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UNITED STATES – COUNTERVAILING AND ANTI-DUMPING MEASURES ON CERTAIN PRODUCTS FROM CHINA

COMMUNICATION FROM THE PANEL

The following communication, dated 31 May 2013, was received from the Chairperson of the Panel with the request that it be circulated to the Dispute Settlement Body (DSB).

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On 15 March 2013, the United States submitted to the Panel a request for a preliminary ruling concerning the consistency of China's request for the establishment of a Panel (WT/DS449/2) with Article 6.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

On 7 May 2013, the Panel issued the attached preliminary ruling and addressed it to the parties and third parties.

After consulting the parties to the dispute, the Panel decided to inform the Dispute Settlement Body (DSB) of the content of its preliminary ruling. Therefore, I would be grateful if you would circulate this letter and the attached preliminary ruling to the Members of the DSB.

COMMUNICATION FROM THE PANEL
PRELIMINARY RULING

7 May 2013

1 PROCEDURAL BACKGROUND

1.1. On 15 March 2013, the United States submitted to the Panel a request for a preliminary ruling (preliminary ruling request) concerning the consistency of China's request for the establishment of a Panel (WT/DS449/2) (panel request) with Article 6.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

1.2. The United States requested that the Panel issue its preliminary ruling before the filing of first written submissions.[1] In contrast, China argued that the Panel should rule on the preliminary ruling request at a later stage of the proceedings.[2] Ultimately, the Panel decided it would issue a preliminary ruling prior to the filing of the first written submissions of the parties, reasoning, *inter alia*, that the United States' preliminary ruling request concerns a substantial part of China's panel request and, if the Panel were to uphold the United States' request in its entirety, the impact on the matter under review by the Panel would be significant. China subsequently indicated that it would not pursue certain claims that are the subject of the United States' preliminary ruling request.[3] In response, the United States indicated, however, that it wishes to maintain its preliminary ruling request as submitted to the Panel.[4] In the light of these additional communications from the parties, the Panel confirmed its decision that it would issue a preliminary ruling prior to the filing of the first written submissions of the parties.

1.3. As neither China nor the United States requested a hearing on the preliminary ruling issue, the Panel gave the parties the opportunity to submit further written comments to respond to each other's comments on the United States' request. The Panel also invited the third parties to submit written comments on the United States' request.[5] Moreover, the Panel posed several written questions to the parties and third parties, and gave China and the United States the opportunity to submit comments on the responses received.[6]

2 SUBSTANCE OF THE UNITED STATES' REQUEST

2.1. The United States bases its preliminary ruling request on Article 6.2 of the DSU, which provides in relevant part as follows:

> The request for the establishment of a panel shall be made in writing. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

2.2. More particularly, the United States requests the Panel to find that China's claims set forth in Parts C and D of its panel request fail to meet the requirement in Article 6.2 to "provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly" and, therefore, are not within the Panel's terms of reference.[7] According to the United States, "the legal

[1] United States' letter to the Panel dated 15 March 2013.
[2] China's letter to the Panel dated 19 March 2013.
[3] China's letter to the Panel dated 25 March 2013.
[4] United States' letter to the Panel dated 27 March 2013.
[5] Only the European Union submitted comments on the United States' preliminary ruling request. European Union's comments on the United States' preliminary ruling request, dated 11 April 2013.
[6] The parties, Australia, the European Union and Japan submitted responses to the Panel on 19 April 2013. Furthermore, on 24 April 2013 the parties provided comments on each other's responses, and on those of the third parties.
[7] United States' preliminary ruling request, dated 15 March 2013, paras. 1 and 35.

claims referenced in Sections C and D of China's request are so broad and ill-defined as to deny the Panel jurisdiction and the United States an opportunity to begin preparing its defense."[8]

2.3. According to the United States, in Parts C and D of its panel request, China merely lists articles of the Agreement on Subsidies and Countervailing Measures (SCM Agreement), the Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement) and the General Agreement on Tariffs and Trade 1994 (GATT 1994) in relation to over 60 US countervailing and anti-dumping proceedings. The United States submits that both Parts contain identical language alleging that the United States has acted inconsistently with "Articles 10, 15, 19, 21, and 32 of the SCM Agreement and Article VI of the GATT 1994" and "Articles 9 and 11 of the AD Agreement and Article VI of the GATT 1994". In the United States' view, such a listing of articles, each of which contains multiple distinct legal obligations, together with derivative claims, constitutes an imprecise and speculative summary of the basis of the complaint. The United States argues that a cursory reference to these articles without further specificity does not reveal which distinct legal obligation or obligations are at issue. The United States further submits that China fails to "plainly connect"[9] the challenged measures with the legal basis of its complaint.[10]

2.4. In sum, the United States claims that China has failed sufficiently to state the legal basis of its complaint in these proceedings. In its view, without the specificity required by both the letter and spirit of Article 6.2 of the DSU, China has frustrated the United States' attempts to adequately prepare a defence, as the United States must speculate about what claims China is asserting in Parts C and D of its panel request. The United States submits that it is not the responding party's burden to determine how or why an obligation relates to a specific measure or how or why the claims relate to other WTO disputes.[11]

2.5. In response, China indicated that it had decided, for its own reasons, to narrow the scope of its claims with regard to the issue of double remedies, and that it would not pursue its claims in Parts C and D of its panel request, except for those under Articles 10, 19, and 32 of the SCM Agreement, as set forth in Part D. In the light of its decision, China limited its response to the United States' preliminary ruling request to those portions of the request that relate to the specific claims that China had decided to pursue in respect of the issue of double remedies. In China's view, the Panel should reject the United States' preliminary ruling request because, with respect to China's claims under Articles 10, 19, and 32 of the SCM Agreement, Part D is consistent with the requirements of Article 6.2 of the DSU.[12]

2.6. China submits that its claims relating to double remedies under Articles 10, 19, and 32 of the SCM Agreement in Part D of its panel request were articulated with more than sufficient precision to "present the problem clearly" within the meaning of Article 6.2. According to China, it is evident on the face of the panel request that China intended to apply the Appellate Body's findings in *US — Anti-Dumping and Countervailing Duties (China)* (DS379) under Articles 10, 19, and 32 to the investigations and reviews that came after those at issue in DS379. China states that it was required to take this action because the legislation at issue in the present dispute requires China to re-litigate the issue of double remedies before the United States will consider whether to comply with its obligations under the covered agreements in respect of those post-DS379 investigations and reviews. China further argues that the United States suffered no conceivable prejudice from the fact that China cited Article 19 generally as opposed to individual paragraphs under Article 19. China considers that in the light of the interlinked nature of the obligations under Article 19, including as they relate to the issue of double remedies, the United States was fully apprised of the nature of China's claim under this provision.[13]

2.7. The Panel begins its consideration of the United States' preliminary ruling request by determining the appropriate scope of its preliminary ruling.

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[8] United States' preliminary ruling request, dated 15 March 2013, para. 1.

[9] In this respect, the United States relies on the Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 162.

[10] United States' preliminary ruling request, dated 15 March 2013, paras. 2 and 19.

[11] United States' preliminary ruling request, para. 34.

[12] China's response to the United States' preliminary ruling request, dated 8 April 2013, paras 1 and 10; China's letter to the Panel dated 25 March 2013, pp. 1-2.

[13] China's response to the United States' preliminary ruling request, dated 8 April 2013, paras. 8, 9 and 34.

3 CONSIDERATION BY THE PANEL

3.1 Scope of the preliminary ruling

3.1. As an initial matter, the Panel needs to address and determine the scope of its preliminary ruling. This is because China indicated that it would not pursue certain claims that are the subject of the United States' preliminary ruling request.

3.2. Specifically, China, in a letter to the Panel, stated that:

> Given China's view that a finding of inconsistency under [Articles 10, 19, and 32 of the SCM Agreement] would be sufficient to secure an effective resolution of this dispute, and given that the measures at issue in Part D of China's panel request are identical in all relevant respects to those at issue in DS379, China decided to limit the claims that it will pursue to those three provisions. Likewise, China decided not to pursue its claims concerning the omission identified in Part C of its panel request, given that those claims would not materially add to the compliance obligations of the United States in relation to its compliance obligations under Part D, should China prevail in its claims under Part D.[14]

Subsequently, in its response to the United States' preliminary ruling request, China referenced the aforesaid letter to explain why it limited its response to "those portions of the request that relate to the specific claims that China had already decided to pursue in respect of the issue of double remedies. These are China's claims under Articles 10, 19, and 32 of the SCM Agreement, as set forth in Part D of the panel request."[15] In response to Panel questions, China stated that it "will not" request that the Panel examine and rule upon claims that China was no longer pursuing, and that "[w]hile one cannot entirely foreclose the possibility that it would be appropriate under extraordinary circumstances, such as a supervening change in facts, for a panel to examine and rule upon claims that a complainant had previously abandoned, China wishes to reiterate that it has no intention of doing so in this case".[16] In its final set of comments to the Panel, China stated that it "would like to repeat that it has no intention of pursuing its claims under Part C of the panel request and that, in respect of Part D of the panel request, it will limit its claims to Articles 10, 19, and 32 of the SCM Agreement. China made this representation to the Panel in its letter dated 25 March, and reiterated this intention in its response to question 1(c) from the Panel."[17]

3.3. The United States indicated to the Panel that, China's earlier letter notwithstanding, it wishes to maintain its preliminary ruling request as submitted to the Panel.[18] In a later reply to a Panel question, the United States noted, however, that it could be appropriate for the Panel to choose to exercise judicial economy with respect to the claims that China suggested it was abandoning, if China were to express its commitment to the Panel not to pursue these claims further in these proceedings.[19] According to the United States, any exercise of judicial economy with respect to the claims that China stated it had withdrawn should be based on a clear commitment by China and not simply on a statement of China's current intentions. Absent such a commitment, it would, in the United States' view, be appropriate for the Panel to make findings that these claims are outside the Panel's terms of reference.[20]

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[14] China's letter to the Panel dated 25 March 2013, pp. 1-2.

