WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/234
23 July 2007

(07-3132)

Dispute Settlement Body
20 June 2007

MINUTES OF MEETING

Held in the Centre William Rappard
on 20 June 2007

Chairman: Mr. Bruce Gosper (Australia)

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.55)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.55)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.30)

(d) United States – Laws, regulations and methodology for calculating dumping margins ("Zeroing"): Status report by the United States (WT/DS294/20/Add.4)

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

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.55)

2. The Chairman drew attention to document WT/DS176/11/Add.55, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

3. The representative of the United States said that his country had provided a status report in this dispute on 7 June 2007, in accordance with Article 21.6 of the DSU. As noted in the status report, a number of legislative proposals that would implement the DSB's recommendations and rulings in this dispute had been introduced in the current Congress, in both the US Senate and the US House of Representatives. The US Administration continued to work with the US Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Communities said that the EC had, on several occasions, expressed its opinion that the development of trade called for a parallel development in the level of protection of intellectual property rights linked to the goods that were traded. In that respect, the conclusion of the TRIPS Agreement was a major achievement of the Uruguay Round negotiations. The United States strongly supported that achievement. That made it rather incomprehensible why the United States was not complying with the TRIPS Agreement. The EC hoped that the present US Congress would realize that it was in the interest of the United States and of its industry as a whole to put an end to this situation, which had damaging effect on the authority of the TRIPS Agreement. The EC again urged the United States to comply with its obligations under the TRIPS Agreement.

5. The representative of Cuba said that, once again, the DSB was obliged to consider the non-implementation of the recommendations relating to Section 211 of the Omnibus Appropriations Act of 1998. The failure to comply with the recommendations and conclusions of the adjudicative bodies had become one of the major weaknesses of the dispute settlement mechanism. The United States was responsible for the fact that the credibility of the system had been called into question on account of its record of failing to comply with the DSB's recommendations. This dispute brought to four the number of disputes awaiting implementation by the United States: (i) US – Anti-dumping measures on certain hot-rolled steel products from Japan; (ii) US – Section 110(5) of the US Copyright Act; and (iii) US – Laws, regulations and methodology for calculating dumping margins (Zeroing). The

United States even dared to take reprisals in the face of an adverse ruling by the DSB, avoiding its obligations through the withdrawal of commitments assumed in previous negotiations.

6. With regard to Section 211, that country was prepared to affect the US entrepreneurs who owed registered trademarks in Cuba, if Cuba decided to give them the same treatment as their government granted to Cuban trademarks. The United States was violating its own intellectual property law by perpetuating provisions that enabled the Bacardí company to rid itself of its competitors. Once again, Cuba called on the United States to inform Members how and when it was going to comply with the recommendations of the DSB in this dispute. Cuba would continue to press this matter, even though the US President had reiterated through various channels his intention to veto any bill approved by the US Congress intended to make more flexible or eliminate the unilateral illegal measures imposed by the United States on Cuba, including Section 211. Cuba noted that the last deadline for implementation agreed between the parties to the dispute had expired on 30 June 2005, without any new date having been set for compliance with the DSB's rulings, thereby calling into question the effectiveness of the DSB. On that occasion, the parties to the dispute had notified an understanding on the non-application of the suspension of concessions. Thus, now there was no pressure on the Member in breach of its obligations to observe the principle of prompt compliance. That Member might now continue to fail to comply for an indefinite period of time with the consent of the DSB. Cuba wished to have an explanation as to how this irregular situation could be reconciled with the letter of the DSU. Cuba hoped that in the course of the current negotiations it would be possible to remedy these deficiencies of the agreed procedures. Cuba recognized that the only solution to this dispute was the repeal of Section 211, and called on the United States to comply immediately with its obligations as a WTO Member.

7. The representative of Brazil said that his country wished to renew its systemic concerns about the situation of non-compliance in this dispute. The DSB had adopted the Panel and the Appellate Body Reports pertaining to this dispute more than five years ago. Despite this extremely long time-period, way beyond the limits foreseen in Article 21.3 of the DSU, no implementing action had been taken. Nor could WTO Members discern a clear sign in the US statements that such an action would be taken in the near future. In no way could this situation be reconciled with the principle of prompt settlement of disputes. Furthermore, a protracted non-compliance situation by one of the major players in this organization clearly undermined the credibility of the system and altered the balance of rights and obligations. Once again, Brazil urged the United States to promptly take the requisite steps to bring the condemned measures into compliance.

