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Dispute Settlement Body
19 and 27 November 2007

MINUTES OF MEETING

Held in the Centre William Rappard
on 19 and 27 November 2007

Chairman: Mr. Bruce Gosper (Australia)

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Prior to the adoption of the Agenda

The Chairman said that the items proposed for the Agenda of the present meeting were contained in document WT/DSB/W/364 and proposed that the DSB adopt the Agenda contained in the document to which he had just referred.

The representative of Chinese Taipei said that his delegation wished to propose that item 8, concerning the appointment of Appellate Body members, be removed from the Agenda of the present meeting so that the DSB could proceed with the other items on the Agenda.

The Chairman said that in line with the WTO rules of procedure and established practice, the Agenda could be amended if there was a consensus to do so. He, therefore, asked whether the proposal put forward by Chinese Taipei would be acceptable to other delegations.

The representative of the United States said that his country was very disappointed at this objection to the adoption of the Agenda, which included several important items, but most particularly item 8. The dispute settlement system, including the Appellate Body, was a critical aspect of the WTO and a smooth transition to new membership was in everyone's interest. The United States would urge reconsideration of any objection to the adoption of the Agenda and would certainly not support the removal of item 8 from the Agenda of the present meeting.

The representative of Japan said that item 8 was the most important item on the Agenda of the present meeting. Japan could not agree to the adoption of the Agenda without item 8.

The representative of China said that item 8 was the most important item on the Agenda of the present meeting and China fully supported the statements made by the United States and Japan.

The representative of the Philippines said that his country shared the United States' disappointment with the objection raised with regard to item 8 contained on the Agenda of the present meeting. The Philippines would not be able to accept the adoption of the Agenda without item 8.

The representative of the European Communities said that the EC shared the view that item 8 was so important that it should remain on the Agenda and that a solution to the problem at hand should be found as quickly as possible.

The Chairman said that, in light of what had just been stated, it was clear that the proposal to postpone discussion of item 8 did not have consensus. He asked if Chinese Taipei could indicate whether it could change its position at this time.

The representative of Chinese Taipei said that his delegation's position remained the same.

The Chairman said that, given the situation, the meeting could not proceed. He, therefore, proposed that the meeting be suspended to allow an opportunity for informal consultations among those concerned.

The DSB so agreed.

Upon the resumption of the meeting on 27 November 2007, the Chairman recalled that on 19 November, Chinese Taipei had requested that item 8 be removed from the proposed Agenda. As there had been no consensus on this request, he had suspended the meeting so as to allow time for informal consultations. He recalled that on 23 November, he had convened an informal meeting of the DSB to update Members on the state of these consultations. At that meeting, he had reported that the Director-General, the Chairman of the General Council and himself, had all explored with Chinese Taipei and interested delegations various ways to address the concerns raised by Chinese Taipei within the established WTO rules and procedures. Immediately after the informal meeting on 23 November, the Director-General and himself had continued intensive consultations. On 26 November, he had sent out a fax in which he had provided delegations with a further update of the situation. In that fax, he had also indicated that it was his hope to resume the 19 November DSB meeting as quickly as possible. At the present meeting, he was in a position to announce that these consultations had produced a positive outcome. He again emphasized that he had carried out these consultations strictly within the limits of the agreed rules and procedures, which all Members had pledged to uphold. He had assured the delegation of Chinese Taipei of the guarantees that the agreed rules and procedures provided to all WTO Members. He said that he would refer to these rules and procedures in his statement introducing item 8 at the present meeting. It was his understanding that the delegation of Chinese Taipei was now prepared to lift its objection to item 8, and so the meeting could proceed. He thanked the delegations involved for their efforts and constructive engagement. He also thanked all Members for their patience and understanding. With these words, he proposed to turn to the first item of business, namely, the adoption of the Agenda. In doing so, he suggested that item 8 be taken up first, so as to enable those Permanent Representatives who had taken a close personal interest in this issue – and he thanked them – to attend to their other important commitments.

The DSB adopted the Agenda contained in WT/DSB/W/364 and agreed that item 8 concerning the appointment of Appellate Body members be taken up as the first item on the Agenda of the present meeting.

1. Appointment of Appellate Body members

1. The Chairman recalled that, at its meeting on 20 June 2007, the DSB had established a Selection Committee composed of the 2007 Chairpersons of the General Council, the Goods Council, the Services Council and the TRIPS Council, the Director-General and the Chairman of the DSB. The Selection Committee had been entrusted with the task of carrying out a single selection process with regard to four upcoming positions in the Appellate Body. These concerned the positions currently held by Ms Merit Janow and Mr Yasuhei Taniguchi, whose terms of office would expire on 10 December 2007, and by Messrs. Georges Abi-Saab and A.V. Ganesan, whose terms of office would expire on 31 May 2008. The Selection Committee's mandate was to make recommendations for appointment by the DSB to these four positions. At the 20 June DSB meeting, it had also been agreed that the deadline for nominations of candidates should be 31 August 2007. He recalled that, by the agreed deadline, nine candidates had been nominated by seven WTO Members. Curricula Vitae of those candidates had been circulated to all delegations as Job documents. In accordance with the DSB's decision of 20 June, the Selection Committee had conducted thorough interviews, in September and October, with the nine candidates and had made itself available to hear the views of WTO Members regarding the candidates. To this effect, 44 delegations had met with the Selection Committee and eight delegations had submitted written comments. The Selection Committee had approached its task of recommending four new Appellate Body members with great care, consistent with the guidelines, rules and procedures contained in the DSU provisions and document WT/DSB/1, which governed the selection and appointment of Appellate Body members.

2. As Chairman of the Selection Committee, he wished to emphasize that, throughout its work, the Selection Committee had kept constantly in mind the relevant WTO rules and principles,

particularly those laid down in Article 17.3 of the DSU, and had assured itself that its recommendations would conform fully with these provisions. He reminded delegations that Article 17.3 of the DSU stated 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. All persons serving on the Appellate Body shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the WTO. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest."

3. As Chairman of the DSB, he wished to recall that the functioning of the Appellate Body and the conduct of its members were governed by rules and procedures agreed by the WTO Membership. In addition to Article 17 of the DSU, these were set out in documents WT/DSB/1 and WT/AB/WP/5. These rules and procedures ensured that the interest of all WTO Members, in a fair and impartial appeals process, was fully safeguarded. They provided all WTO Members with the necessary assurances of impartiality and independence. Clearly these rules, procedures and principles would continue to govern the appointment of Appellate Body members and the functioning of the Appellate Body. And, as all knew, the scope of the Appellate Body's decisions was clearly limited under the rules agreed by WTO Members in the DSU, notably Article 17.6, to issues of law covered in the panel report and legal interpretations developed by the panel.