[15] China's response to the United States' preliminary ruling request, dated 8 April 2013, paras. 1 and 6.

[16] China's responses to Panel question No. 1(b) and (c), dated 19 April 2013, paras. 1 and 6, respectively.

[17] China's comments on the United States' comments on China's response to the United States' preliminary ruling request, dated 29 April 2013, para. 11.

[18] United States' letter to the Panel dated 27 March 2013, p. 1.

[19] United States' response to Panel question No. 1(a), dated 19 April 2013, para. 2.

[20] United States' comments on China's response to the United States' preliminary ruling request, dated 22 April 2013, para. 2 and footnote 2; and United States' comments on China's response to Panel question No. 1(c), dated 24 April 2013, paras. 2 and 17. China did not specifically respond to the United States' request that China provide a "clear commitment". However, China did subsequently reiterate that it "has no intention of pursuing its claims under Part C of the panel request and that, in respect of Part D of the panel request, it will limit its claims to Articles 10, 19, and 32 of the SCM Agreement". China's comments on the United States' comments on China's response to the United States' preliminary ruling request, dated 29 April 2013, para. 11.

3.4. In considering this matter, the Panel will address first whether it is has the legal authority to rely on China's statement to the effect that it will not pursue any of its claims under Part C of its panel request, and that with regard to Part D of its panel request it will only pursue its claims under Articles 10, 19, and 32. In this respect, it is now well established in WTO dispute settlement practice that a complaining party may limit a claim or even abandon it altogether.[21] In the present case, China stated that it had decided not to pursue the specified claims set forth in Parts C and D. In other words, China in effect indicated that it has abandoned these claims.

3.5. As regards the timing of a limitation or abandonment of a claim, we observe that China indicated its abandonment of the relevant claims early in these proceedings and well before this Panel turns to assess the merits (substance) of any claims by China.[22] The early limitation or abandonment of claims in our view comports well with the aim of fair, prompt and efficient dispute settlement.[23]

3.6. We also need to examine the form and nature of China's statement concerning the abandonment of the claims in question. The statement is set forth in a letter addressed to the Panel, i.e. in a formal written communication. The statement was subsequently referred to, and reaffirmed, in three further formal written communications to the Panel[24], demonstrating that it reflects a considered decision of China. Furthermore, it may be inferred from the statement that China made a unilateral decision not to pursue the identified claims, and China at no point suggested that its decision was conditional on follow-up action by the Panel or the United States. Also of note is that China's subsequent conduct accorded with its statement, in that China did not address, at all, the parts of the United States' preliminary ruling request that cover the claims China said it would abandon. Moreover, China's own letter characterized the relevant statement as "representations", indicating it constitutes a formal and serious expression of its position.[25] To us, this indicates that China was aware and indeed trusted that the Panel and the United States might act on its statement.[26] In the light of these various elements, we do not share the United States' apparent view that China needs to provide anything more or different before the Panel can proceed on the basis that China has validly abandoned the identified claims.[27] In this connection, we also observe that even assuming for the sake of argument that China's statement could be fairly characterized as a simple statement of its current intentions, a prior panel permitted the

[21] See, e.g. Appellate Body Report, *Japan – Apples*, para. 136 (saying "nor do we disagree … that a party may abandon claims in the course of dispute settlement proceedings"); Panel Reports, *China – X-Ray Equipment*, footnote 339; *EC – Fasteners* (*China*), footnote 239; *US – Clove Cigarettes*, para. 7.11; *China – Raw Materials*, para. 7.23; *India – Additional Import Duties*, paras. 7.402-7.405; *US – Steel Plate*, para. 7.26; and *Egypt – Steel Rebar*, para. 7.30.

[22] Likewise, the panel in *China – Raw Materials* raised no questions over the complaining parties' abandonment of certain claims in the context of a special preliminary ruling procedure. See Panel Reports, *China — Raw Materials*, para. 7.1, incorporating Communication from the Panel, *China — Raw Materials*, WT/DS394/9, WT/DS395/9, WT/DS398/8, paras. 40-41. We further note that the Appellate Body in *Japan – Apples* addressed a situation where the United States limited one of its claims in its arguments and allegations of fact submitted to the panel. Although this limitation was not made in the context of a special preliminary ruling procedure, the Appellate Body observed that it saw "nothing wrong with the United States restricting the scope of its claim subsequent to the issuance of the terms of reference or at any other stage of the proceedings". (Appellate Body Report, *Japan – Apples*, para. 136).

[23] See, e.g. Article 3.3 and 3.7 of the DSU.

[24] See footnotes 15-17 above.

[25] The reference to "representations" appears twice in China's letter (China's letter to the Panel dated 25 March 2013, p. 2). We further note that the noun "representation" has been defined, *inter alia*, as "[a] formal and serious statement of facts, reasons, or arguments, made with the aim of influencing action, conduct, etc.; a remonstrance, a protest, an expostulation" (*Shorter Oxford English Dictionary*, 6th edn., A. Stevenson (ed.) (Oxford University Press, 2007), Vol. 2, p. 2537).

[26] Specifically, China's letter indicates that China anticipated (i) that its representations might have a bearing on the timetable and procedures followed by the Panel for purposes of dealing with the United States' preliminary ruling request, and (ii) that they might also lead the United States to reconsider whether its preliminary ruling request remained necessary. China further expressed the view that it did not seem worthwhile for the Panel and parties to evaluate whether claims it did not wish to pursue were properly set forth in its panel request (China's letter to the Panel dated 25 March 2013, p. 2).

[27] In response to a question from the Panel, China addressed a hypothetical scenario involving "extraordinary circumstances" that might prompt a complaining party to request examination of claims it had previously abandoned. China hastened to "reiterate", though, that "it has no intention of doing so in this case" (China's response to Panel question No. 1(c), dated 19 April 2013, para. 6). This remark about hypothetical and extraordinary circumstances in our view sheds neither new nor different light on the nature of the statement in China's letter. Indeed, China itself used the word "reiterate". China's remark does not, therefore, colour our assessment of the nature of China's statement.

complaining parties in that dispute to abandon certain claims referred to in their panel requests, after having been informed by the complaining parties that "they do not intend to pursue" any such claims.[28]

3.7. For all these reasons, we conclude that, in the particular circumstances of this case and for purposes of making its preliminary ruling, the Panel has the authority to rely on China's formal statement, as set out in its letter and subsequently reaffirmed, that it had decided not to pursue – and hence to abandon – all claims in Part C of its panel request, and its claims in Part D other than those under Articles 10, 19, and 32.

3.8. We now turn to consider whether it is appropriate for the Panel to refrain from ruling on those elements of the United States' preliminary ruling request that concern the claims that China has abandoned. To recall, the United States did not limit the scope of its request in response to China's statement that it had decided to abandon certain claims covered by the United States' request.[29] We concluded above that China validly abandoned its claims in Part C, and its claims in Part D except for those under Articles 10, 19, and 32. However, China did not thereby modify the Panel's terms of reference. Indeed, China cannot unilaterally modify this Panel's terms of reference.[30] It follows, then, that China's abandonment of the identified claims does not dispose, in and of itself, of the issue raised by the United States, viz. whether Parts C and D of the panel request meet the requirements of Article 6.2 insofar as they relate to abandoned claims.

3.9. The mere fact that we are still left with an Article 6.2 issue does not mean that we need to, or should, resolve it. As a threshold matter, it is necessary to consider whether resolving this issue would make any practical difference. In this regard, if we were to find that Parts C and D are inconsistent in relevant part with Article 6.2 and the claims that China decided to abandon are outside our terms of reference, we would lack the authority to rule on their merits. Conversely, if we were to find that Parts C and D are not inconsistent in relevant part with Article 6.2 and the claims that China decided to abandon are within our terms of reference, China in keeping with its statement would not request us to rule on the merits of these claims. Thus, in view of China's statement, a ruling by this Panel on whether Parts C and D, insofar as they concern abandoned claims, meet the requirements of Article 6.2 would make no practical difference – in either case, the Panel would make no ruling on the merits of the claims in question. In this sense, and in relation to the abandoned claims, China's statement that it will not pursue the claims in question has rendered the Article 6.2 issue raised by the United States moot[31], provided that China continues to act in accordance with its statement. We will revert to this proviso further on.[32]

3.10. At this stage, we note that other panels confronting issues that they determined were moot responded by not examining them further.[33] In the particular circumstances of this case, we consider that the aim of the WTO dispute settlement mechanism, which is to "secure a positive solution to a dispute"[34], does not require us to rule on an Article 6.2 issue that we have determined is moot. Indeed, it appears futile to offer a ruling linked to claims that the complaining party no longer deems fruitful to pursue.[35] We likewise consider that a ruling on the Article 6.2 issue that pertains to the abandoned claims is not necessary to "assist the DSB in making the

[28] Panel Reports, *China — Raw Materials*, para. 7.1, incorporating Communication from the Panel, *China — Raw Materials*, WT/DS394/9, WT/DS395/9, WT/DS398/8, paras. 40-41.

[29] As noted above, the United States also indicated that, subject to a clear commitment from China regarding the abandonment of the specified claims, it could be appropriate for the Panel to exercise judicial economy with respect to the claims that China suggested it was abandoning. China considers that it is not necessary for the Panel to make findings on whether the specified claims are within its terms of reference as China had decided not to pursue these claims (China's response to Panel question No. 1(b), dated 19 April 2013, para. 1.

[30] We see nothing in Article 6 or 7 of the DSU that would indicate otherwise.