8. The representative of the Bolivarian Republic of Venezuela said that his country wished to thank Cuba for its statement, which it fully supported. As his delegation had already stated, his country believed that Cuba's complaint was legitimate. This matter had already been discussed many times in the DSB. His country had also noted the status report submitted by the United States and continued to hope that effect would be given to the US assertion made at previous DSB meetings regarding the readiness of the United States to work actively towards compliance with the DSB's rulings and recommendations in all pending disputes. On the basis of that assertion, his country had hoped that the United States would submit a status report, which would be different from the previous reports that had been submitted over a long period of time. Unfortunately, that had not proved to be the case. This demonstrated, once more, the continued indifference of the United States towards its WTO obligations. Once again, his country wished to draw attention to the risks associated with the continued failure of the United States to comply with the DSB's recommendations, not only for the WTO, but also for other Members as well as for the credibility of the multilateral trading system. Situations such as the one under consideration created uncertainty regarding the effectiveness of future results of the Doha Round negotiations. Therefore, his country urged, once again, that the United States show the political will necessary to respect, once and for all, the DSB's rulings and bring about a solution to the dispute in question that would be mutually satisfactory to the interested parties and be within the scope of the WTO Agreements and its fundamental principles.

9. The representative of India said that her country wished to thank the United States for the status report and the statement made at the present meeting. However, based on the systemic issues, India remained concerned with the protracted implementation process in this dispute. The United States again could not report on any progress in the implementation of the DSB's rulings. As mentioned several times, non-compliance situations lacking proper solutions undermined the carefully negotiated balance of rights and obligations of the whole Membership in the multilateral trading system.

10. The representative of China said that, due to its systemic interests, his country once again wished to express its concerns on the protracted implementation process in this dispute. First, China thanked the United States for its status report and its statement. However, as other delegations had stated, five years had passed and the implementation issue in this dispute was still under discussion in the DSB. It was very regrettable that there was no development as to when this matter would be resolved to the satisfaction of the parties to the dispute and other WTO Members. Besides, as one could see on the agenda of the present meeting, the Unites States was the only Member that had many disputes on the DSB agenda with pending implementation. The DSU more than once referred to the importance of prompt and full implementation of the DSB's rulings and recommendations, which was essential to ensure the effective resolution of disputes and to maintain the authority of the DSB. Although China was conscious of possible difficulties involved in implementation, undue delays in full implementation of the DSB's rulings inevitably caused systemic concerns about the efficiency of the dispute settlement system. Therefore, China again urged the United States to double its efforts to fully implement the decision of the DSB pertaining to this dispute.

11. The representative of Nicaragua said that her delegation wished to thank the United States for the status report submitted at the present meeting. Nicaragua had a systemic concern about the delay in complying with the Appellate Body's ruling in this dispute. Her delegation wished to reiterate that the failure to reach a prompt settlement which would be satisfactory to the parties involved continued to put at risk: (i) the balance between the rights and obligations of WTO Members; (ii) the legitimacy and efficiency of the dispute settlement process; and (iii) the protection of intellectual property rights. Nicaragua hoped that the US Congress would adopt the appropriate legislative measures in the near future so as to put an end to this situation.

12. The representative of Thailand said that his country wished to thank the United States for its status report and the statement made at the present meeting. Like previous speakers, his country wished to express its concern over the systemic implications of this dispute. Non-implementation of the DSB's rulings and recommendations undermined the rules-based multilateral trading system. Thailand, therefore, called on the United States to take the necessary and urgent steps to comply with its obligations under the TRIPS Agreement.

13. The representative of Bolivia said that her country wished to reiterate its concern regarding the status of this dispute and the indifference towards WTO obligations. Once again, no progress had been made to lift the restrictions under Section 211 of the Omnibus Appropriations Act. The negative impact on the credibility of the multilateral trading system and the DSB disrupted the balance between the rights and obligations established under the WTO Agreements. For the above reasons, Bolivia, once again, urged the United States to comply with the DSB's rulings and recommendations and to make a renewed effort to ensure that the US authorities remove the restrictions imposed under Section 211.

14. The representative of Viet Nam said that all Members knew that the dispute settlement mechanism was an important element that made the WTO different from, and more effective than, the GATT. However, this advanced mechanism might not work if its rulings were not fully respected and implemented. Viet Nam's position regarding this dispute had been expressed at the 22 May DSB

meeting, when together with other Members, Viet Nam had requested that the United States implement the DSB's rulings and recommendations in this dispute without further delay.

15. The representative of the United States said that, in response to the suggestion that the US compliance record was poor, the facts simply did not support that assertion. Indeed, the record showed that the United States had fully complied in the vast majority of its disputes. As for the remaining few, the United States was actively working towards compliance.

16. The representative of Cuba said that his delegation wished to comment on the intervention that had just been made. As stated by one delegation, it was enough to take a look at the agenda of the present meeting as well as at the agendas of previous DSB meetings, to realize how many implementing cases were still pending. The Section 211 dispute had been going on for more than five and a half years. The reasonable period of time for implementation had been extended on numerous occasions and status reports, which were void of any content, had been repeated. Members had been told that the US Administration was working with the US Congress and different legislations were being passed. For many years now different US administrations had worked with the representatives of their parties to stop the approval of bills which were consistent with the DSB's recommendations and rulings. Once again, Cuba wished to ask that the United States comply with the DSB's recommendations and rulings. Impunity was not eternal and patience was running out. Cuba had respected the registration of many trade marks of the United States for some 50 years despite all the actions carried out by the United States with a lack of respect for Cuban trade marks, but everything had a limit.