4. Having said that, he noted that the Selection Committee had also been guided by the statement made in November 1995 by the (then) Chairman of the DSB to the effect that composition of the Appellate Body could vary over time, that no rights should be derived from the initial composition, and that initial appointments did not compromise the scope for different regional or national compositions in future. He said that the Selection Committee's task was far from easy, owing to the excellence of the candidates. However, with the cooperation of delegations, the Selection Committee had been able to conclude its work on schedule. On 7 November, following its extensive deliberations on all candidates, the Selection Committee had reached firm recommendations that the following persons be appointed to the Appellate Body: Ms Lilia R. Bautista (Philippines), Ms Jennifer Hillman (United States), Mr Shotaro Oshima (Japan), and Ms Yuejiao Zhang (China). The Selection Committee's recommendations had been communicated by fax to all delegations on 7 November, immediately after the Committee had arrived at its decision. Today, in light of the recommendations reached by the Selection Committee, he would first like to propose that the DSB take a decision on the recommendations of the Selection Committee, and immediately after he would open the floor to delegations who would wish to make statements for the record. He hoped that this would be agreeable to all delegations.

5. The DSB so agreed.

6. The Chairman proposed that, as recommended by the Selection Committee, the DSB decide to appoint Ms Lilia R. Bautista and Ms Jennifer Hillman as members of the Appellate Body for four years commencing on 11 December 2007, and to appoint Mr Shotaro Oshima and Ms Yuejiao Zhang as members of the Appellate Body for four years commencing on 1 June 2008.

7. The DSB so agreed.

8. The Chairman said that, before giving the floor to delegations wishing to make statements, on behalf of the Selection Committee, he wished to take this opportunity to thank all individual candidates who had come forward and their respective Governments as well as to congratulate those four newly appointed Appellate Body members. He then proposed to open the floor for statements, starting with those delegations who had nominated candidates for the Appellate Body, if they wished to do so.

9. The representative of the United States said that, first of all, his delegation wished to express its deepest gratitude to the Chairman, for his tireless efforts in resolving Members' concerns so that the DSB could take this decision to ensure the smooth functioning of the WTO dispute settlement system. In helping to bring Members to this position, the Chairman had displayed firmness, but also sensitivity to the interests of all Members. Second, his delegation wished to thank Chinese Taipei for the flexibility that it had shown in dealing with this matter, and its willingness to engage intensively with the Chairman of the DSB, the Director-General, and other Members to resolve its concerns. With respect to the issues that had been occupying delegations over the past 10 days, the United States emphasized that it was satisfied that the selection process that had been used to recommend the four candidates for the Appellate Body fully respected all of the criteria set forth in Article 17.3 of the DSU.

10. In this regard, the United States shared the view of all Members that the Appellate Body's consideration of an appeal must be impartial, independent and objective, and must not be politicized in any way. But this was not simply the US opinion: the dispute settlement system contained numerous checks and balances to ensure such behaviour. The DSB had agreed to the Rules of Conduct which applied to Appellate Body members, and Article II of those Rules – entitled "Governing Principle" – required that an Appellate Body member "shall be independent and impartial, shall avoid direct or indirect conflicts of interest and shall respect the confidentiality of proceedings of bodies". In addition, each Appellate Body member was to take an oath that obligated him or her to abide by this Governing Principle. Specifically, an incoming member was to swear to perform his or her duties "honourably, independently, impartially, conscientiously, and in accordance with the law of the World Trade Organization" and "at all times, avoid direct or indirect conflicts of interests". These checks and balances ensured, among other things, that Members should have no fear that a member of the Appellate Body would seek or accept instructions from anyone regarding the outcome of an appeal. The United States was confident that the four individuals, appointed to the Appellate Body at the present meeting, would abide by the principles that had just been described.

11. The United States wished to thank the Chairman of the DSB and the other members of the Selection Committee for their hard work and recommendations, which had helped the DSB in taking its decision at the present meeting. The United States also wanted to thank all delegations who had nominated candidates for this selection process, as well as those delegations who had met with the nominees and had expressed their views to the Selection Committee. Finally, the United States was grateful to the Secretariat for its assistance during the process. The United States wished to take the opportunity to congratulate the four new members of the Appellate Body that had just been appointed by the DSB. It would also like to thank the departing Appellate Body members – Mr Taniguchi and Ms Janow – for their contributions, and wished them well in their future pursuits.

12. The representative of Japan said that her delegation wished to extend Japan's sincere gratitude to the Chairman of the DSB and the other members of the Selection Committee for their tireless efforts devoted to the selection process. Japan believed that the task entrusted to the Selection Committee was extremely difficult. This time four vacancies had to be filled out of the seven positions in the Appellate Body, and the choices made would have a defining importance for the work of the Appellate Body in the years to come. The high quality of candidates nominated by several Members had made the Selection Committee's task even harder. Japan congratulated and welcomed the four distinguished individuals who had been appointed at the present meeting as new members of the Appellate Body. The impartiality and independence of Appellate Body members were essential to the credibility and effective functioning of the WTO dispute settlement system. Japan hoped, and was convinced, that the newly appointed Appellate Body members would live up to the trust that the WTO Membership had placed in them by discharging their duties faithfully, independently and impartially, and that they would contribute to enhancing the credibility and authority of the Appellate Body, which was recognized as a key institution in the rules-based multilateral trading system. Japan appreciated that Chinese Taipei had taken into consideration the views expressed by other

delegations, and had decided to withdraw its objection regarding the item related to the appointment of Appellate Body members in the interest of the Organization as a whole. For its part, Japan would continue to cooperate with the work of the Appellate Body. Finally, Japan wished to pay tribute to the outgoing Appellate Body members for their remarkable and persevering services and contributions, over the past years, to the WTO multilateral trading system.

13. The representative of China said that his country wished to thank the Selection Committee for its tremendous work to put forward these balanced recommendations and for its transparent and efficient manner in conducting the selection process. China, like many other Members, highly appreciated the tremendous efforts made by the Chairman of the DSB, the Director-General and the Chairman of the General Council to make sure that the DSB meeting finally take place, without which the operation of the dispute settlement mechanism, one of the key elements of the WTO system, would be endangered. China wished to pay tribute to all candidates for their professionalism, strong capabilities and ample experiences. The high quality of these candidates and the constructive engagement in the selection process of Members reflected their genuine interest in strengthening the multilateral trading system by contributing to the consolidation of the Appellate Body, a key institution within the WTO. China also wished to extend its sincere congratulations to the four outstanding individuals recommended by the Selection Committee. China believed that the four newly appointed Appellate Body members would add values to the already high quality of the Appellate Body and would contribute to the normal functioning of the multilateral trading system and its stability and predictability. China, as an increasingly substantial participant in the dispute settlement mechanism, had the same interests as any other Member in ensuring that the relevant DSU rules and provisions were faithfully adhered to by all Appellate Body members.