[31] The adjective "moot" is defined, *inter alia*, as "[o]f a case, issue, etc.: of no practical significance or relevance; abstract or academic" (*Shorter Oxford English Dictionary*, 6th edn., A. Stevenson (ed.) (Oxford University Press, 2007), Vol. 1, p. 1834).

[32] See paragraphs 3.13. - 3.14. below.

[33] See, e.g. Panel Reports, *China — X-Ray Equipment*, para. 7.410; *US – Hot-Rolled Steel*, paras. 7.52 and 7.60; *US – Lamb*, para. 5.65; and *Guatemala – Cement II*, para. 8.171.

[34] Article 3.7, second sentence, of the DSU.

[35] Article 3.7, first sentence, of the DSU provides that before bringing a case, a Member is to exercise its judgement as to whether action under the DSU procedures would be fruitful. It seems to us that similar logic can be reasonably brought to bear on the matter of pursuing claims before a panel.

recommendations or in giving the rulings provided for"[36] in the covered agreements. As explained, it follows from China's statement before this Panel that the abandoned claims will not result in DSB recommendations or rulings of any kind.

3.11. In this case both parties[37], and all of those third parties that made submissions and/or responded to Panel questions on this issue[38], agree that the Panel could, in certain circumstances and subject to certain conditions, decline to rule on Article 6.2 issues relating to abandoned claims (one of those circumstances being the clear abandonment of the claims). As an additional matter, we are aware of at least two other panels that decided there was no need to rule on a preliminary ruling request by the responding party which was based on Article 6.2 and concerned a particular claim, on the grounds that the complaining party had either not raised that claim during the course of the proceedings, or confirmed at the first substantive meeting with the panel that it was not pursuing it.[39]

3.12. In the light of the foregoing, it is our view that the mere fact that the United States has not limited the scope of its preliminary ruling request does not mean that we cannot nevertheless limit the scope of our preliminary ruling. Before reaching a conclusion on whether it is appropriate to do so in the present case, we need to revert to China's statement that it would not pursue the identified claims.

3.13. We have determined above that we are entitled to rely on China's statement for purposes of making our preliminary ruling. However, any decision by this Panel to limit the scope of its preliminary ruling in reliance on China's statement would of necessity be subject to the condition that China acts in accordance with its statement. It is apposite to recall in this respect that Article 3.10 of the DSU commits all Members, if a dispute arises, to engage in dispute settlement procedures "in good faith in an effort to resolve the dispute". Thus, it is clear to us that in situations where a complaining party abandons claims during a special preliminary ruling procedure, panels should not – save, perhaps, in extraordinary circumstances and subject to a well-substantiated explanation[40] – allow that party to resurrect those claims after the preliminary phase has run its course. Otherwise, a complaining party could circumvent a preliminary ruling covering these claims.

3.14. Bearing in mind these additional observations informed by Article 3.10 of the DSU, we remain of the view that the Panel is entitled to act on China's statement for purposes of making its preliminary ruling. Given this, we conclude that we have sufficient reason at this time to consider that the Article 6.2 issue raised by the United States and pertaining to the abandoned claims is, and will remain, moot. In these circumstances, we find it appropriate to limit the scope of our preliminary ruling to take account of China's statement.

3.15. Accordingly, and in conclusion, we decline to rule on whether Parts C and D of China's panel request, insofar as they relate to claims other than those in Part D under Articles 10, 19, and 32 of the SCM Agreement, are inconsistent with Article 6.2, as the United States argues. However, this decision is conditional on continued adherence by China to its formal statement to this Panel that it will not pursue any claims in Parts C and D other than its claims in Part D, under Articles 10, 19, and 32 of the SCM Agreement.

3.16. We now proceed to address the remaining elements of the United States' preliminary ruling request.

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[36] Article 11, second sentence, of the DSU.

[37] China's response to Panel question No. 1(b), dated 19 April 2013, paras. 1-2; the United States' response to Panel question No. 1(b), dated 19 April 2013, paras. 4-6.

[38] European Union's comments on the United States' request for a preliminary ruling, dated 11 April 2013, paras. 28-30; Australia's response to Panel question No. 1 to third parties, dated 19 April 2013; the European Union's response to Panel question No. 1(a) to third parties, dated 19 April 2013, paras. 1-2; Japan's response to Panel question No. 1(a) to third parties, dated 19 April 2013, paras. 1-11.

[39] See Panel Reports, *Japan – DRAMs* (*Korea*), para. 7.17; *US — Oil Country Tubular Goods Sunset Reviews*, para. 7.44. It should be noted that unlike this Panel, the panels in these disputes had not agreed to issue a preliminary ruling before the parties would file their first written submissions.

[40] It is noteworthy that, in *China – GOES*, the Appellate Body indicated along similar lines that in a case where a panel is entitled to rely on statements made before it by a party, and that party wishes to advance a different position on appeal, that party would have to explain why its statements are no longer to be relied upon. (See Appellate Body Report, *China – GOES*, para. 195).

3.2 Does China's panel request permit sufficiently clear inferences as to the WTO obligations at issue in its Part D?

3.17. The Panel now turns to address the United States' argument that Part D of the panel request, by merely listing a number of articles that contain multiple distinct legal obligations, does not reveal which distinct legal obligation(s) are at issue and therefore fails to "provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly". Part D of the panel request includes claims under Articles 10, 15, 19, 21, and 32 of the SCM Agreement, Articles 9 and 11 of the Anti-Dumping Agreement and Article VI of the GATT 1994. As a consequence of our conclusion set forth at paragraph 3.15 above, the remainder of our analysis is confined to the claims under Articles 10, 19, and 32 of the SCM Agreement.

3.18. As pointed out in paragraph 2.3 above, the United States submits that Part D of China's panel request does not meet the requirement in Article 6.2 of the DSU to "provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly". The United States asserts that China's panel request "states the specific measures at issue and then merely lists a string of articles" from the SCM Agreement, the Anti-Dumping Agreement and Article VI of the GATT 1994.[41] The United States submits that the "cursory reference" to these articles "without further specificity does not reveal which distinct legal obligation or obligations are at issue".[42] The United States advances several different arguments in support of its position.

3.19. First, the United States notes that the measures at issue in this dispute include "any and all determinations" issued by three US government agencies that are "in connection" with countervailing duty investigations or reviews over a six year period".[43] In this regard, the United States argues that China's failure to sufficiently state the legal basis of its complaint "is particularly problematic because the present circumstances touch upon over 62 proceedings conducted by multiple government agencies".[44]

3.20. Second, the United States argues that Article 19 contains multiple, distinct obligations.[45] In this regard, the United States argues, *inter alia*, that prior Appellate Body and panel reports have analysed the paragraphs contained in Article 19 as distinct obligations.[46]

3.21. Third, the United States argues that it is not the responding party's burden to determine how or why an obligation relates to a specific measure or how or why the claims relate to other WTO disputes.[47] In this regard, the United States' raises a number of concerns with respect to China's argument that the Appellate Body's findings in *US – Anti-Dumping and Countervailing Duties (China)* (DS379) clarify the legal basis of the complaint in this dispute.[48]

3.22. Fourth, the United States argues that this case is "analogous" to the proceedings in *EC – Tube or Pipe Fittings* and *US – Countervailing Measures on Certain EC Products (Article 21.5 – EC)*, and argues that this Panel should follow those panels in finding that a mere listing of provisions is not sufficient to meet the requirements of Article 6.2 of the DSU.[49]

3.23. Fifth, the United States submits that the claims under Articles 10 and 32 are "derivative" of China's claim under Article 19, and cannot form independent legal bases for China's claims. Accordingly, the United States argues that because the underlying claims such as those under Article 19 do not fall within the Panel's terms of reference, the derivative claims under Articles 10 and 32 must be excluded as well.[50] The United States submits that China's failure to specify which

[41] United States' preliminary ruling request, dated 15 March 2013, paras. 15-16.
[42] United States' preliminary ruling request, dated 15 March 2013, para. 19.
[43] United States' preliminary ruling request, dated 15 March 2013, paras. 1-2.
[44] United States' preliminary ruling request, dated 15 March 2013, para. 34.
[45] United States' preliminary ruling request, dated 15 March 2013, paras. 21-22.
[46] United States' comments on China's response to the United States' preliminary ruling request, dated 22 April 2013, paras. 12-25 (citing the Appellate Body Reports in *US – Anti-Dumping and Countervailing Duties (China)*, *US – Softwood Lumber IV, US – Certain EC Products,* and the Panel Report in *EC – Salmon)*.
[47] United States' preliminary ruling request, dated 15 March 2013, para. 34.
[48] United States' comments on China's response to the United States' preliminary ruling request, dated 22 April 2013, paras. 5-10.
[49] United States' preliminary ruling request, dated 15 March 2013, paras. 25-27.
[50] United States' preliminary ruling request, dated 15 March 2013, paras. 20, 30-32.

obligation in Article 32 is at issue further illustrates the inadequacy of Part D of the panel request.[51]

3.24. Finally, the United States' submits that China's failure to identify the specific obligation(s) at issue has frustrated its attempts to begin preparing its defence.[52] However, the United States does not argue that the Panel should base its ruling on a separate and distinct assessment of whether the United States suffered any prejudice in this regard.[53]

3.25. As pointed out in paragraph 2.6. above, China submits that its claims relating to double remedies under Articles 10, 19, and 32 in Part D of its panel request were articulated with more than sufficient precision to "present the problem clearly" within the meaning of Article 6.2. China advances several different arguments in support of its position.