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

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.55)

18. The Chairman drew attention to document WT/DS184/15/Add.55, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

19. The representative of the United States said that his country had provided a status report in this dispute on 7 June 2007, in accordance with Article 21.6 of the DSU. As of 23 November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. Details were provided in document WT/DS184/15/Add.3. The US Administration would work with the US Congress with respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities by 23 November 2002.

20. The representative of Japan said that the DSB had adopted the recommendations and rulings regarding this case in August 2001, almost six years ago. However, the United States must still report on the status of its implementation of the DSB's recommendations and rulings. In this regard, Japan noted the statement made by the United States along with its most recent status report in which the United States stated that the US administration was working with the new US Congress to pass specific legislative amendments that would implement the DSB's recommendations and rulings. As his delegation had repeatedly stated before the DSB, Japan believed that a full and prompt implementation of the recommendations and rulings of the DSB was essential for maintaining the credibility of the WTO dispute settlement system. Japan wished to renew its strong hope that the US administration would accelerate its efforts to work with the US Congress in order to fully comply with the recommendations without further delay.

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

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.30)

22. The Chairman drew attention to document WT/DS160/24/Add.30, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

23. The representative of the United States said that his country had provided a status report in this dispute on 7 June 2007, in accordance with Article 21.6 of the DSU. The US Administration would work closely with the US Congress and continue to confer with the EC, in order to reach a mutually satisfactory resolution of this matter. In this regard, the United States appreciated the statement made by the EC at the 22 May 2007 DSB meeting that the United States was open to working with the United States to seek a mutually satisfactory solution to this dispute. The United States shared the EC's goal of discussing how such a solution could be achieved.

24. The representative of the European Communities said that the EC's position regarding this dispute was well known, the EC would like to see the law made conform to the WTO obligations of the United States. As already stressed in respect of the Section 211 dispute, a long period without concrete action to bring legislation into compliance undermined the authority of the TRIPS Agreement. This damaged the interests of the whole industry for the benefit of a limited group. The EC remained prepared to work with the United States to seek a mutually satisfactory solution to this dispute and hoped that a solution could be identified in the near future.

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

(d) United States – Laws, regulations and methodology for calculating dumping margins ("Zeroing"): Status report by the United States (WT/DS294/20/Add.4)

26. The Chairman drew attention to document WT/DS294/20/Add.4, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US laws, regulations and methodology for calculating dumping margins.

27. The representative of the United States said that his country had provided a status report in this dispute on 7 June 2007, in accordance with Article 21.6 of the DSU. As previously stated, the US Department of Commerce continued to work towards completion of a determination in one investigation in which the European respondent had alleged a clerical error which it had requested to be corrected, having completed implementation with respect to the other matters covered by this dispute. In this connection, the United States noted the EC's objection at the 22 May meeting that Commerce had not yet issued its determination in one investigation. However, as explained in its status report, the delays in that proceeding had been requested by the European respondent. The United States wished to recall that Commerce was considering that respondent's clerical error allegation, even though it had been several years late and was not a subject of the WTO dispute. If the EC had further concerns about the timing of this proceeding, the United States suggested that the EC address those concerns to the European respondent.

28. The representative of the European Communities said that the EC wished to refer to its statement made at the April DSB meeting explaining in detail why the United States had not taken sufficient action to bring itself into compliance with its WTO obligations. In May 2007, the EC had mentioned that the United States had even worsened the situation, by totally ignoring the 9 April

deadline and deciding that the re-determinations made in respect of part of the 15 original investigations condemned in this dispute would only take effect as from 23 April 2007. None of the shortcomings in the US actions had been addressed and the EC was still waiting for revocation of the order on stainless steel sheet and strip from Italy, in spite of clear evidence that the correction of an elementary arithmetical mistake would take the non-zeroed margin below *de-minimis*. Should no satisfactory solution be brought to the outstanding issues, the EC would take the appropriate steps to protect its rights.

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

2. United States – Continued Dumping and Subsidy Offset Act of 2000: Implementation of the recommendations adopted by the DSB

(a) Statements by Canada, the European Communities and Japan

30. The Chairman said that this item was on the agenda of the present meeting at the request of Canada, the European Communities and Japan. He then invited the respective representatives to speak.

31. The representative of Canada said that while his country appreciated the steps the United States had taken towards implementing the rulings and recommendations in this dispute, the United States had only prospectively repealed the Byrd Amendment. Anti-dumping and countervailing duties collected up to 30 September 2007 could still be disbursed to US producers under the terms of this legislation. As such, Canada believed that the US claim – made in its last status report from over a year ago – that it had "taken the actions necessary to implement the rulings and recommendations" in this dispute was not accurate. Canada, therefore, called on the United States to resume the submission of status reports and to repeal the Byrd Amendment.