14. The representative of the Philippines said that, first of all, his delegation wished to thank the Chairman of the DSB for his efforts in dealing with the delicate situation that Members had encountered in the past several days. His country also wished to thank Chinese Taipei for demonstrating its flexibility and sensitivity with regard to the views expressed by Members at the informal DSB meeting held on 23 November. The Philippines wished to join previous speakers in extending congratulations and best wishes to the four individuals including Ms Lilia Bautista of the Philippines, who had been appointed at the present meeting to the Appellate Body. His country wished to be associated with the statements commending the Selection Committee for their professional and impartial manner with which it had conducted the selection process. The Philippines believed that throughout this process the Selection Committee had worked on the basis of the guidelines, rules and procedures contained in the DSU and document WT/DSB/1.

15. He said that Ms Bautista's professional career was characterized by her long and deep involvement in the Philippines' trade law and policy. She had also been uniquely positioned to have been present at the concluding years of the Uruguay Round negotiations, and had participated in the first years of the WTO, including the Appellate Body. After she had left her government service in 2004, she had continued to monitor the growth and development of the WTO, albeit from a distance as a scholar, consultant and private practitioner. Therefore, she had no second thoughts that her name be submitted as a candidate for the upcoming vacancies in the Appellate Body, knowing that her appointment was not guaranteed and that the selection process would be rigorous. On behalf of Ms Bautista, his delegation wished to express her deepest gratitude to Members of the DSB for their trust and confidence, as demonstrated by a decision taken at the present meeting. His delegation shared collective aspirations that panels and the Appellate Body would continue to strengthen the foundations of the rules-based multilateral trading system. This task would remain challenging and might never be completed since the WTO system, including the DSU, would constantly need to respond to new challenges and opportunities in the years to come. But his country was confident that the individuals appointed at the present meeting had the required intellectual calibre and would faithfully discharge their duties with the highest impartiality and independence. Finally, his country wished to pay tribute to the other nominees to the Appellate Body and their respective governments.

His country thanked these individuals for allowing their names to be put forward and wished them well in all their future endeavours.

16. The representative of Chinese Taipei said that his delegation wished to reiterate its position, namely, that it had expressed deep concern about one candidate for this very important Appellate Body position, and greatly appreciated the time and efforts that the Chairman of the DSB, the Director-General, the Chairman of General Council and other Members had devoted to discuss this matter. Throughout the selection process, as a matter of principle, Chinese Taipei had made it absolutely clear that all Appellate Body members should be selected according to criteria set out in the guidelines, rules and procedures of the DSU. Members appointed to serve on the Appellate Body should be committed to the obligations enshrined in the Rules of Conduct for the Understanding on the Rules and Procedures Governing the Settlement of Disputes with regard to impartiality, independence, fairness and objectiveness. In particular, Appellate Body members should not seek or receive instructions and opinions from, or be influenced by, the government of their country of origin. Nor should their judgment and decisions, in any way, imply that they reflected their country's political views, values or positions. These obligations should always be observed and respected in their conduct of the official business of the Body. Similarly, documents issued by the Appellate Body shall not prejudice the legal rights and status of any Member. His delegation would also like to be associated with the statement made by the Chairman of the DSB in reminding Members that the scope of the Appellate Body was limited as per Article 17.6 of the DSU: "The Appellate Body shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel". His delegation wished that the DSB take note of this statement and that it be recorded in the minutes of the meeting accordingly.

17. The representative of the European Communities said that the EC thanked the Chairman of the DSB for his efforts to achieve a positive outcome in his consultations. The EC also thanked the Selection Committee for its hard work. The EC was aware that Chinese Taipei had had some serious concerns and had needed some time to overcome its reservations. The EC was grateful that Chinese Taipei had been able to reconsider its position and had thus contributed to the proper functioning of the DSB in the interest of all Members. The EC noted that Chinese Taipei, like others, had paid particular attention to the principle of a fair selection process as well as impartiality of the Appellate Body members. The EC could not but underline the importance of these aspects for their future work. The EC finally thanked the outgoing members of the Appellate Body for their work and congratulated the four new incoming Appellate Body members. The EC looked forward to working with them during the four-year term for which they had been appointed at the present meeting.

18. The representative of Uruguay expressed his country's satisfaction that the DSB meeting had now been resumed and that the four excellent candidates recommended by the Selection Committee had been appointed as members of the Appellate Body. Uruguay congratulated the newly appointed members of the Appellate Body. The decision taken at the present meeting ensured the continuity of the functioning of the Appellate Body which, as had already been stated on many occasions, was of great importance for the whole system. For that reason, Uruguay congratulated the Chairman of the DSB for the way in which he had taken this process forward and thanked the Director-General for his efforts. Uruguay also thanked Chinese Taipei for its understanding, which had enabled it to join in the consensus at the present meeting. This demonstrated Chinese Taipei's constructive participation in the work of the DSB. As his delegation had already stated, Uruguay considered that the DSU provisions and the Appellate Body working procedures as well as the regular monitoring mechanism under the dispute settlement system, constituted important practices and rules to ensure the necessary guarantees of the principle of impartiality. Uruguay believed that the four candidates, who had just been appointed as members of the Appellate Body, would live up to the trust that WTO Members had placed in them, and that their professionalism and impartiality would ensure the continuity of the highly technical work being carried out under the dispute settlement system.

19. The representative of Mexico said that his delegation wished to extend its warm welcome and congratulations to the four new members of the Appellate Body. Mexico was convinced that they would demonstrate full impartiality and independence, and that they would act in an objective manner. Mexico was satisfied that it had been possible to resume the DSB meeting, which had been suspended on 19 November. Mexico thanked the Chairman of the DSB and the Director-General for their work, which had made it possible for this process to end in a satisfactory manner. Mexico also thanked Chinese Taipei for its flexibility because a serious precedent could have been set if the DSB's work had continued to be suspended. Furthermore, the smooth functioning of the multilateral trading system could have been undermined. What had happened on 19 November demonstrated that, on the one hand, the system was vulnerable and that, on the other hand, the system was working. It also showed how important it was to continue working together, in particular at a time when Members were trying to bring to a successful conclusion the most ambitious round of trade negotiations. Mexico had a systemic interest in the proper functioning of the dispute settlement mechanism. In concluding, he noted that Members had been able to solve the matter at a technical level and they must ensure that this continued to be the case.