3.26. First, China argues that it is clear from the heading and content of Part D of the panel request that the entire subject matter of Part D is the issue of double remedies. China submits that its claims under Article 19 relate to this very specific issue, not just to *any* issue that might arise under Article 19 in respect of a countervailing duty measure.[54]

3.27. Second, China argues that the mere listing of a treaty Article is sufficient where the obligations contained within that Article have a "close relationship" with each other or are "interlinked" in terms of their substantive content, and that this is the case with the paragraphs of Article 19. China submits that the Appellate Body's findings in DS379 demonstrate the close interrelationship among the four paragraphs of Article 19.[55]

3.28. Third, China argues that footnote 6 of the panel request expressly refers to the recommendations and rulings of the DSB in *US – Anti-Dumping and Countervailing Duties (China)* (DS379), which include findings in relation to double remedies under Articles 10, 19, and 32, thereby drawing a clear connection between these two disputes.[56] With respect to the findings in *US – Anti-Dumping and Countervailing Duties (China)* (DS379), China argues, *inter alia*, that it "is obvious on the face of the panel request that China's claims in Part D included the same claims on which it prevailed in DS379".[57]

3.29. Fourth, China argues that the United States' reliance on the panel report in *EC – Tube or Pipe Fittings* is misplaced, and that the situation before this Panel is more analogous to several prior cases in which panels found that the "mere listing" of an Article in a panel request was sufficient to comply with Article 6.2 of the DSU.[58]

3.30. Fifth, China argues that the consequential nature of the claims under Articles 10 and 32 means that if the Panel finds that the general reference to Article 19 meets the requirements of Article 6.2, so do the claims under Articles 10 and 32.[59] China also argues that given the nature of the obligations contained in Article 32, the only obligation that could have been breached by virtue of the imposition of double remedies is in Article 32.1.[60]

3.31. Finally, China submits that the United States could have suffered no prejudice in its ability to begin preparing its defence. In this regard, China argues that the United States cannot demonstrate that it was prejudiced by China's reference in Part D of the panel request to Article 19, as opposed to Articles 19.3 and 19.4 individually.[61]

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[51] United States' comments on China's response to Panel question No. 6, dated 24 April 2013, para. 15.
[52] United States' preliminary ruling request, dated 15 March 2013, paras. 33-34.
[53] See United States' response to Panel question No. 2(a), dated 19 April 2013, paras. 11-13.
[54] China's response to the United States' preliminary ruling request, dated 8 April 2013, para. 12.
[55] China's response to the United States' preliminary ruling request, dated 8 April 2013, paras. 21-30.
[56] China's response to the United States' preliminary ruling request, dated 8 April 2013, paras. 7, 13-15.
[57] China's response to the United States' preliminary ruling request, dated 8 April 2013, para. 34.
[58] China's response to the United States' preliminary ruling request, dated 8 April 2013, paras. 22-23 (discussing the Appellate Body Reports in *US – Certain EC Products* and *Thailand – H-Beams*).
[59] China's response to the United States' preliminary ruling request, dated 8 April 2013, para. 33.
[60] China's response to Panel question No. 6, dated 19 April 2013, para. 19.
[61] China's response to the United States' preliminary ruling request, dated 8 April 2013, paras. 9, 32 and 34; China's comments on the United States' response to Panel question No. 2(a), dated 24 April 2013,

3.32. The Panel begins its consideration by setting out the principal issue in dispute. Article 6.2 of the DSU requires that a panel request must provide certain information, including "a brief summary of the legal basis of the complaint sufficient to present the problem clearly". Part D of China's panel request, which identifies Articles 10, 19, and 32 as the treaty provisions at issue[62], meets the "minimum prerequisite"[63] of identifying the treaty provisions claimed to have been violated. However, the Appellate Body has explained that "to the extent that a provision contains not one single, distinct obligation, but rather multiple obligations, a panel request might need to specify which of the obligations contained in the provision is being challenged".[64] Part D of China's panel request refers generally to Articles 10, 19, and 32, without specifying which obligations in those provisions form the legal basis of the complaint. The principal issue before the Panel is whether Part D of the panel request, insofar as the general references to Articles 10, 19, and 32 are concerned, provides a brief summary of the legal basis of the complaint sufficient to present the problem clearly.[65]

3.33. The Panel notes that there have been a number of prior cases in which similar issues arose. In the majority of those cases, panel requests that included only general references to provisions containing multiple distinct obligations were found to provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.[66] However, in some cases, panels found that it was impossible, when reading the provisions identified together with the other information contained in the panel request, to identify which distinct obligation(s) within those provisions formed the legal basis of the complaint.[67]

3.34. Turning to the provisions referenced in Part D of China's panel request, we observe that Article 10 consists of a single paragraph. In contrast, Article 19 contains four paragraphs, which, in the Panel's view, contain multiple distinct obligations.[68] Among other things, and as the United

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paras. 1-5; China's comments on the United States' comments on China's response to the United States' preliminary ruling request, dated 29 April 2013, paras. 2-10.

[62] As noted above, in the light of China's representations that it is not pursuing its claim under the other articles mentioned in Part D (or Part C) of the panel request, the Panel's analysis is confined to the remaining claims under Articles 10, 19, and 32.

[63] Appellate Body Report, *Korea – Dairy*, para. 124.

[64] See, e.g. Appellate Body Report, *China – Raw Materials*, para. 220 (citing Appellate Body Report, *Korea – Dairy*, para. 124 and Appellate Body Report, *EC – Fasteners (China)*, para. 598.)

[65] As a matter of terminology, we refer to the "general references" to these provisions rather than their "mere listing", because the latter expression appears to have been used in some previous cases to refer to a situation in which a panel request refers to the measures at issue and one or more articles of the covered agreements without any narrative explanation of the problem. See, e.g. Panel Report, *Mexico – Anti-Dumping Measurers on Rice*, para. 7.30. As discussed further below, in the panel request in this case the general references to Articles 10, 19, and 32 are accompanied by a narrative description of the problem, notably the reference to the United States' "failure to investigate and avoid double remedies" in certain investigations and reviews.

[66] See, e.g. Appellate Body Report, *Korea – Dairy*, paras. 114-131 (general references to Articles 2, 4, 5, and 12 of the Agreement on Safeguards and Article XIX of the GATT 1994); Appellate Body Report, *Thailand – H-Beams*, paras. 80-97 (general references to Articles 2, 3, and 5 of the Anti-Dumping Agreement and Article VI of the GATT 1994); Panel Report, *US – Lamb*, paras. 5.17-5.53 (general references to Articles 2, 3, and 4 of the Agreement on Safeguards); Panel Report, *Mexico – Corn Syrup*, paras. 7.6-7.18 (general references to Articles 1, 2, 3, 4, 5, 6, 7, 10, and 12 of the Anti-Dumping Agreement and Article VI of GATT 1994); Appellate Body Report, *US – Certain EC Products*, paras. 108-111 (general reference to Article 23 of the DSU); Panel Report, *US – Oil Country Tubular Goods Sunset Reviews*, paras. 7.43-7.48 (general reference to Article 3 of the Anti-Dumping Agreement); Panel Report, *Mexico – Anti-Dumping Measurers on Rice*, paras. 7.29-7.31 (general reference to Article VI of the GATT 1994); Panel Reports, *EC – Approval and Marketing of Biotech Products*, paras. 70-77 of the preliminary ruling reproduced at para. 7.47 of the reports (general references to Annex B(5) of the SPS Agreement and Articles 2.9, 5.6, and 12 of the TBT Agreement); and Panel Report, *Japan – DRAMs (Korea)*, paras. 7.15, 7.29, 7.31, 7.33, 7.35, 7.37, and 7.39 (seven items in the panel request that contained general references to one or more of Articles 1, 2, 10, 12, 14, 19, and 21 of the SCM Agreement).

[67] See, e.g. Panel Report, *Thailand – H-Beams*, paras. 7.26-7.31 (general references to Articles 2, 3 and 5 of the Anti-Dumping Agreement and Article VI of the GATT 1994 met the requirements of Article 6.2, but a general reference to Article 6 of the Anti-Dumping Agreement did not); Panel Report, *Japan – DRAMs (Korea)*, para. 7.21 (seven out of the eight items at issue met the requirements of Article 6.2, but one item in the panel request, which contained general references to Articles 10, 11, 12, 14, 15, 22, and 32.1 of the SCM Agreement and Articles VI:3 and X:3 of the GATT 1994, did not).

[68] Article 19 contains four paragraphs, which read as follows:

Imposition and Collection of Countervailing Duties

States points out, prior Appellate Body and panel reports have analysed the paragraphs of Article 19 as distinct obligations.[69] In addition, we have difficulty reconciling China's argument that the obligations in Article 19 are "not 'distinct' in any way"[70] with China's argument that Article 19.3 and 19.4 (and not Article 19.1 or 19.2) are "the only two obligations in Article 19 that could possibly relate to a determination of the amount of countervailing duty to impose".[71] With respect to Article 32, which contains eight paragraphs, it is clear on the face of that provision that the eight paragraphs contained therein address distinct issues.[72]

3.35. Thus, with regard to Article 10, we consider that Part D does not need to provide additional detail, as it is reasonable to infer that in this dispute, as would typically be the case, Article 10 is invoked to raise a consequential claim.[73] With regard to Articles 19 and 32, which contain multiple,

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19.1 If, after reasonable efforts have been made to complete consultations, a Member makes a final determination of the existence and amount of the subsidy and that, through the effects of the subsidy, the subsidized imports are causing injury, it may impose a countervailing duty in accordance with the provisions of this Article unless the subsidy or subsidies are withdrawn.

19.2 The decision whether or not to impose a countervailing duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the countervailing duty to be imposed shall be the full amount of the subsidy or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition should be permissive in the territory of all Members, that the duty should be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry, and that procedures should be established which would allow the authorities concerned to take due account of representations made by domestic interested parties whose interests might be adversely affected by the imposition of a countervailing duty.