32. The representative of the European Communities said that on 29 May 2007, the US Department of Homeland Security had published the notice of intent to distribute offset for fiscal year 2007 in the Federal Register. This was the first step in the administrative process that would ultimately result in a new distribution of the anti-dumping and countervailing duties in October 2007. The United States had to stop these distributions by 27 December 2003 to comply with its obligations under Articles 18.1 of the Anti-Dumping Agreement and 32.1 of the SCM Agreement. Therefore, the EC wished to ask again the United States if and what steps it intended to take to stop the transfer of anti-dumping and countervailing duties to its industry. The EC also renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit its status reports on implementation in this dispute.

33. The representative of Japan said that his country wished to join Canada and the EC by expressing its dismay at the recent announcement made by the United States to initiate yet another round of distribution process under the Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA"). On 29 May 2007, the US Customs and Border Protection ("USCBP") had issued a "notice of intent to distribute offset for Fiscal Year 2007".[1] This notice provided "the case name and number ... for which funds may become available for distribution" with the list of potentially eligible recipients. It also "gives detailed instructions and requirement to be followed to ensure timely filing of claims"[2] for distributions in accordance with the regulations implementing the CDSOA. Following

[1] 72 Federal Register at 29582 et seq. (dated 29 May 2007).

[2] See CBP News Release titled "Customs and Border Protection starts 2007 Continued Dumping and Subsidy Offset Act cycle" dated 29 May 2007, available at: http://www.cbp.gov/xp/cgov/newsroom/news_releases/05292007_2.xm1.

this notification, the USCBP had also published fiscal year 2007 preliminary CDSOA amounts available as of 30 April 2007. Based on the data published by the USCBP, funds attributable to Japan which were preliminary available to US domestic industries for fiscal year 2007 would amount to some US$38.6 million. Japan's past experiences with the CDSOA showed that the final amounts that would be eventually distributed were likely to be substantially higher than these preliminary figures. The notice and announcement showed that the CDSOA had been repealed only in form, but was still in force and fully operational. In fact, the USCBP stated in this newly published notice that this document was the "notice of intent" to distribute the offset for Fiscal Year 2007 "[p]ursuant to the Continued Dumping and Subsidy Offset Act of 2000". Interestingly, there appeared to be no mention to the repeal of the CDSOA in this notice. In Japan's view, these latest actions by the US authorities testified against the repeated US assertion that it had taken all necessary steps for implementation in this case. Instead, they rendered further support to the view that the United States still failed to fully implement the DSB's recommendations and rulings in this case.

34. Japan, once again, urged the United States to take the necessary steps to immediately terminate the illegal distribution and repeal the CDSOA not just in form, but also in substance. Until then, Japan considered that the US compliance with the DSB's recommendations and rulings was incomplete and the issue of implementation in this dispute must be under surveillance by the DSB pursuant to Article 21.6 of the DSU. In this connection, Japan reiterated that the United States was under obligation to provide the DSB with a status report pursuant to Article 21.6 of the DSU. The United States maintained that no "purpose would be served by further submission of status reports repeating the progress the United States made". The United States appeared to assume that there was no progress it could make anymore. However, as Japan suggested, the United States could and should make further progress in the implementation in this dispute that could and should be reported to the DSB. Japan reserved all its rights under the DSU until the United States came into full compliance with the DSB's recommendations.

35. The representative of Brazil said that his country thanked Canada, the EC and Japan for raising this issue at the present meeting. Brazil shared their concerns. It also supported their request that the United States explain how full compliance had been achieved in this case with the prospective repeal of the Byrd Amendment. In this respect, Brazil noted that, as had just been noted by the EC and Japan, on 29 May 2007 – i.e. more than three years after the deadline for the United States to cease all disbursements under the CDSOA – the US Customs and Border Protection had announced its intention to distribute, yet again, funds under this illegal measure.[3] In light of these circumstances, to simply repeat that Members had an option to challenge this situation under the DSU, giving no further explanation, was clearly not an appropriate reaction from a responding party that truly believed that its implementing measure delivered full compliance. Finally, Brazil reiterated that WTO Members should not be deprived of any rights under the DSU in relation to this dispute.

36. The representative of India said that, first, her country wished to thank Canada, the EC and Japan for bringing this issue before the DSB once again. As mentioned at previous DSB meetings, India remained concerned about US continued illegal disbursement of anti-dumping and countervailing duties to its Industry. India also wished to express its concern about the United States' continued lack of status reports in this dispute. India, therefore, urged the United States to inform the DSB of the steps it proposed, to ensure full compliance and reiterated its request that the United States resume submitting status reports.