20. The representative of Brazil said that his delegation wished to congratulate the Chairman of the DSB on the successful outcome of his consultations. This was extremely important for the proper functioning of the DSB. His delegation also wished to congratulate the Selection Committee for its hard work in recommending four excellent candidates who had just been appointed by the DSB as Appellate Body members. Brazil congratulated the four new Appellate Body members and wished them well in their new functions. Brazil believed that during this process, all the rules and disciplines of the WTO had been appropriately followed, and that the selection process had been carried out in an impartial and fair manner. Brazil was also confident that the new Appellate Body members would abide by these rules and did not see any reason for doubting their impartiality. Brazil also thanked Chinese Taipei for reconsidering its position so that the DSB could move forward with its work. Finally, Brazil thanked the outgoing members of the Appellate Body for their work.

21. The representative of Nicaragua said that her delegation noted with satisfaction the outcome of the consultations held by the Chairman of the DSB. Nicaragua congratulated Chinese Taipei for having acted with a sense of responsibility, placing collective interests first before individual interests. All Members should do the same in order to work in an efficient and impartial manner. It was for that reason that each Member was required to act with wisdom so as to avoid jeopardizing the dispute settlement system, which was the cornerstone of the multilateral trading system. She said that the basis of the governance of this system, namely, the principle of consensus had been put into question. In Nicaragua's view, the principle of consensus should be safeguarded, however difficult that might be in certain situations. Nicaragua was satisfied that, in this instance, the principle of consensus had been respected, and that the cooperation and dialogue had enabled the parties to reach a successful and satisfactory outcome for all. Nicaragua congratulated the four newly appointed members of the Appellate Body. Nicaragua was convinced that they would act in compliance with the requirements of impartiality and would avoid any conflict of interests which might arise in their work as members of the Appellate Body.

22. The representative of India said that his country was delighted that the matter had been resolved in accordance with the best traditions of the WTO. Like all Members, India attached the utmost importance to the Appellate Body. The rules and procedures put in place by WTO Members required that individuals of unimpeachable character and great competence be selected to the Appellate Body. The Selection Committee had fully adhered to this requirement and deserved to be complimented. India welcomed the four candidates who had just been appointed to the Appellate Body. India was fully confident that they would make a valuable contribution to the Appellate Body and wished them a very fruitful tenure. India wished to thank the outgoing Appellate Body members for their valuable contribution in developing further the WTO jurisprudence and for upholding the highest standards in their work. India thanked Chinese Taipei for their flexibility and for joining the

consensus at the present meeting. He was sure that the delegation of Chinese Taipei would share with other Members the enormous confidence that the Appellate Body enjoyed among the Membership. Finally, India wished to thank the Chairman of the DSB and his colleagues for their tireless efforts in resolving this issue.

23. The representative of El Salvador said that his delegation wished to thank the Chairman of the DSB, the Director-General and the Secretariat for their efforts undertaken in order to be able to resume the DSB meeting, which had been suspended on 19 November. El Salvador was satisfied with the agreement reached, which pleased all Members, since it enabled them to continue to carry out the work of the DSB, which his country regarded as one of the cornerstones of the WTO. His country attached particular importance to the issue of the appointment of new members of the Appellate Body, which had the important task of judging appeals lodged against panels' decisions. El Salvador recalled that the membership of the Appellate Body, under the provisions of the DSU, must be broadly representative of the WTO Membership. Furthermore, Appellate Body members were legally required, *inter alia*, to be persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally, and must refrain from participating in the consideration of any disputes that would create a direct or indirect conflict of interests. El Salvador believed that it was on that basis that the WTO Members had been able to rely, with full confidence, on the existence and operation of an effective, impartial and fair mechanism such as the DSB and, consequently, on the important work of the Appellate Body. In view of the importance of the DSB in the world trading system, El Salvador, like other delegations, wished to express its appreciation for the flexibility shown by all Members, in particular Chinese Taipei, in reaching a consensus regarding this agenda item, which enabled the DSB to continue to carry out its responsibilities. Finally, El Salvador wished the new members of the Appellate Body success in their new responsibilities.

24. The representative of Canada said that his country was very pleased that Members had been able to resume the work of the DSB. Canada welcomed Chinese Taipei's decision to agree to proceeding with the full agenda, including the nominations of four new members to the Appellate Body. This was a decision that demonstrated Chinese Taipei's commitment to the multilateral trading system and its clear understanding of how all WTO Members must work together to maintain the strength, objectivity and credibility of the dispute settlement system. As Canada had stated in the past week, all were protected by the rules and procedures that Members had negotiated to govern dispute settlement proceedings and the operation of the Appellate Body. These rules required the Appellate Body members to exercise the duties of their office in a professional and impartial manner. Canada believed that impartiality and professionalism had always characterized the work of the Appellate Body and – like Chinese Taipei – Canada would demand no less of each and every new Appellate Body member. Canada believed that the candidates that had been appointed at the present meeting were all eminently qualified. Canada had no doubt each candidate clearly understood his or her duty to act impartially – and had every confidence that each of them would do so. Canada congratulated them on their appointments. Canada would also like to extend its thanks to the outgoing members of the Appellate Body. They had demonstrated integrity, dedication and thoughtfulness and had contributed to the respect and esteem that all Members had for the Appellate Body. Canada would like to offer a word of thanks to the Representative of Chinese Taipei who had shown great courtesy throughout this difficult debate. He had defended his position and the interests of Chinese Taipei with poise – under conditions that all recognized had been very trying. Finally, he wished to offer Canada's sincere appreciation to the Chairman of the DSB. He had worked tirelessly and very skilfully to resolve this impasse. In so doing, he had demonstrated respect for all Members. Most importantly his efforts had ensured the maintenance of a sound, credible, highly respected dispute settlement system. Canada recognized that this had been an exhausting task, but it was certain that all Members would agree that it was worth the effort.

25. The representative of Honduras said that his delegation welcomed the resumption of the DSB meeting that had been suspended on 19 November. Honduras wished to express its gratitude to the delegation of Chinese Taipei for the flexibility it had shown in this matter. Honduras was aware of the importance of the DSB in the WTO. One of the aspects of the WTO's work was to settle trade disputes between Members and this objective was achieved by means of the dispute settlement mechanism. Chinese Taipei's flexibility demonstrated that a constructive dialogue had enabled Members to move forward for the benefit of the Organization and, above all, it demonstrated Chinese Taipei's commitment to the rules which all Members had accepted when signing and ratifying the WTO Agreement. In addition to thanking Chinese Taipei for its flexibility, Honduras thanked the outgoing members of the Appellate Body for their work and congratulated the new members who were taking up their duties.