19.3 When a countervailing duty is imposed in respect of any product, such countervailing duty shall be levied, in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be subsidized and causing injury, except as to imports from those sources which have renounced any subsidies in question or from which undertakings under the terms of this Agreement have been accepted. Any exporter whose exports are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to cooperate, shall be entitled to an expedited review in order that the investigating authorities promptly establish an individual countervailing duty rate for that exporter.

19.4 No countervailing duty shall be levied on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product.

[69] United States' comments on China's response to the United States' preliminary ruling request, dated 22 April 2013, paras. 12-25 (discussing the Appellate Body Reports in *US – Anti-Dumping and Countervailing Duties (China)*, *US – Softwood Lumber IV, US – Certain EC Products,* and the Panel Report in *EC – Salmon).*

[70] China's response to the United States' preliminary ruling request, dated 8 April 2013, para. 26; China's comments on the United States' comments on China's response to the United States' request for a preliminary ruling, dated 29 April 2013, paras. 7-8.

[71] China's response to Panel question No. 5, dated 19 April 2013, para. 17. See also China's response to the United States' preliminary ruling request, dated 8 April 2013, para. 31 (where China argues that Articles 19.3 and 19.4 are "the only two paragraphs under Article 19 that impose specific obligations concerning the determination of the amount of the countervailing duty to impose"); and China's comments on the United States' comments on China's response to the United States' request for a preliminary ruling, dated 29 April 2013, paras. 6, 9.

[72] Article 32 contains eight paragraphs, which read as follows:

Other Final Provisions

32.1 No specific action against a subsidy of another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement.

32.2 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

32.3 Subject to paragraph 4, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the WTO Agreement.

32.4 For the purposes of paragraph 3 of Article 21, existing countervailing measures shall be deemed to be imposed on a date not later than the date of entry into force for a Member of the WTO Agreement, except in cases in which the domestic legislation of a Member in force at that date already included a clause of the type provided for in that paragraph.

32.5 Each Member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply to the Member in question.

32.6 Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

32.7 The Committee shall review annually the implementation and operation of this Agreement, taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

32.8 The Annexes to this Agreement constitute an integral part thereof.

[73] See, e.g. Appellate Body Report, *US – Softwood Lumber IV*, para. 143.

distinct obligations, it may not always be sufficient, for purposes of meeting the requirements of Article 6.2 of the DSU, to specify only the Article number.[74] In this regard, the Appellate Body has indicated that compliance with the requirements of Article 6.2 "must be determined on the merits of each case, having considered the panel request as a whole, and in the light of attendant circumstances".[75] Therefore, it may emerge from a careful reading that the WTO obligations at issue in a panel request, while not explicitly identified by paragraph number, are nonetheless identifiable from the panel request considered as a whole. As a result, the Panel now turns to examine whether, despite the lack of explicit identification of the relevant paragraph numbers, a careful reading of China's panel request permits sufficiently clear inferences as to which of the distinct obligations in Articles 19 and 32 form the legal basis of the complaint set out in Part D.

3.36. To resolve this issue, we must read Part D (and the remainder of the panel request) as a whole. This notably involves considering the general references to Articles 19 and 32 together with the narrative explanation of the problem contained in Part D. In the context of examining a panel request that contained a general reference to Article VI of the GATT 1994, without specifying which distinct obligation(s) formed the legal basis of the complaint, the panel in *Mexico – Anti-Dumping Measures on Rice* emphasized the importance of reading such general references together with any accompanying narrative explanation of the problem:

> [T]he US request for establishment does more than simply listing the treaty provisions alleged to have been violated. The United States also provides a narrative in which it briefly explains the problem the United States has with the challenged measure. In our view, the question before us is thus whether, the reference to the provisions of the Agreement, *together with the narrative* which accompanied the listing of these provisions, were sufficient to present the problem clearly so that the defendant was able to understand the case against it.[76]

3.37. We thus turn to the text of Part D of China's panel request, to look more closely at the narrative explanation of the problem contained therein. Part D reads as follows:

> D. Failure to Investigate and Avoid Double Remedies in Certain Investigations and Reviews Initiated Between November 20, 2006 and March 13, 2012
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> Between November 20, 2006 and March 13, 2012, the U.S. authorities initiated a series of anti-dumping and countervailing duty investigations and reviews that resulted in the imposition of anti-dumping and countervailing duties in respect of the same imported products from China, either on a preliminary or final basis. In none of these investigations or reviews did the U.S. authorities take steps to investigate and avoid double remedies.[6]
>
> In light of the failure of the U.S. authorities to investigate and avoid double remedies in the identified investigations and reviews, China considers that the resulting countervailing duty measures, including any countervailing duties collected pursuant to their authority, are inconsistent with Articles 10, 15, 19, 21, and 32 of the SCM Agreement and Article VI of the GATT 1994. China further considers that the associated anti-dumping measures in each such instance, including any anti-dumping duties collected pursuant to their authority, are inconsistent with Articles 9 and 11 of the AD Agreement and Article VI of the GATT 1994.
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> ———————————————————

[6] Appendix A lists all countervailing duty investigations and reviews initiated between November 20, 2006 and March 13, 2012 that included a parallel anti-dumping investigation. The parallel anti-dumping duty investigations are listed in Appendix B. The investigations and reviews that are the subject of the claims set forth in this subpart D are marked with an asterisk (*). China has excluded those investigations that resulted in a negative injury determination by the U.S. International Trade Commission (indicated in the table), as those investigations did not result in the imposition of anti-dumping and countervailing duties. China has also excluded the

[74] See paragraph 3.32 above referring to Appellate Body Report, *China – Raw Materials*, para. 220 (citing Appellate Body Reports, *Korea – Dairy*, para. 124 and *EC – Fasteners (China)*, para. 598).

[75] Appellate Body Report, *US – Carbon Steel*, para. 127.

[76] Panel Report, *Mexico – Anti-Dumping Measures on Rice*, para. 7.30. Emphasis original.

> four sets of parallel AD/CVD investigations that were the subject of the recommendations and rulings of the DSB in *United States – Definitive Anti-dumping and Countervailing Duties on Certain Products from China* (DS379). The DSB has already found that the United States acted inconsistently with its obligations under the covered agreements by failing to investigate and avoid double remedies in those investigations.

3.38. The Panel considers that Part D provides two elements of information that are relevant to ascertaining which obligation(s) are at issue. The first is the narrative description of the problem that, according to the panel request, gives rise to a violation of Articles 10, 19, and 32. As stated in the title of Part D, China's claims in Part D concern a very specific issue: the United States' alleged "failure to investigate and avoid double remedies in certain investigations and reviews". This is repeated in each of the two paragraphs that follows, and again in the last sentence of footnote 6. Thus, while the "measures" identified in Part D of the panel request include a number of investigations and reviews, Part D of the panel request cannot be understood to include any and all aspects of such proceedings on which Article 19 might have some bearing. Rather, Part D of the panel request raises only one issue, namely, the United States' alleged "failure to investigate and avoid double remedies" in certain investigations and reviews. The panel request, under the heading "Measures at Issue", also defines what is meant by "double remedies", i.e. "the double remedies that are likely to result when the USDOC applies countervailing duties in conjunction with anti-dumping duties determined in accordance with the US non-market economy methodology (hereinafter, "double remedies")".[77]

3.39. When reading the general reference to Article 19 together with the accompanying narrative explanation of the problem contained in Part D of the panel request – i.e. the United States' alleged "failure to investigate and avoid double remedies" in certain investigations and reviews – it is clear to the Panel that the obligations set forth in Articles 19.3 and 19.4 are "the potentially relevant obligations"[78] on which China may wish to base its claim(s) before the Panel. In contrast, it is not apparent to us, from the reference to Article 19, read together with the corresponding narrative explanation, that Article 19.1 or 19.2 are obligations at issue in Part D. Article 19.1 focuses on the issue of whether an importing Member may impose a countervailing duty at all (specifically the requirements that must be fulfilled). We see no plausible basis, taking into account that the focus in Part D is on "double" remedies, to infer that China wished to claim that the United States could not impose *any* countervailing duty because the applicable requirements (e.g. subsidization, injury or causation) had not been fulfilled. As concerns Article 19.2, we recognize that it relates, in part, to the amount of countervailing duty to be assessed. However, Article 19.2 does not appear to contain any legal obligation.[79] We further note that China in Part D claims that the measures at issue are "inconsistent" with, *inter alia*, Article 19. Footnote 6 indicates that the Dispute Settlement Body in *US – Anti-Dumping and Countervailing Duties (China)* (DS379) "has already found that the United States acted *inconsistently with its obligations* ... by failing to investigate and avoid double remedies in those investigations".[80] Thus, it appears to us that Part D uses the phrase "inconsistent with" to refer to legal obligations that the United States is required to implement. These elements make it very difficult, certainly in the absence of any indications to the contrary, to infer that China wished to base a claim on Article 19.2. As a final matter, it bears mentioning that neither the United States nor China nor any third party has pointed to anything in Article 19.1 or 19.2 that would be potentially relevant to the problem identified in Part D of the panel request.

3.40. As regards Article 32, the Panel considers that the obligation set forth in Article 32.1 is relevant to the problem identified in Part D of the panel request. Indeed, if, as Part D suggests, the measures at issue are inconsistent with Article 19, it would be plausible for China to claim that the measures are, for that reason, also inconsistent with Article 32.1. In this regard, we recall that the Appellate Body has treated claims under Articles 10 and 32.1 as "consequential" claims.[81]

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[77] WT/DS449/2, p. 2.