37. The representative of Thailand said that his country wished to join previous speakers in thanking Canada, the EC, and Japan for bringing this item before the DSB once more. As noted in previous DSB meetings, Thailand remained disappointed at the United States' continued illegal disbursement of funds under the CDSOA, including the recent administrative steps taken by the

[3] http://www.cbp.gov/xp/cgov/newsroom/news_releases/05292007_2.xml.

United States to continue further disbursements. Thailand also remained disappointed at the United States' continued lack of status reports on its outstanding implementation in this dispute. Therefore, Thailand again urged the United States to cease its WTO-inconsistent disbursements, to repeal the Byrd Amendment with immediate practical effect, and to resume providing status reports until such actions were taken and this matter had been fully resolved.

38. The representative of China said that his country, once again, thanked and supported Canada, the EC and Japan for raising this item at the DSB meeting. China appreciated the efforts of the United States to implement the DSB's rulings and recommendations in this dispute and welcomed the repeal of CDSOA. However, China shared the same view expressed by previous speakers that the implementation issue had not been resolved in this dispute within the framework of Article 21 of the DSU. It was the obligation of a Member to fully and promptly implement the DSB's rulings and recommendations, which was critically important to the credibility and efficiency of the dispute settlement system. Therefore, China wished to join previous speakers in urging the United States to comply fully with the DSB's rulings.

39. The representative of the United States said that as his country had explained at previous DSB meetings, the US President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. With respect to comments regarding further status reports in this matter, as his delegation had already explained, the United States had taken all steps necessary to implement the DSB's recommendations and rulings in these disputes. Those Members who had inscribed this item on the agenda of the present meeting were, of course, free to do so, but the United States failed to see what purpose would be served by further submission of status reports repeating the progress the United States had made in the implementation of the DSB's recommendations and rulings.

40. The DSB took note of the statements.

3. India – Additional and extra-additional duties on imports from the United States

(a) Request for the establishment of a panel by the United States (WT/DS360/5)

41. The Chairman recalled that the DSB had considered this matter at its meeting on 4 June 2007 and had agreed to revert to it. He drew attention to the communication from the United States contained in document WT/DS360/5, and invited the representative of the United States to speak.

42. The representative of the United States said that as his delegation had explained at the 4 June DSB meeting, the United States was concerned about an additional duty and an extra additional duty that India imposed on imports from the United States, in particular on wine and distilled spirits. The United States believed that these duties, individually and in combination, subjected imports of the United States to ordinary customs duties or other duties or charges in excess of those in India's WTO Tariff Schedule in breach of Article II:1(a) and (b) of the GATT 1994. Accordingly, the United States requested that the DSB establish a panel pursuant to Article 6 of the DSU, with standard terms of reference, to examine the matters set forth in the US panel request. As the United States had also noted at the 4 June DSB meeting, the DSB had established a panel on 24 April 2007 to consider the EC's claims relating to the additional duty and extra additional duty. The United States would note that in this situation, Article 9.3 of the DSU provided that, to the greatest extent possible, the panelists in the US and EC disputes shall be the same and the time-table for the two disputes shall be harmonized.

43. The representative of India said that her country remained disappointed that the United States had chosen to pursue the matter further by requesting the establishment of a panel. As mentioned in

India's previous statement, both India and the United States had had constructive and fruitful consultations in Geneva. Both parties had agreed to work towards a mutually acceptable solution, and India still believed that the parties were headed in that direction. India was confident that the panel would find that the measures were consistent with India's WTO obligations. While India understood that a panel would be established at the present meeting, it continued to consider that the US request was premature. Finally, regarding the US request that the panelists in the US dispute and the recently established panel to consider the EC's claims with respect to importation and sale of wines and spirits from the EC could be the same, India was considering the appropriateness of the US request for appointing the same panelists and seeking harmonization of the time-table. India would revert to this matter separately.

44. The representative of the European Communities said that his delegation wished to signal that the EC would be prepared to go along the avenue provided for in Article 9 of the DSU and have the panelists, which were about to be appointed by the Director-General, in the EC's case against India, also serve on the panel requested by the United States as well as to have a harmonized time-table.

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

46. The representatives of Australia, Chile, the European Communities, Japan and Viet Nam reserved their third-party rights to participate in the Panel's proceedings.

4. Brazil – Anti-dumping measures on imports of certain resins from Argentina

(a) Request for the establishment of a panel by Argentina (WT/DS355/2)

47. The Chairman drew attention to the communication from Argentina contained in document WT/DS355/2, and invited the representative of Argentina to speak.