26. The representative of Hong Kong, China said that his delegation thanked the Chairman for resuming the DSB meeting that had been suspended on 19 November following Chinese Taipei's objection to the agenda item regarding the appointment of Appellate Body members and thanked him for proposing to deal with that critical agenda item first. For its part, Hong Kong, China had been fully supportive of the recommendation of the Selection Committee for the appointment of the four new Appellate Body members. The launching of a single selection process for the four positions of the Appellate Body and the procedures for the appointment had all been agreed on by Members. The selection process had been very transparent and fair. All Members had had the opportunity to meet with the candidates to assess their qualifications and competences. Members had also been given the opportunity to meet with the Selection Committee to express their views on the candidates. Hong Kong, China had taken a very active part in the process and had subsequently met with the Selection Committee to express its views. Hong Kong, China was confident that the Committee had given due regard to Members' views and had exercised due diligence in making its final recommendations. Unquestionably the four candidates recommended by the Committee had all completely fulfilled the requirements laid down in Article 17.3 of the DSU. There should be no doubt as regards their impartiality or their qualifications. In addition, as the Chairman had pointed out, the DSU, the working procedures of the Appellate Body and the rules of conduct provided sufficient safeguards for the impartiality and independence of the Appellate Body members. Any member of that Body, once appointed, must abide by such rules and the code of conduct. Dispute settlement was a central pillar of the multilateral trading system and the mechanism was the WTO's unique contribution to the stability of the global economy. The appointment of Appellate Body members was a very important matter within the WTO dispute settlement system. Hong Kong, China greatly appreciated the efforts undertaken by the Chairman of the DSB and the Director-General in conducting their intensive consultations sensitively with Chinese Taipei and other Members concerned and that, as a result of these, the potential threat to the WTO dispute settlement system had now been satisfactorily resolved. Hong Kong, China was pleased that the consensus had finally been reached by Members on this important matter and welcomed the approval that had now been given by the DSB to the appointment of the four Appellate Body members as recommended by the Selection Committee. Last but not least, Hong Kong, China also wished to congratulate the new Appellate Body members on their appointment and wished the outgoing members of the Appellate Body well in their future walks of life.

27. The representative of Thailand said that his country warmly welcomed the DSB's decision to appoint new Appellate Body members to fill the upcoming vacancies in the Appellate Body. Thailand had every trust and confidence in those individuals. As a nation that attached great value to the WTO, Thailand was grateful to all those who had exercised their good offices, including the Chairman of the DSB, which had made the consensus possible at the present meeting. He said that Thailand had urged Chinese Taipei to show its responsibility, leadership and wisdom by joining the consensus of the WTO Membership. At the present meeting, Chinese Taipei had demonstrated all these qualities, thus allowing the work of the DSB to continue. What had happened at the present meeting had not only renewed Members' faith in multilateralism to bring forward the best in all, but it

had also reinforced the fact that an individual dissenting voice counted a great deal under this system. By placing the system first, all Members were winners. They renewed faith in each other and in the WTO.

28. The representative of Switzerland said that his country wished to thank the Director-General, the Chairman of the General Council and the Chairman of the DSB for conducting their consultations, which had led to the positive result, as outlined by the Chairman of the DSB in his statement, and to the most important decision that had been taken by the DSB at the present meeting. Switzerland also thanked Chinese Taipei for its flexibility and constructive engagement demonstrated during consultations. Switzerland attached the highest importance to the multilateral trading system and, its institutionally most important aspect; i.e. the dispute settlement mechanism. Switzerland was convinced that the procedure which had led to the selection of the four new Appellate Body members had worked well, that the selection process had been followed according to the existing procedures and that the appointed individuals had responded to the criteria set out in the DSU. Switzerland, therefore, sincerely welcomed and congratulated the new Appellate Body members appointed for the four-year term and paid tribute to the outgoing members of the Appellate Body that had served the international trading system with so much dedication in these past four years.

29. The Chairman proposed that the DSB take note of the statements and thanked all Members for their understanding, patience and support as they all had reached a satisfactory conclusion on this matter.

30. The DSB took note of the statements.

2. 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.60)
- (b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.60)
- (c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.35)
- (d) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/22)

31. 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.60)

32. The Chairman drew attention to document WT/DS176/11/Add.60, 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.

33. The representative of the United States said that his country had provided a status report in this dispute on 8 November 2007, in accordance with Article 21.6 of the DSU. As noted in that 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.

34. The representative of the European Communities recalled that at the 22 October DSB meeting, the United States had, once again, reiterated its strong commitment to the TRIPS Agreement. This brought the EC to the same question again and again. The EC was still left to wonder how the US statement reconciled with the US ignoring for years fundamental obligations of the TRIPS Agreement. And to make things worse, this was not only in this dispute, but also in the Section 110 dispute. The outright neglect of the TRIPS Agreement and the DSB's rulings enforcing it necessarily sent wrong signals, which undermined the authority of the TRIPS Agreement and the DSU. The introduction of bipartisan bills that would repeal Section 211 was a positive step. The EC sincerely hoped that this would show a renewed and genuine interest of the United States to finally put itself into compliance with its TRIPS obligations. It was in the interest of all, including of the US industry, that the United States finally complied with its obligations under the TRIPS Agreement.

35. 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.60)

36. The Chairman drew attention to document WT/DS184/15/Add.60, 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.

37. The representative of the United States said that his country had provided a status report in this dispute on 8 November 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.

38. The representative of Japan said that her delegation thanked the United States for its statement and the latest status report in this dispute. Japan also acknowledged that in November 2002 the United States had taken certain measures to implement the part of the DSB's recommendations, as reported by the United States. However, the fact remained that, while it was more than six years after the adoption by the DSB of the recommendations, the issue of implementation in this case was still on the DSB's agenda because the remaining part of the recommendations had not yet been implemented. As Japan had repeatedly stated before the DSB, a full and prompt implementation of the DSB's recommendations and rulings was essential for maintaining the credibility of the WTO dispute settlement system. Japan noted that, in its statement and its status report, the United States had stated that the US administration was working with the new Congress to pass specific legislative amendments that would implement the DSB's recommendations and rulings. In this regard, Japan asked the United States to indicate when such amendment would be introduced in the new US Congress. Finally, Japan wished to renew its hope that the United States accelerate its work to come to full compliance with its obligations without further delay.

39. The representative of the United States said that, as his delegation had noted in the past, the US Trade Representative and the Secretary of Commerce had written to the Congress to support amendment of the statute to implement that portion of the DSB's recommendations and rulings. As

Members knew, the legislative process was the responsibility of the US Congress, and the US administration had been working closely with the US Congress concerning those recommendations and rulings.

40. 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.35)

41. The Chairman drew attention to document WT/DS160/24/Add.35, 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.

42. The representative of the United States said that his country had provided a status report in this dispute on 8 November 2007, in accordance with Article 21.6 of the DSU. The US administration would work closely with the US Congress and would continue to confer with the European Communities, in order to reach a mutually satisfactory resolution of this matter. In this regard, the United States appreciated the EC's statement at the 22 October 2007 meeting that it remained prepared to work with the United States to seek a resolution to this dispute. The United States shared the EC's goal of discussing how such a mutually satisfactory solution could be achieved.