[78] In *EC – Approval and Marketing of Biotech Products*, the panel referred to "the potentially relevant obligations". See Panel Reports, *EC – Approval and Marketing of Biotech Products*, para. 77 of the preliminary ruling reproduced at para. 7.47 of the reports ("We note that the European Communities recognizes that of the various obligations set out in Article 12, four are potentially relevant to Argentina's complaint. In our view, the potentially relevant obligations are those contained in Articles 12.1, 12.2, 12.3 and 12.7.")

[79] The first sentence of Article 19.2 confirms that the authorities of the importing Member are entitled to make certain decisions. The second sentence indicates Members' agreement on what is desirable, but does not appear to impose an obligation to do what is characterized as desirable.

[80] The DSB in that dispute did not find any inconsistency with Article 19.2.

[81] See, e.g. Appellate Body Report, *US – Softwood Lumber IV*, para. 143.

Article 32 contains a further obligation that might seem relevant at first– Article 32.5. On closer inspection, we see no plausible basis on which to infer that China wished to base a claim on Article 32.5. In this regard, the Panel recalls that the problem identified in Part D of the panel request is the United States' alleged failure to investigate and avoid double remedies "in certain investigations and reviews". In contrast to Parts B and C of the panel request, there is no suggestion that in Part D China is challenging any "laws, regulations and administrative procedures".[82]

3.41. The second element of information contained in the panel request is the express reference to DSB rulings and recommendations in *US – Anti-Dumping and Countervailing Duties (China)* (DS379). In the context of clarifying the scope of the measures at issue in this dispute, footnote 6 states that:

> China has also excluded the four sets of parallel AD/CVD investigations that were the subject of the recommendations and rulings of the DSB in *United States – Definitive Anti-dumping and Countervailing Duties on Certain Products from China* (DS379). The DSB has already found that the United States acted inconsistently with its obligations under the covered agreements by failing to investigate and avoid double remedies in those investigations.

3.42. By its terms, footnote 6 of the panel request refers to DSB rulings and recommendations in *US – Anti-Dumping and Countervailing Duties (China)* (DS379), and in particular to the findings arising from the United States' failure "to investigate and avoid double remedies" in the investigations at issue in that dispute. At its meeting of 25 March 2011, the DSB adopted the Appellate Body report in *US – Anti-Dumping and Countervailing Duties (China)* (DS379) and the panel report as modified by the Appellate Body report.[83] Upon adoption, the Appellate Body's findings (and any findings in the panel report, as appropriate) on the matter of double remedies became the DSB "rulings and recommendations" referred to in footnote 6 of the panel request. The Appellate Body's findings, which are readily available and easily accessible to all Members, were that by virtue of the United States' imposition of anti-dumping duties calculated on the basis of a non-market economy (NME) methodology, concurrently with the imposition of countervailing duties on the same products from China, "without having assessed whether double remedies arose from such concurrent duties", the United States acted inconsistently with its obligations under Article 19.3, and, consequently, under Articles 10 and 32.1.[84] The Panel recognizes, as the United States argues[85], that footnote 6 serves to explain why China excluded certain investigations from the scope of the measures at issue in this dispute, and does not directly relate to the legal basis of China's complaint as set out in Part D. However, in our view it does not follow from this that the information provided in footnote 6, which is attached to the first paragraph of Part D, cannot, at the same time, provide useful context for purposes of our inquiry into whether it is possible to draw sufficiently clear inferences concerning the obligation(s) on which China wishes to base its claims in Part D.

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[82] The wording of Article 32.5 of the SCM Agreement is similar to that found in Article 18.4 of the Anti-Dumping Agreement (and also to Article XVI:4 of the WTO Agreement). In the context of discussing the expression "laws, regulations and administrative procedures" in the context of Article 18.4 of the Anti-Dumping Agreement, the Appellate Body has observed that the phrase "laws, regulations and administrative procedures" means "the entire body of *generally applicable rules, norms and standards* adopted by Members in connection with the conduct of anti-dumping proceedings". (Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 87 and footnote 106, emphasis added).

[83] WT/DS379/9.

[84] Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, para. 611, subparagraph (d)(iii). Having referenced the Appellate Body's findings, we note the United States' argument that "*reference to a document external to* the panel request cannot satisfy the requirement of DSU Article 6.2 that the panel request itself provide a brief summary of the legal basis sufficient to present the problem clearly". (United States' comments on the European Union's response to Panel question No. 3, para. 22, emphasis added). We are unable to agree with the United States insofar as it is arguing that there is a general rule prohibiting panels from consulting any documents outside of a panel request, including documents referenced directly or indirectly therein. Accepting the United States' argument could require a complaining party to annex a considerable amount of material to its panel request, including, for example, the full text of any laws and regulations challenged.

[85] United States' response to Panel question No. 3, dated 19 April 2013, para. 23; United States' comments on China's response to the United States' preliminary ruling request, dated 22 April 2013, para. 9; United States' comments on third parties' responses to Panel question No. 3, dated 24 April 2013, paras. 18-23. See also Australia's third-party response to Panel question No. 3, dated 19 April 2013.

3.43. Footnote 6 of China's panel request expressly refers to DSB rulings and recommendations in *US – Anti-Dumping and Countervailing Duties (China)* (DS379) regarding the United States' failure to identify and avoid double remedies in a number of individual investigations and reviews. As mentioned above, the "DSB rulings and recommendations" in that dispute reflect the findings and conclusions in the corresponding Appellate Body report and the panel report as modified. We also pointed out that in relation to Article 19, the Appellate Body found an inconsistency with Article 19.3 and exercised judicial economy with regard to China's claim under Article 19.4. We further wish to draw attention to the last sentence of footnote 6, which states that "[t]he DSB *already found* that the United States *acted inconsistently* with its obligations under the covered agreements by failing to investigate and avoid double remedies *in those investigations*".[86] The phrase "already found that the United States acted inconsistently ... in those investigations [that were the subject of DSB recommendations and rulings in DS379]" strongly indicates, in our view, that China through Part D of its panel request seeks to obtain findings of violation from this Panel, in respect of the identified measures, that parallel the findings that China had previously obtained from the DSB in DS379 in respect of the measures at issue in that dispute. The DSB in *US – Anti-Dumping and Countervailing Duties (China)* (DS379) found that the United States acted inconsistently with its obligations under Article 19.3; it made no finding of consistency or inconsistency under Article 19.4. Hence, while the narrative reference to "double remedies" in Part D suggests that both Articles 19.3 and 19.4 are potentially relevant WTO obligations at issue, consideration of the last sentence in footnote 6 indicates that Article 19.3 is an obligation at issue, while Article 19.4 is not.

3.44. As regards China's claims in Part D under Articles 10 and 32, the reference in footnote 6 to the DSB findings in *US – Anti-Dumping and Countervailing Duties (China)* (DS379) in our view provides confirmation of the result of our analysis based, *inter alia*, on the narrative explanation of the problem in Part D, i.e. that the relevant WTO obligations at issue are those in Articles 10 and 32.1. Indeed, the DSB in the aforementioned dispute found that the United States acted inconsistently with Articles 10 and 32.1.

3.45. We are aware that China in comments submitted to the Panel stated that Part D was intended to raise claims under both Articles 19.3 and 19.4. We are, however, unable to reconcile this view with the terms of the last sentence of footnote 6. Had China wished to raise claims under Article 19.4, it should not have referred to findings by the DSB that the United States had acted "inconsistently" with its WTO obligations. As it is, the relevant sentence is not reasonably open to the reading apparently advanced by China. It bears mentioning in this regard that China itself argues in its response to the United States' preliminary ruling request that "it is obvious on the face of the panel request that China's claims in Part D included the same claims on which it prevailed in DS379".[87] China "prevailed" only with respect to its claim under Article 19.3 (and its consequential claims under Articles 10 and 32.1) – not Article 19.4 (in respect of which the Appellate Body exercised judicial economy).

3.46. We are likewise mindful that Part D of the panel request refers not only to Articles 10, 19, and 32, but also Articles 15 and 21 of the SCM Agreement, Article VI of the GATT 1994, and Articles 9 and 11 of the Anti-Dumping Agreement. This means, of course, that the claims set forth in Part D of the panel request cannot be understood as corresponding in their entirety to only those provisions in respect of which inconsistencies were found in *US – Anti-Dumping and Countervailing Duties* (*China*) (DS379). However, this does not call into question our view that, in relation to those articles with which we are concerned and in respect of which the DSB did find inconsistencies– Articles 10, 19, and 32 – the obligations at issue in the present dispute are the same.[88] It simply leaves open the question of which are the relevant obligations in the additional provisions that were not subject to any DSB rulings or recommendations in *US – Anti-Dumping and Countervailing Duties* (*China*) (DS379) on the issue of double remedies. This is a question, however, that the Panel does not need to address in the light of China's representations that it is not pursuing those other claims.

[86] Emphasis added.

[87] China's response to the United States' preliminary ruling request, dated 8 April 2013, para. 34.

[88] In passing, our view, which we have arrived at following our own independent analysis of China's panel request, accords with China's statement that the United States "has been on notice that this dispute would entail, at a minimum, the application of the recommendations and rulings of the DSB in DS379 to a group of parallel AD/CVD investigations that came after those at issue in DS379". (China's comments on the United States' comments on China's response to the United States' request for a preliminary ruling, dated 29 April 2013, para. 4, emphasis added).

3.47. Having thus reviewed various elements of Part D – the general reference to Articles 10, 19 and 32, the narrative explanation of the problem (i.e. the reference to an alleged "failure to investigate and avoid double remedies") and a footnote reference to DSB findings of inconsistency in DS379 on the same issue – and taking these elements together as part of a comprehensive analysis, the Panel considers that Part D of China's panel request permits sufficiently clear inferences as to the WTO obligations at issue, and they are Articles 10, 19.3, and 32.1.