48. The representative of Argentina said that his country regretted that it had to call the DSB's attention to the dispute arising from the anti-dumping measures imposed by Brazil on the imports of certain resins from Argentina. However, the issue with regard to which Argentina was requesting the establishment of a panel was long-standing and gave rise to serious concerns on the part of his country. He recalled that in August 2005 Brazil had decided to impose an anti-dumping duty of over US$340 per tonne on the imports of PET resins from Argentina. Argentina considered that in establishing such duties, Brazil had acted in a manner inconsistent with Articles 2, 3, 6, 8, 10, 12 and Annex II of the Anti-Dumping Agreement and Article VI of the GATT 1994, as set out in detail in Argentina's request for the establishment of a panel (WT/DS355/2). Argentina also viewed with concern the fact that certain aspects of the Brazilian legislation regulating the powers of the Brazilian authority responsible for imposing the anti-dumping duties were inconsistent with Articles 10 and 18 of the Anti-Dumping Agreement, Article X of the GATT 1994 and Article XVI of the WTO Agreement.

49. Argentina and Brazil had attempted to reach a bilateral settlement to this dispute. In the course of 2006 and 2007 several bilateral meetings had taken place both in Argentina and in Brazil. During those meetings various options had been considered. However, it had proved impossible to reach a settlement to the dispute in question. In view of the lack of substantive progress, on 26 December 2006 Argentina had requested consultations with Brazil under Article 4 of the DSU (WTDS355/1), with a view to resolving the issue in a manner satisfactory to both parties. Regrettably, at the consultations held on 1 February 2007 in Brasilia, it had proved impossible to reach an amicable solution. Consequently, Argentina had no other option than to request the establishment of a panel in accordance with Article XXIII of the GATT 1994, Articles 4.7 and 6 of the DSU and Article 17.4 of the Anti-Dumping Agreement.

50. The representative of Brazil said that his country regretted that Argentina had taken the decision to request the establishment of a panel. Brazil had been working with Argentina in an effort to resolve this matter, and considered that good progress had been made in the consultations. Furthermore, fruitful discussions with stakeholders to resolve the dispute occurred as recently as in the past week. In light of this ongoing effort, Brazil believed that Argentina's decision to abandon consultations, and to request the establishment of a panel was premature. As a result, Brazil was not in a position to agree to the establishment of a panel at this time. Brazil continued to believe that the matter could be resolved without further recourse to the dispute settlement procedures. However, should Argentina pursue this matter further, Brazil was confident that a panel would find that the anti-dumping measures at issue fully complied with Brazil's WTO obligations.

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

5. United States – Subsidies and other domestic support for corn and other agricultural products

(a) Request for the establishment of a panel by Canada (WT/DS357/11)

52. The Chairman drew attention to the communication from Canada contained in document WT/DS357/11, and invited the representative of Canada to speak.

53. The representative of Canada said that her country strongly supported WTO Members' shared commitment to establish fair and market-oriented, world agricultural markets. This was why Canada continued to work with other WTO Members to achieve an ambitious outcome on agriculture as part of the Doha Round negotiations. At the same time, Canada must ensure that WTO Members were meeting their WTO commitments under the current Agreement on Agriculture. As outlined in Canada's request, dated 7 June 2007, Canada believed that the United States had been providing trade-distorting agriculture subsidies inconsistent with US WTO commitments. More specifically, it was Canada's view that: (i) the US's Current Total Aggregate Measurement of Support had exceeded its commitment levels in each of 1999, 2000, 2001, 2002, 2004 and 2005, contrary to the Agreement on Agriculture. Canada estimated that during these years the United States had exceeded its WTO commitment levels by billions of dollars each year. The measures at issue include a broad scope of US agriculture subsidy programs, such as Direct Payments, Counter-Cyclical Payments and Loan Deficiency Payments, which provide subsidies to a wide range of agricultural products, and; (ii) the United States provided export credit guarantees through the General Sales Manager 102 program that were inconsistent with the SCM Agreement and the Agreement on Agriculture. Canada and the United States had held consultations on these matters in February 2007. However, because the consultations had not produced a resolution of these matters, Canada was now requesting that a panel be established to examine this issue.

54. The representative of the United States said that his country was disappointed that Canada had chosen to move forward with a request for panel establishment at this time. On the one hand, the United States noted that Canada was not pursuing its claim that US domestic support had distorted trade in corn. Notwithstanding Canada's mistaken belief that apparently nearly all US farm programs distorted trade, corn prices were not depressed or suppressed, but rather were at record highs. Both the Canadian International Trade Tribunal and, most recently, the Canadian Federal Court of Appeal had rejected claims by Canada's corn producers alleging injury from US corn imports. These facts appeared to have been enough for Canada to set aside its claim that US farm programs had distorted trade by suppressing corn prices. Unfortunately, Canada had not taken an equally sober look at its other claims. Canada had alleged that the United States had exceeded its domestic support reduction commitments. The United States rejected that claim. The United States carefully crafted its farm programs to support US farmers within the negotiated WTO limits on spending. The United States

had provided support within those limits, and, therefore, consistently with its WTO obligations. Should this dispute move forward, the United States would vigorously defend its farm programs.