43. The representative of the European Communities said that there was no need to repeat what the EC had stated countless times. The EC was still waiting for compliance.

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

(d) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/22)

45. The Chairman drew attention to document WT/DS322/22, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US measures relating to zeroing and sunset reviews.

46. The representative of the United States said that his country had provided a status report in this dispute on 8 November 2007, in accordance with Article 21.6 of the DSU. The United States and Japan had agreed that the reasonable period of time would expire on 24 December 2007, and, as noted in the status report, the United States had already addressed the DSB's recommendations and rulings with respect to certain of the measures at issue in this dispute. In addition, the United States was continuing to consult internally on steps to be taken with respect to the other DSB recommendations and rulings.

47. The representative of Japan said that her country thanked the United States for its statement and its first report on the status of implementation of the DSB's recommendations and rulings in this dispute. In its report, the United States had mentioned that, as from 22 February 2007, the US Department of Commerce had ceased to use the zeroing methodology in weighted-average-to-weighted-average comparisons in original investigations. Japan recognized that the withdrawal of zeroing measures in this context was a positive step forward in the right direction. However, this step by the United States had addressed only a part of the DSB's recommendations and rulings. In fact, as suggested by the status report, it was a course of action already contemplated well before the adoption of the DSB's recommendations in this dispute. For the remaining part of the DSB's recommendations

concerning the other WTO-inconsistent zeroing measures, the status report simply stated that the United States was "continuing to consult internally on steps to be taken". She recalled that the DSB had adopted the recommendations and rulings on 23 January 2007, and a reasonable period of time for implementation, which had been mutually agreed by the parties would expire on 24 December 2007. Since the expiry of the reasonable period of time was only about a month ahead, Japan encouraged the United States to further elaborate on the progress made thus far and on specific steps that it intended to take to comply with the remaining part of the DSB's recommendations. Japan believed that a full and prompt implementation of the DSB's recommendations and rulings was essential not only for the effective resolution of particular disputes, but also for maintaining the credibility and proper functioning of the WTO dispute settlement system. Japan would urge the US administration to accelerate its efforts to come into full compliance within the reasonable period of time, as mutually agreed.

48. The representative of the European Communities said that, as many other Members, the EC had a direct interest in this matter since it was still awaiting full implementation of the rulings in its own zeroing case against the United States (DS294). In addition, the EC had another dispute on the continued application of zeroing by the US pending before the Panel. The issue of zeroing had been subject to extensive litigations since the first case brought against the EC in 1998. To-date, 12 disputes had been brought against the use of zeroing by the United States whether as the single subject of the dispute or as part of a wider dispute. All issues of law had now been extensively pleaded and analysed. There was no doubt that zeroing ran foul of fundamental obligations of the Anti-Dumping Agreement, which were to establish dumping in respect of an exporter and a certain product, and to conduct a fair comparison between the export prices and normal value. The EC hoped that the United States would finally accept this and put an end to all remaining illegal practices of zeroing.

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

3. Turkey – Measures affecting the importation of rice

(a) Implementation of the recommendations of the DSB

50. The Chairman recalled that, in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 22 October 2007, the DSB had adopted the Panel Report pertaining to the dispute: "Turkey – Measures Affecting the Importation of Rice". He then invited the representative of Turkey to inform the DSB of his country's intentions in respect of implementation of the recommendations.

51. The representative of Turkey said that, due to the suspension of the DSB meeting on 19 November 2007, his country had not been able to indicate orally its intentions in respect of implementation of the DSB's recommendations prior to the expiry of the 30-day period, as stipulated in Article 21.3 of the DSU. Therefore, Turkey had provided its statement of intentions in writing, which was circulated in document WT/DS334/10. At the present meeting, his country would reiterate its intentions orally. Turkey was pleased to inform the DSB that it had already taken certain steps towards the implementation during the Panel's proceedings. At the end of the process, importation of rice was thoroughly unfettered with no exceptions. The Control Certificate system ran smoothly. Moreover, there was no single provision in the Turkish legislation that could be interpreted as a base upon which a discretionary and restrictive import regime could be built. Thus, there were no measures "*de jure*" or "*de facto*" that were used to restrict trade in rice. In that respect, Turkey

believed that the system of Control Certificates for the importation of rice was in compliance with the DSB's recommendations. Nevertheless, Turkey wished to inform the DSB that it had already engaged in consultations with the United States to explore any additional steps that might be taken pursuant to the recommendation in order to find a mutually satisfactory outcome. In that respect, Turkey preserved its right to seek a reasonable period of time depending on the outcome of its negotiations with the United States.

52. The representative of the United States said that his country thanked Turkey for its statement made at the present meeting. In its letter of 20 November to the Chairman of the DSB, Turkey had indicated that it was in the process of implementing the DSB's recommendations and rulings in this dispute. However, at the present meeting, Turkey appeared to say that it was already in compliance with the DSB's recommendations and rulings. In light of what the United States knew about Turkey's measures, and in light of the recommendations and rulings that the DSB had adopted at its meeting in October, the United States had great difficulty seeing how Turkey could already have implemented the DSB's recommendations or how Turkey would not need a reasonable period of time to do so. The United States looked forward to discussing the matter of implementation with Turkey again very soon with a view to clarifying these issues.

53. The DSB took note of the statements, and of the information provided by Turkey regarding its intentions in respect of implementation of the DSB's recommendations and rulings.

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

(a) Statements by the European Communities and Japan

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

55. The representative of the European Communities said that by the end of November 2007, the United States would complete its seventh illegal distribution under the CDSOA. The provisional amounts published earlier this year indicated that this was likely to be the most important thus far. On 30 April 2007, already US\$279 million was available for distribution. On the same date, there was only US\$171 million in 2006 and US\$97 million in 2005. This distribution and those to come would continue to produce trade-distorting effects to the detriment of all WTO Members. The EC was still waiting for a convincing explanation as to how this was compatible with the United States' assertion month after month that it had taken all actions necessary to bring itself into compliance with its WTO obligations. 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 implementation reports in this dispute.

56. The representative of Japan said that her country noted that, according to the Deficit Reduction Act of 2005, duties collected on entries entered as from 1 October 2007 were no longer subject to the distribution under the CDSOA. The fact remained, however, that under the transitional clause "the distribution process will continue until all entries made before [that date] are liquidated and the duties are collected".² Under the US system, such liquidation and collection could take years and the distribution would continue. Thus, contrary to the US position that it had taken all necessary steps for implementation in this dispute, the United States had not fully implemented the DSB's recommendations and rulings in this dispute. Japan, once again, urged the United States to immediately terminate the illegal distribution and repeal the CDSOA not just in form but also in

² 71 Federal Register at 31336 et seq. (dated 1 June 2006).

substance. Until then, Japan considered that the US compliance 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 a status report, pursuant to Article 21.6 of the DSU. Japan reserved all its rights under the DSU until the United States had come into full compliance with its obligations.