3.48. In our view, it is clear from the foregoing that, due notably to footnote 6, the situation in this case is quite unusual. We express no general view on whether the findings and/or reasoning contained in a panel or Appellate Body report in one WTO dispute should be taken into account in another dispute, as part of the "attendant circumstances"[89] or otherwise, for the purpose of examining whether a panel request in the latter dispute meets the requirements of Article 6.2 of the DSU. The Panel notes that in *Thailand – H-Beams*, the Appellate Body found that the panel had erred to the extent that it relied mainly on issues raised in the underlying anti-dumping investigation in assessing the sufficiency of Poland's panel request under Articles 2 and 5. The Appellate Body observed that it would be incorrect to "assume that there is always continuity between claims raised in an underlying anti-dumping investigation and claims raised by a complaining party in a related dispute brought before the WTO", and that "although the defending party will be aware of the issues raised in an underlying investigation, other parties may not". For these reasons, the Appellate Body concluded that "the underlying investigation cannot normally, in and of itself, be determinative in assessing the sufficiency of the claims made in a request for the establishment of a panel".[90] The Appellate Body's observations were focused on and made in the context of that panel's reliance on an underlying anti-dumping investigation before a national investigating authority for the purpose of understanding a WTO panel request. However, these considerations may similarly apply in the event that a panel were to take prior panel and Appellate Body reports into account as part of the "attendant circumstances" for the purpose of drawing inferences about the obligations at issue in a separate dispute. In this regard, we wish to underscore that we have not simply "assumed" that there is continuity between the findings made (and/or issues raised) in *US – Anti-Dumping and Countervailing Duties (China)* (DS379) and this case, and *a fortiori* we have not "assumed" that third parties in this dispute – which include but are not limited to the Members that participated as third parties in DS379 – would necessarily be aware of the relevance of the findings made (and/or issues raised) in DS379 to the dispute before us. As we have explained, the panel request in this dispute expressly refers to, and indeed singles out, the DSB rulings and recommendations in DS379 regarding the United States' "failure to identify and avoid double remedies" in a number of individual investigations and reviews. And it does so in a manner that we consider permits sufficiently clear inferences, when taken together with the other elements reviewed by us, regarding the obligations at issue in this dispute, certainly for the reference in Part D to Articles 10, 19, and 32.

3.49. Before concluding, the Panel notes that it has considered the United States' argument that this case is "analogous" to *EC – Tube or Pipe Fittings* and *US – Countervailing Measures on Certain EC Products (Article 21.5 – EC)*, and its argument that we should follow those panels in finding that a "mere listing" of provisions is not sufficient to meet the requirements of Article 6.2.[91] We do not consider those cases to be analogous to this case. In *EC – Tube or Pipe Fittings*[92], the issue was whether the complaining party, having specified in the panel request the specific *issues* that gave rise to the claimed violation of the provisions identified in the panel request, could then introduce *different issues* to support a violation of the same provisions in the course of the proceeding. The panel found that the additional issues omitted from the panel request fell outside its terms of reference, and that such issues could not be introduced simply on the basis that the panel requests contained general references to the treaty provisions at issue. We note that a

[89] As we have already noted, the Appellate Body has explained that "compliance with the requirements of Article 6.2 must be determined on the merits of each case, having considered the panel request as a whole, and in the light of *attendant circumstances*". (Appellate Body Report, *US – Carbon Steel*, para. 127 (citing Appellate Body Report, *Korea – Dairy*, paras. 124-127,emphasis added)). In this case, the parties and third parties have presented differing views on whether the Appellate Body's findings in *US – Anti-Dumping and Countervailing Duties (China)* (DS379) form part of the "attendant circumstances" for the purpose of examining whether China's panel request complies with the requirements of Article 6.2 of the DSU. (See parties' and third parties' responses to Panel question No. 3, dated 19 April 2013).

[90] Appellate Body Report, *Thailand – H-Beams*, para. 94.

[91] United States' preliminary ruling request, dated 15 March 2013, paras. 25-27.

[92] See Panel Report, *EC – Tube or Pipe Fittings*, paras. 4-8 of the preliminary ruling reproduced at para. 7.14 of the report.

similar issue arose more recently in *EC – Fasteners (China)*, and the Appellate Body reached a similar conclusion.[93] In neither of those cases was the panel request itself found to be deficient, or inconsistent with Article 6.2. The present case is not analogous: for example, China in its comments on the United States' preliminary ruling request has not attempted to expand the scope of its claims under Articles 10, 19, and 32 to include issues other than the United States' alleged failure to investigate and avoid double remedies in the investigations and reviews at issue.

3.50. Turning to *US – Countervailing Measures on Certain EC Products (Article 21.5 – EC)*, the panel request in that case specifically enumerated the individual paragraphs of Articles 6, 9 and 11 of the Anti-Dumping Agreement on which the claims were based. In the course of the proceeding, the complaining party attempted to introduce other claims based on different paragraphs of Articles 6, 9 and 11. The panel found that the new claims fell outside its terms of reference, on the grounds that such issues could not be introduced on the basis that the panel request used the phrase "especially (but not exclusively)" when enumerating the individual paragraphs of Articles 6, 9 and 11.[94] The panel request itself was not found to be deficient, or inconsistent with Article 6.2. Thus, this case would be "analogous" to the present case only if, for example, China's panel request had stated that the claim was based on Article 19, and "especially (but not exclusively)", for example Article 19.3, and then in the course of these proceedings China were to raise a claim under, for example, Article 19.1.

3.51. In conclusion, we are unable to accept the United States' argument that Part D of the panel request fails to meet the requirements of Article 6.2 of DSU because Part D does not expressly specify which distinct obligations in the relevant provisions (Articles 10, 19, and 32) form the legal basis of the complaint, and thus does not put the United States on adequate notice of the case against it sufficient to allow it to begin preparing its defence, and inform the third parties of the legal basis of the complaint. More specifically, the Panel concludes that, when read in conjunction with the other elements of information contained in the panel request, the general references to Articles 10, 19, and 32 contained in Part D of the panel request warrant the inference that the obligations at issue are those contained in Article 19.3, Article 10 and Article 32.1.

3.52. In reaching this conclusion based on various elements of information included in the panel request, we wish to emphasize that we do not endorse a cursory approach to drafting panel requests. As a general matter, explicit identification of obligations at issue, including by reference to relevant paragraph numbers, will ordinarily make for greater clarity as to the legal basis of a complaint and thus contribute to avoiding the need for panels, parties and third parties to devote resources to preliminary ruling requests based on the relevant requirements in Article 6.2.[95]

3.3 Does China's panel request in Part D fail to "plainly connect" the specific measures with the WTO obligations at issue?

3.53. The Panel now turns to address an additional argument advanced by the United States in support of its view that Part D of China's panel request does not satisfy the requirement in Article 6.2 to provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. According to the United States, China's panel request, including Part D, fails to meet this requirement because it does not "plainly connect" the challenged measures with the legal basis of its complaint, i.e. the provisions alleged to have been breached.[96]. The Appellate Body has observed in this regard that in order for a panel request to "present the problem clearly", a complaining party must "plainly connect the challenged measure(s) with the provision(s) of the covered agreements claimed to have been infringed, so that the respondent party is aware of the

[93] Appellate Body Report, *EC – Fasteners (China),* paras. 594-599.

[94] Panel Report, *US – Countervailing Measures on Certain EC Products (Article 21.5 – EC)*, paras. 7.47-7.52 (under the subheading, "New claim not included in the Panel request").

[95] The Panel notes its agreement with the following observations by the panel in *China – Electronic Payment Services*: "As a general matter, we agree that it would be desirable for complaining parties to strive to provide explicit information about the […] claims at issue where this is possible without compromising the case they plan to make. Not least, this might go some way towards forestalling procedural objections under Article 6.2, which, as our case shows, impose additional work on panels and the parties that detracts from that to be devoted to addressing the substance of complaining parties' claims. However, the issue before us is not what is desirable, but what is necessary, on the merits of each case, to meet the requirements of Article 6.2". (Panel Report, *China – Electronic Payment Services*, para. 7.4, incorporating Communication from the Panel, *China – Electronic Payment Services*, WT/DS413/4, para. 53).

[96] United States' preliminary ruling request, dated 15 March 2013, paras. 19 and 29.

basis for the alleged nullification or impairment of the complaining party's benefits".[97] In the Appellate Body's view, "[o]nly by such connection between the measure(s) and the relevant provision(s) can a respondent 'know what case it has to answer, and ... begin preparing its defence'".[98]

3.54. In addressing this argument by the United States, we note that in its preliminary ruling request, the United States presented no specific arguments on the issue of whether Part D of China's panel request "plainly connects" the specific measures at issue with the provisions of Article 19 of the SCM Agreement. In response to a question from the Panel, the United States argued that by merely listing Article 19 in Part D of its panel request, China failed to "plainly connect" the specific measures at issue with the alleged breach of several treaty obligations found in the paragraphs of Article 19. The United States also pointed out that China's panel request in *US — Anti-Dumping and Countervailing Duties (China)* (DS379), insofar as it concerned the issue of "double remedies", not only listed the paragraph of Article 19 at issue, but described how the measures were allegedly violating that specific treaty obligation.[99]

3.55. With regard to China's claims under Articles 10 and 32, the United States argues that they are derivative of its claims under Article 19 and cannot form an independent legal basis for China's claims. The United States submits that they must be excluded from the Panel's terms of reference, to the extent that China's claims under Article 19 fail to meet the requirements of Article 6.2 of the DSU.[100]

3.56. China responds that its claims under Articles 10, 19, and 32 in Part D of its panel request "plainly connect" the specific measures at issue with the provision of the covered agreements claimed to have been infringed. China argues that the legal basis of China's complaint under Part D – i.e. its "claim" – is that the failure of the United States' authorities to investigate and avoid double remedies in the identified investigations and reviews renders those measures, and any countervailing duties imposed under their authority, inconsistent with Articles 10, 19, and 32.[101]

3.57. In considering this issue, the Panel recalls its conclusion in paragraph 3.51 above. We found there that while Part D of China's panel request does not explicitly specify the paragraphs of Articles 19 and 32 that are at issue, it can nonetheless be inferred from the panel request as a whole that the WTO obligations at issue in Part D are those set out in Articles 19.3 and 32.1.[102] For this reason, we are unable to agree with the United States that merely because Part D does not explicitly identify the paragraphs of Articles 19 and 32 that are at issue, it fails to establish a sufficient connection between the challenged measures and the WTO obligations at issue.