55. Canada had also advanced claims on GSM-102, a US export credit guarantee program for agricultural products. This program had been revised in response to the DSB's recommendations in the Cotton dispute. As the United States had explained in the Article 21.5 compliance proceeding currently underway in that dispute, this program fully complied with US WTO obligations. In fact, far from providing an export subsidy as alleged by Canada, the program provided a profit to the US Government, amounting to hundreds of millions of dollars over the long-term. The United States shared the objectives for the WTO agriculture negotiations agreed upon at Doha and reaffirmed at Hong Kong: i.e., substantial improvements in agricultural market access, elimination of agricultural export subsidies, and substantial reductions in trade-distorting domestic support. The United States hoped that Canada shared these objectives as well. But the United States rejected Canada's assertions in this dispute, for example, that nearly every US farm program was trade-distorting. There was absolutely no basis to those claims. Both Canada and the United States would better spend their efforts ensuring that the negotiations successfully increase farm trade, to provide a real boost to farmers and consumers worldwide.

56. Finally, the United States also had concerns about the way in which Canada had framed its panel request. For example, the panel request impermissibly listed measures that had not been the subject of consultations. In other cases, it was impossible to tell what measures Canada was seeking to challenge. And some of Canada's claims pertained to measures that had ceased to exist, in some cases more than five years ago. For all the preceding reasons, the United States did not agree to the establishment of a panel.

57. The representative of Brazil said that, without prejudice to any statement that his delegation might make in future should Canada move forward with its panel request, Brazil wished to put on record, since references had been made to the Cotton dispute, that it had a very different view from the US view on the consistency of the GSM-102, the revised version of the GSM-102 export credit guarantees and its programme with the US obligations under the Agreement on Agriculture and the SCM Agreement.

58. The representative of Argentina said that his country had followed, with great interest, the developments regarding this matter, and had, therefore, asked to be joined in the consultations requested by Canada with the United States pertaining to this dispute. Consequently, Argentina had participated in the meeting that had been held to that effect at the beginning of February 2007. Argentina had a systemic interest in this matter, which was shared by other Members, as well as a commercial interest. This had been demonstrated in Argentina's request to be joined in the consultations and in the letter of acceptance of its request by the United States. Thus, Argentina deeply regretted the fact that to date the United States had not reconsidered its position regarding the implementation of the levels of its domestic support and export subsidies relating to the agricultural products that were the outcome of arduous negotiations in the course of the Uruguay Round, and which were part of the commitments accepted under its Schedule of Concessions. A failure to meet its obligations had been highlighted in Canada's detailed and exhaustive complaint regarding this matter, which his country shared and supported. In this connection, Argentina wished to emphasize that the disregard by the United States of its commitments had a direct impact on the international markets, and in particular on developing-countries markets. It also caused serious concerns due to the lack of transparency and correct identification of the measures that the United States had notified, not to mention the significant delay by that country in notifying such measures. In this regard, Argentina noted that the last notification relating to commitments on export subsidies covered the year 2002 and on domestic support covered the years 2000 and 2001. Accordingly, Argentina supported Canada's complaint and said that it was considering to participate as a third party in the Panel's proceedings.

59. The representative of Nicaragua said that, like Argentina, due to Nicaragua's commercial interest in this dispute, her country supported the statement made by Canada, and wished to indicate its third-party interest in this dispute.

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

6. Appointment of Appellate Body members

61. The Chairman said that, under this agenda item, as he had announced at the informal meeting held on 19 June 2007, he wished to submit to the DSB for decision his proposal regarding the process for selecting new Appellate Body members. A copy of this proposal had already been made available previously to Members attending the informal meetings on this matter, and was also available as a room document at the present meeting. Before turning to the content of his proposal, he noted that at the informal meeting, he had reported on the results of his consultations with Members regarding the process for selecting new Appellate Body members. He recalled that, at the informal meeting on 21 May 2007, based on his preliminary consultations with delegations, he had made a proposal on the procedures for appointment of Appellate Body members to the two positions on the Appellate Body for which the terms of office would expire on 10 December 2007 and the two positions for which the terms of office would expire on 31 May 2008. At that meeting, he had proposed, *among other things*, that the DSB deal with these four positions together as part of the single selection process. He said that this element of his proposal was based on the approach followed by the DSB in the 2003 Appellate Body selection process, namely, to carry out one single process regarding the two positions on the Appellate Body for which terms of office were to expire in December 2003 and the two positions for which terms of office were to expire in May 2004. The record, as set out in document WT/DSB/M/153 of the July 2003 DSB meeting, indicated that the then Chairman of the DSB had proposed that it would be more efficient for the DSB to deal with the four positions in question as part of the same process. All delegations who had spoken at that meeting had supported the Chairman's proposal and the DSB had then agreed to the proposal.