57. The representative of China said that his country thanked the EC and Japan for, once again, raising this item at the DSB meeting. China shared the view expressed by previous speakers. China especially wished to emphasize that the continuous distribution of anti-dumping and countervailing duty provided unlawful subsidies to the US domestic industries. For instance, a recent report by the American Institute for International Steel disclosed that the US steel industry had received around US\$280 million from the government through the Byrd Amendment. Because the full implementation of the DSB's rulings and recommendations in this dispute required to stop such distributions, China, once again, urged the United States to take concrete action to comply fully with the DSB's rulings.

58. The representative of Thailand said that his country wished to join previous speakers in thanking the EC and Japan for continuing to bring this item before the DSB. Thailand noted with appreciation the positive steps taken by the United States not to disburse to its industries AD/CVD duties collected on goods entering the United States from 1 October 2007. According to the US statement made at the 22 October DSB meeting, "antidumping duties and countervailing duties that are being collected on goods now entering the United States will not be distributed to domestic firms". However, Thailand remained concerned that AD/CVD duties collected on goods that had entered the United States prior to 1 October 2007 would continue to be disbursed to the domestic industry under the Byrd Amendment. Thailand, therefore, 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.

59. The representative of Canada said that her country was pleased that duty deposits collected by the United States after 30 September would no longer be subject to the Byrd Amendment. While this was a significant step forward, duty deposits collected by the United States before 1 October 2007 would, nevertheless, continue to be subject to the Byrd Amendment. Until the United States ceased to administer the Byrd Amendment, Canada shared the view that surveillance by the DSB should continue.

60. The representative of Brazil said that his country wished to express its appreciation to the EC and Japan for maintaining this item on the DSB's agenda. The United States had repeatedly asserted in the DSB that full compliance had been achieved in this case. While Brazil noted that no anti-dumping or countervailing duties, collected on products entered into the United States after 30 September 2007, would be handed out to the US domestic industry, there remained the fact that disbursements still occurred under the Byrd Amendment with trade-distortive effects for foreign producers and exporters. Brazil wished to reiterate that WTO Members should be able to exercise its rights related to the non-compliance situation in this case until the complete elimination of all disbursements under the Byrd Amendment.

61. The representative of the United States said that, as the United States had already 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. The United States welcomed the EC and Japan's recognition that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007. The United States was, therefore, all the more surprised to hear the EC and Japan make the statement that the United States had not implemented the DSB's

recommendations and rulings. The United States asked if it properly understood that the EC and Japan were saying that, notwithstanding the fact that anti-dumping duties and countervailing duties that were being collected on goods now entering the United States would not be distributed to domestic firms, they considered that the United States had not implemented the DSB's rulings and recommendations?

62. With respect to comments regarding further status reports in this matter, as the United States had already explained at previous DSB meetings, the United States had taken all steps necessary to implement the DSB's recommendations and rulings in these disputes. Those two 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 made in the implementation of the DSB's recommendations and rulings.

63. The DSB took note of the statements.

5. China – Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products

(a) Request for the establishment of a panel by the United States (WT/DS363/5)

64. The Chairman recalled that the DSB had considered this matter at its meeting on 22 October 2007, and had agreed to revert to it. He drew attention to the communication from the United States contained in document WT/DS363/5, and invited the representative of the United States to speak.

65. The representative of the United States said that, at the 22 October DSB meeting, his country had briefly described its concerns with respect to certain Chinese measures that affected market access for films for theatrical release; for audiovisual home entertainment products, such as DVDs and video cassettes; for books, periodicals, journals, and other publications; and for sound recordings. The United States did not propose to repeat that description at the present meeting. The United States had taken note of China's statement at the October DSB meeting, including China's comments about access to its market for several of the products mentioned in the US panel request as well as China's comments about its wish to resolve this dispute through consultations. The United States, too, regretted that bilateral discussions on the specific matters described in the US panel request had, up to now, not resulted in a mutually agreeable solution to US concerns. The United States, therefore, once again requested that the DSB establish a panel to examine the matters set forth in the US panel request.

66. The representative of China said that his country had fully elaborated its position on this matter at the 22 October DSB meeting, and would not repeat it at the present meeting. To be brief, China was disappointed with the United States pursuing this matter further by requesting the establishment of the panel for a second time despite the ample market access that China granted to foreign publications, films and audiovisual products and services. China also disagreed with the US allegation in the past that China's relevant measures exacerbate IPR infringement given the fact these measures actually contributed to the protection of IPR by ensuring dependable market channels for duly authorized culture products. Besides, China had demonstrated good faith in order to find a positive solution to this dispute throughout the consultation process, but failed to see the same spirit by the complainant. China would defend its position and interests before the Panel to be established and remained confident that China's relevant measures were consistent with its WTO obligations.

67. 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.

68. The representatives of the European Communities and Japan reserved their third-party rights to participate in the Panel's proceedings.

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

(a) Request for the establishment of a panel by Canada (WT/DS357/12)

69. The Chairman drew attention to the communication from Canada contained in document WT/DS357/12, and invited the representative of Canada to speak.

70. The representative of Canada said that her country strongly supported the shared commitment of WTO Members 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 letter of 8 November to the Chairman of the DSB, Canada believed that the United States was providing trade-distorting agriculture subsidies in a manner inconsistent with its WTO commitments. More specifically, it was Canada's view that: the US 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 included a broad scope of US agriculture subsidy programmes, such as Direct Payments, Counter-Cyclical Payments and Loan Deficiency Payments, which provided large amounts of trade-distorting support.

71. Canada and the United States had held consultations on these matters in February 2007. The consultations had been useful in providing further information on the US programmes at issue. 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. Canada considered this request to be distinct from the one filed by Canada on 20 June 2007 and withdrawn on 15 November 2007 (WT/DS357/13). Notably, Canada's new request did not include a challenge to the US export credit guarantee measures in light of a recent decision on these measures by a WTO panel in the Brazil/US Cotton dispute. Accordingly, Canada was submitting this request as a first request.

72. The representative of the United States said that his country was disappointed that Canada had chosen to move forward with a new request for panel establishment at this time. The United States noted first of all that the request for panel establishment that was on the DSB agenda of the present meeting was different from the panel request that the DSB had considered on 20 June 2007. In this connection, the United States welcomed the letter that it had received from Canada confirming that it had withdrawn its request for the establishment of a panel, dated 7 June 2007 and contained in WT/DS357/11. The United States also noted that Canada was not pursuing two of the three claims raised in its consultations request – that US domestic support distorted trade in corn, and that US export credit guarantees conferred export subsidies. With corn prices near record highs and a compliance panel report on certain modifications to US export credit guarantee programmes to be circulated in the near future, the United States welcomed Canada's decision not to divert further time and resources into these matters. Unfortunately, Canada had not equally reconsidered its claims regarding US total AMS reduction commitments. This dispute distracted attention from the essential task before WTO Members of completing the Doha Development Round negotiations. The United States shared the objectives for the WTO agriculture negotiations agreed upon at Doha and

reaffirmed at Hong Kong: 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. Both Canada and the United States would better spend their efforts ensuring that the negotiations successfully increased farm trade, to provide a real boost to farmers and consumers worldwide, rather than pursuing this dispute.