3.58. Furthermore, looking at Part D and considering it as a whole, we observe that it connects the measures at issue – the identified investigations and reviews – with the obligations alleged to have been breached – Articles 10, 19.3, and 32.1. In addition, by referring to an alleged failure by the United States "to investigate and avoid double remedies in the identified investigations and reviews"[103], Part D also links the provisions at issue to the alleged facts of the case and provides at least some elucidation as to how or why the measures are alleged to have breached the relevant obligations. It becomes clear that the claimed violations are considered to be the result of an alleged failure by the United States to "investigate and avoid double remedies" in the identified trade remedy investigations and reviews.

3.59. We recall that it is incumbent on the United States as the party seeking to make out a *prima facie* case to explain the basis for the alleged inconsistency, in this case the alleged inconsistency of Part D of China's panel request with Article 6.2.[104] Lacking specific arguments and explanation by the United States on this issue, we are not persuaded in view of our observations in

[97] Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 162. See also Appellate Body Report, *US – Continued Zeroing*, para. 160.

[98] Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 162 (quoting Appellate Body Report, *Thailand – H-Beams*, para. 88).

[99] United States' response to Panel question No. 7, dated 19 April 2013, para. 26.

[100] United States' response to Panel question No. 7, dated 19 April 2013, para. 27.

[101] China's response to the United States' preliminary ruling request, dated 8 April 2013, para. 6.

[102] At noted above at paragraph 3.34, Article 10 has only one paragraph.

[103] WT/DS449/2, p. 4.

[104] Appellate Body Report, *US - Gambling*, para. 141.

the preceding paragraph that Part D fails to "plainly connect" the challenged measures with the WTO obligations at issue, i.e. Articles 10, 19.3, and 32.1.

3.60. In sum, we conclude that the United States has not established that Part D of China's panel request fails to "plainly connect" the challenged measures with the WTO obligations at issue, and thus does not put the United States on adequate notice of the case against it sufficient to allow it to begin preparing its defence, and inform the third parties of the legal basis of the complaint. As a corollary, we further conclude that the United States has not established, through this particular line of argument, that Part D of the panel request fails to satisfy the requirement of Article 6.2 to "provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly".

4 OVERALL CONCLUSION

4.1. Overall, the Panel thus concludes that it is appropriate to limit the scope of its preliminary ruling and make findings on the consistency with Article 6.2 of the DSU only with regard to Part D of China's panel request, insofar as it specifies claims under Articles 10, 19, and 32 of the SCM Agreement.[105] The Panel further concludes that the United States has failed to establish that Part D of China's panel request, insofar as it specifies claims under Articles 10, 19, and 32 of the SCM Agreement, is inconsistent with Article 6.2 of the DSU on the grounds that it does not provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In this regard, the Panel concludes that the general references to Articles 10, 19, and 32 contained in Part D of the panel request warrant the inference that the obligations at issue are those contained in Articles 10, 19.3, and 32.1, and that the United States has not established that Part D of China's panel request fails to "plainly connect" the challenged measures with those obligations.

4.2. Accordingly, the Panel: (i) declines the United States' request that it rule on whether Part C and Part D, insofar as it specifies claims other than those under Articles 10, 19, and 32 of the SCM Agreement, are inconsistent with Article 6.2; (ii) rejects the United States' request that it rule that Part D, insofar as it specifies claims under Articles 10, 19, and 32 of the SCM Agreement, is inconsistent with Article 6.2 of the DSU. In the light of this overall conclusion, the Panel will continue its consideration of China's complaint in accordance with the timetable that has been set for these proceedings.

4.3. This preliminary ruling will become an integral part of the Panel's final report, subject to any changes that may be necessary in the light of comments received from the parties at the interim review stage.

[105] The Panel therefore makes no findings on the consistency with Article 6.2 of Part C of China's panel request or of Part D of the same request, insofar as Part D specifies claims other than those under Articles 10, 19, and 32 of the SCM Agreement.

ANNEX A: TABLE OF WTO CASES CITED IN THIS PRELIMINARY RULING

Short title	Full case title and citation
China – Electronic Payment Services	Panel Report, *China – Measures Affecting Electronic Payment Services*, WT/DS413/R, adopted 31 August 2012
China – GOES	Appellate Body Report, *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States*, WT/DS414/AB/R, adopted 16 November 2012
China – Raw Materials	Appellate Body Reports, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R, adopted 22 February 2012
China – Raw Materials	Panel Reports, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/R / WT/DS395/R / WT/DS398/R / and Corr.1, adopted 22 February 2012, as modified by Appellate Body Reports WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R
China – X-Ray Equipment	Panel Report, *China – Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union*, WT/DS425/R, adopted 24 April 2013
EC – Approval and Marketing of Biotech Products	Panel Reports, *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, WT/DS291/R / WT/DS292/R / WT/DS293/R, Add.1 to Add.9, and Corr.1, adopted 21 November 2006, DSR 2006:III-VIII, 847
EC – Bananas III	Appellate Body Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R, adopted 25 September 1997, DSR 1997:II, 591
EC – Fasteners (China)	Appellate Body Report, *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*, WT/DS397/AB/R, adopted 28 July 2011
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EC – Salmon (Norway)	Panel Report, *European Communities – Anti-Dumping Measure on Farmed Salmon from Norway*, WT/DS337/R, adopted 15 January 2008, and Corr.1, DSR 2008:I, 3
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Egypt – Steel Rebar	Panel Report, *Egypt – Definitive Anti-Dumping Measures on Steel Rebar from Turkey*, WT/DS211/R, adopted 1 October 2002, DSR 2002:VII, 2667
Guatemala – Cement II	Panel Report, *Guatemala – Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico*, WT/DS156/R, adopted 17 November 2000, DSR 2000:XI, 5295
India – Additional Import Duties	Panel Report, *India – Additional and Extra-Additional Duties on Imports from the United States*, WT/DS360/R, adopted 17 November 2008, as reversed by Appellate Body Report WT/DS360/AB/R, DSR 2008:XX, 8317
Japan – Apples	Appellate Body Report, *Japan – Measures Affecting the Importation of Apples*, WT/DS245/AB/R, adopted 10 December 2003, DSR 2003:IX, 4391
Japan – DRAMs (Korea)	Panel Report, *Japan – Countervailing Duties on Dynamic Random Access Memories from Korea*, WT/DS336/R, adopted 17 December 2007, as modified by Appellate Body Report WT/DS336/AB/R, DSR 2007:VII, 2805
Korea – Dairy	Appellate Body Report, *Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products*, WT/DS98/AB/R, adopted 12 January 2000, DSR 2000:I, 3
Mexico – Anti-Dumping Measures on Rice	Panel Report, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice*, WT/DS295/R, adopted 20 December 2005, as modified by Appellate Body Report WT/DS295/AB/R, DSR 2005:XXIII, 11007

Mexico – Corn Syrup	Panel Report, *Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States*, WT/DS132/R, adopted 24 February 2000, and Corr.1, DSR 2000:III, 1345
Thailand – H-Beams	Appellate Body Report, *Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*, WT/DS122/AB/R, adopted 5 April 2001, DSR 2001:VII, 2701
Thailand – H-Beams	Panel Report, *Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*, WT/DS122/R, adopted 5 April 2001, as modified by Appellate Body Report WT/DS122/AB/R, DSR 2001:VII, 2741
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US – Carbon Steel	Appellate Body Report, *United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, WT/DS213/AB/R and Corr.1, adopted 19 December 2002, DSR 2002:IX, 3779
US – Certain EC Products	Appellate Body Report, *United States – Import Measures on Certain Products from the European Communities*, WT/DS165/AB/R, adopted 10 January 2001, DSR 2001:I, 373
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US – Continued Zeroing	Appellate Body Report, *United States – Continued Existence and Application of Zeroing Methodology*, WT/DS350/AB/R, adopted 19 February 2009, DSR 2009:III, 1291
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US – Gambling	Appellate Body Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R, adopted 20 April 2005, DSR 2005:XII, 5663 (Corr.1, DSR 2006:XII, 5475)
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US – Lamb	Panel Report, *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WT/DS177/R, WT/DS178/R, adopted 16 May 2001, as modified by Appellate Body Report WT/DS177/AB/R, WT/DS178/AB/R, DSR 2001:IX, 4107
US – Oil Country Tubular Goods Sunset Reviews	Appellate Body Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*, WT/DS268/AB/R, adopted 17 December 2004, DSR 2004:VII, 3257
US – Oil Country Tubular Goods Sunset Reviews	Panel Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*, WT/DS268/R and Corr.1, adopted 17 December 2004, as modified by Appellate Body Report WT/DS268/AB/R, DSR 2004:VIII, 3421
US – Softwood Lumber IV	Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R, adopted 17 February 2004, DSR 2004:II, 571
US – Steel Plate	Panel Report, *United States – Anti-Dumping and Countervailing Measures on Steel Plate from India*, WT/DS206/R and Corr.1, adopted 29 July 2002, DSR 2002:VI, 2073

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