62. He recalled that as it had not been possible to reach consensus on at least one element of his proposal at the informal meeting on 21 May 2007, namely, that a single process be carried out for the positions on the Appellate Body whose terms would expire in December 2007 and May 2008, he had continued to consult with delegations on this matter. On the basis of these consultations, he had reported on 19 June that it was his understanding that delegations were now willing to accept his original proposal of 21 May. He noted that his proposal was based on the procedures for selecting Appellate Body members, set out in a DSB decision of 10 February 1995, which was contained in WT/DSB/1. These procedures had been used for the appointment of all new Appellate Body members in the past and had worked well. The key elements of these procedures were: (i) nominations of candidates for Appellate Body members were submitted by delegations within the deadline established by a decision of the DSB; (ii) appointment to the Appellate Body was by decision of the DSB as provided for in Article 17.2 of the DSU which stipulated that: "The DSB shall appoint persons to serve on the Appellate Body for a four-year term"; (iii) the decision of the DSB to appoint Appellate Body members as stipulated in document WT/DSB/1, was based on a joint recommendation made by a Selection Committee consisting of the Director-General, and the Chairpersons of the General Council, the Goods Council, the Services Council, the TRIPS Council and the DSB; (iv) the Selection Committee formulated its recommendation to the DSB after conducting interviews of all the candidates for appointment and after receiving views from interested delegations on candidates either orally or in writing; (v) the Selection Committee's recommendation reflected the requirements stipulated in Article 17.3 of the DSU that: "The Appellate Body shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. The Appellate Body membership shall be broadly representative of membership in the

WTO...."; and (vi) the final decision on appointments remained in the hands of the WTO Membership.

63. In light of these agreed procedures, past practice, and his understanding that delegations were now willing to accept his proposal regarding the process to be used for selecting four new Appellate Body members, the Chairman asked that the DSB agree to his proposal, which consisted of five elements: "(i) to launch a single selection process for the four positions on the Appellate Body whose terms expire in December 2007 and May 2008; (ii) to establish a Selection Committee, which, in accordance with the procedures contained in document WT/DSB/1, would consist of the Director-General and the 2007 Chairpersons of the General Council, Goods Council, Services Council, TRIPS Council and the DSB; (iii) to set a deadline of 31 August 2007 for Members to nominate candidates; (iv) to request the Selection Committee to conduct interviews with candidates and to hear views of delegations in September and October and to make its recommendations to the DSB by no later than 5 November 2007 and; (v) to take a decision on the four positions in question at the DSB meeting on 19 November 2007."

64. The representative of Cuba said that her country joined the consensus reached with regard to the DSB decision on this matter inspite of the concerns raised, both at the initial informal consultation and bilaterally, that the current Selection Committee would exert considerable influence over the appointment of Appellate Body members. Cuba hoped that the group of four candidates to be submitted for approval by all DSB Members would fully comply with Article 17.3 of the DSU, which required that the Appellate Body be comprised of not only persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally, but also that the Appellate Body membership be broadly representative of the WTO Membership, which included countries from five continents, both developed and developing – the latter being the majority – and both large and small economies. Cuba hoped that the future composition of the Appellate Body would reflect that diversity.

65. The Chairman said that he appreciated Cuba's cooperation on this matter.

66. The DSB took note of the statements and agreed to the Chairman's proposal on the procedures for appointment of Appellate Body members.

67. The Chairman said that, at this point, he wished to remind delegations that nominations of candidates shall be submitted by Members by no later than close-of-business on 31 August 2007. As was done in the past, the nominations along with the curricula vitae of the nominees should be sent to the Chairman of the DSB in care of the Council and TNC Division. This information would then be circulated to all Members as Job documents. The Selection Committee would begin its work in September. He would keep delegations informed about the work and schedule of the Selection Committee, including how and when the Committee intended to hear the views of Members on the nominees.

68. The DSB took note of the statement.

7. Proposed nomination for the indicative list of governmental and non-governmental panelists (WT/DSB/W/351)

69. The Chairman drew attention to document WT/DSB/W/351, which contained an additional name proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. Unless there was any objection, he wished to propose that the DSB approve the name contained in document WT/DSB/W/351.

70. The DSB so agreed.

71. The Chairman said that, in connection with this agenda item, he wished to recall that at the DSB meeting on 24 April 2007, he had made an announcement regarding the need to update the indicative list of governmental and non-governmental panelists, pursuant to the proposals for the administration of the indicative list of panelists, approved by the DSB on 31 May 1995. He recalled that, at that meeting, he had asked delegations to submit to the Council and TNC Division of the WTO Secretariat updated curricula vitae of persons appearing on the current indicative list, contained in documents WT/DSB/33 and Add.1 through Add.11, as well as to indicate any modifications they wished to make to the list. At the present meeting, he wished to remind delegations that this be done by the end of July 2007 so that an updated and consolidated list could be circulated after the Summer break.

72. The DSB took note of the statement.