73. For example, the United States saw that some of the measures identified by Canada had ceased to exist, in some cases more than five years ago. Not only did the United States fail to see what legal basis there was for a panel to review such expired measures, but it also failed to see what Canada could hope to gain by making such a request. In any event, the United States had carefully crafted its farm programmes 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. Canada had no basis to claim otherwise. Should this dispute move forward, the United States would vigorously defend its farm programmes.

74. Finally, the United States wished to draw Canada's attention to the fact that not all of the measures identified in the panel request had been subject to consultations, and that, therefore, it was improper to include those measures in this request. For all the preceding reasons, the United States strongly encouraged Canada to reconsider its decision to pursue a panel in this dispute, and it was not in a position to agree to the establishment of a panel at this time.

75. The representative of Canada said that, in its request for the establishment of a panel, Canada claimed that the US Current Total Aggregate Measurement of Support had exceeded its commitment levels, contrary to Article 3.2 of the Agreement on Agriculture. On 11 January 2007, Canada had requested that consultations be held on this matter. The consultations with the United States had taken place on 7 February 2007, but had failed to settle the dispute. Consequently, additional consultations were not required.

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

7. United States – Domestic support and export credit guarantees for agricultural products

(a) Request for the establishment of a panel by Brazil (WT/DS365/13)

77. The Chairman drew attention to the communication from Brazil contained in document WT/DS365/13, and invited the representative of Brazil to speak.

78. The representative of Brazil said that on 11 July 2007, pursuant to Article 4 of the DSU and Article XXII of the GATT 1994, Brazil had requested consultations with the United States (as set out in document WT/DS365/1 of 17 July 2007) concerning domestic support measures by the US Government in favour of agricultural producers. In the consultations held on 22 August 2007, Brazil had raised its concerns that the domestic support the United States provided through several programmes had exceeded the commitment levels specified in Section I of Part IV of the US Schedule in each of the years 1999, 2000, 2001, 2002, 2004 and 2005, contrary to Article 3.2 of the Agreement on Agriculture. Despite the useful exchange of views and factual information during the consultations, the clarifications provided by the United States were not sufficient to dissipate Brazil's concerns. Brazil believed that the US measures nullified or impaired the benefits accruing to Brazil and had, therefore, requested the establishment of a panel with standard terms of reference to examine the matter. The details of Brazil's request were set out in document WT/DS365/13, dated 9 November 2007.

79. The representative of the United States said that his country was disappointed that Brazil had chosen to move forward with a request for panel establishment at this time. According to Brazil,

virtually all US support for agricultural producers was trade-distorting. There was no basis for this claim. The United States welcomed that Brazil had chosen not to pursue claims in this dispute with respect to US export credit guarantee programmes that would have largely duplicated those already before a panel in another dispute. However, the United States had many of the same concerns with Brazil's panel request that it had already pointed out with the request that had been considered under the previous agenda item. The United States was concerned that Brazil's request would divert time, resources, and attention from the Doha Development Round negotiations, just as WTO Members had reached a critical moment for the success of the Round. Much work was still required to achieve a result that would result in real new trade flows in all areas of the negotiations – including expanded opportunities for market access as well as reducing trade-distorting subsidies in agriculture. The United States was fully committed to this outcome, and hoped that Brazil was committed to it as well. The United States and Brazil, and indeed the whole WTO Membership, would be better served if Members focused their energy on making these negotiations a success. In any event, the United States strongly disagreed with Brazil's claims that the United States had provided domestic support in excess of its WTO commitments. If this dispute did, unfortunately, proceed to the establishment of a panel, the United States would demonstrate that its domestic support was indeed in line with its WTO commitments.

80. In addition, the United States must also point out to Brazil that not all of the measures identified in Brazil's panel request had been the subject of consultations, and many of those that had been had long since ceased to exist. There was no legal basis for a panel to review such expired measures. Furthermore, there seemed to be no point for Brazil to ask the DSB, for example, to make rulings about payments made in 1999, 2000, or 2001 under programmes that had been abolished in the 2002 US Farm Bill and had not existed for many years. For all the preceding reasons, the United States strongly urged Brazil to reconsider its decision to pursue a panel in this dispute, and it was not in a position to agree to the establishment of a panel at this time.

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

8. Adoption of the 2007 draft Annual Report of the DSB (WT/DSB/W/362 and Add.1)

82. The Chairman said that, in pursuance of the procedures for an annual overview of WTO activities and for reporting under the WTO contained in document WT/L/105, he was submitting for adoption the draft text of the 2007 Annual Report of the DSB contained in document WT/DSB/W/362 and Add.1. This report covered the work of the DSB since the previous annual report contained in document WT/DSB/42 and Add.1. For practical purposes, the overview of the state of play of WTO disputes covering the period from 1 January 1995 to 31 October 2007, prepared by the Secretariat on its own responsibility, was included in the addendum to this report. He proposed that after the adoption of the Annual Report at the present meeting, the Secretariat be authorized to update this Report under its own responsibility in order to include actions taken by the DSB at the present meeting. The updated Annual Report of the DSB would then be submitted for consideration by the General Council at its meeting to be held on 18 December. Finally, he said that it was his understanding that the Secretariat had received some comments of typographical nature on the draft Annual Report, which would be taken into account in the final version of the Annual Report.

83. The DSB took note of the statement and adopted the draft Annual Report of the DSB contained in WT/DSB/W/362 and Add.1 on the understanding that it would be further updated by the Secretariat.³

³ The Annual Report was subsequently circulated in document WT/DSB/43 and Add.1

9. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/363)

84. The Chairman drew attention to document WT/DSB/W/363, which contained additional names 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 names contained in document WT/DSB/W/363.

85. The DSB so agreed.

86. In connection with this agenda item, the Chairman informed delegations that a new updated and consolidated indicative list of governmental and non-governmental panelists would be shortly issued by the Secretariat.⁴ In this regard, he thanked all delegations who had complied with his announcement of 24 April 2007 regarding the need to update the current list, as provided for in the proposals for the administration of the indicative list of panelists, approved by the DSB on 31 May 1995.

87. The DSB took note of the statement.

⁴ The new updated and consolidated indicative list of government and non-governmental panelists was circulated on 12 December 2007 in document WT/DSB/44.