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Dispute Settlement Body
24 April 2007

MINUTES OF MEETING

Held in the Centre William Rappard
on 24 April 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.53)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.53)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.28)

(d) United States – Laws, regulations and methodology for calculating dumping margins ("Zeroing"): Status report by the United States (WT/DS294/20/Add.2)

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.53)

2. The Chairman drew attention to document WT/DS176/11/Add.53, 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 12 April 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 recent actions taken by the United States had demonstrated that the United States shared the EC's conviction that the development of trade could not go without an effective protection of intellectual property rights associated with the goods. The EC hoped that the present US Congress would recognize this and would finally bring an end to this dispute to the benefit of all. In this context, the fact that 43 representatives were already supporting bills to repeal Section 211 was welcome news and an encouraging sign. The EC urged again the United States to comply with its obligations under the TRIPS Agreement.

5. The representative of Cuba said that it was regrettable that the DSB continued to monitor the compliance with the recommendations adopted more than five years ago and that, at this stage a status report submitted by the United States did not provide any information that a solution to this dispute could be found shortly. The United States, the only Member to disrespect the principle of prompt compliance, did not seem to be concerned about the negative impact of its action on the balance of rights and obligations under the TRIPS Agreement, rights which it had claimed to advocate, and on the effectiveness and credibility of the multilateral trading system. Cuba wished to reiterate its systemic concerns regarding irregularities in this dispute since there was no reasonable time period for compliance with the recommendations adopted by the DSB. Previous reasonable periods of time had expired, including the most recent one, which had expired in July 2005. This situation was in contradiction with Article 21 of the DSU and encouraged the attitude of the infringer.

6. Given the lack of details provided by the United States on the bills introduced in the current US Congress and the incorrect information provided repeatedly by the United States to the effect that the US Administration was working with the US Congress to implement the DSB's rulings in this case, Cuba wished to inform delegations of the true state of play. As Cuba had indicated at the previous DSB meeting, Bill H.R. 1306, which had its own version in the Senate, S.749, was intended to perpetuate Section 211 by misleadingly introducing a number of cosmetic changes, thus allowing the theft of Cuban trademarks of recognized international prestige to continue. According to an article in The Miami Herald of 24 March 2007, this bill had been co-sponsored by Florida Congressmen Bill Nelson and Mel Martínez as payment to the Bacardí company for its generous contributions to their political campaigns. The Miami Herald was generally very well informed with regard to the activities engaged in by this company and these congressmen against Cuba. Speaking on this bill, the Executive Director of Citizens for Responsibility and Ethics in Washington (CREW) had stated, "it's a private bill, helps only one company, and it's something that undermines American trademarks registered in Cuba". Cuba was aware of other bills which sought to abolish various measures used in the illegal economic, commercial and financial blockade imposed on Cuba, including those pursuing the repeal of Section 211, the only lawful solution to this dispute. For example, Bill H.R. 217, sponsored by Congressman José Serrano and introduced in the House of Representatives on 4 January 2007 and Bill H.R. 624 sponsored by Congressman Charles Rangel and introduced in the House on 22 January 2007, which were similar to others filed in previous legislatures.

7. The truth, however, was that the US Administration had never worked with the US Congress to implement the DSB's recommendations on Section 211 and nor was it doing so at present. In previous US Congresses, with the Republican leadership dominating at the time, the current Administration manipulated the legislature on a number of occasions in order to forestall consideration and approval of a variety of similar bills. Since then, nothing had changed. Now, like before, the US President had reiterated, through a number of channels, his intention to veto any resolution or bill approved by Congress which aimed to ease or eliminate the illegal unilateral measures imposed by the United States against Cuba, including the arbitrary Section 211. What cooperation with Congress in respect of Section 211 was the US representative talking about? At present, the Cuba export company was without a doubt the legitimate owner of the Havana Club trademark on US territory, and not the usurper Bacardí, the beneficiary of Section 211. Although Havana Club rum, produced in Cuba and marketed by Havana Club International, was sold in 124 countries, it was not sold in the United States because of the US blockade based in part on the unlawful Section 211.

8. In March 2007, the Madrid Court of Appeal had upheld the ruling handed down by a Court of First Instance in June 2005, rejecting Barcardí's request to be recognized as owner of the Havana Club rum trademark and to have the registration of its Cuban competitor annulled. The Spanish Court of Appeal had recognized, among other reasons and circumstances demonstrating the unlawful nature of Section 211, that the Arechavala family, which had sold the so-called rights to the Havana Club trademark to Bacardí, had registered the trademark in 1935, but had not renewed its registration when it had expired, and that Havana Club's prestige was the direct and exclusive outcome of the continued commercial efforts and investments made by Havana Club Holding, and not by Barcardí. The legal proceedings instituted by Bacardí had, therefore, been considered to be unfair and unreasonable and to have the sole intention of causing injury to a competitor. These alone were the true reasons for this lengthy dispute.

9. The United States could resolve this dispute and should not let another year go by without doing so. Unlike the majority of the disputes examined by the DSB, in this case the beneficiary of Section 211 was not economically affected in any way, but it sought to obtain new dividends by means of arbitrary action taken by those whose protection it enjoyed. Failing to comply with the DSB's decisions for yet another year would have an immeasurable impact on the WTO, where rights

and obligations went hand in hand, as they did in any other international organization. If this Organization was not capable of ensuring that the rights of the smallest and least developed Members were respected and that the largest and most developed Members met their obligations, what kind of transparent and predictable multilateral trading system and what reciprocity and non-discrimination, as referred to in the preamble to the Marrakesh Agreement, were there to speak of? Cuba asked that Members gave consideration to these systemic implications before it was too late. Once again, Cuba renewed its call on the United States to take immediate and effective action to implement the DSB's recommendations and rulings and insisted that the only possible solution to this dispute was to repeal Section 211.

10. The representative of India said that her country thanked the United States for the situation report and the statement. However, as mentioned previously several times, India noted that there was no substantial change in the situation report. India continued to reiterate that this was a matter of great systemic concern and insisted that the rulings and recommendations of the DSB were to be fully complied with. India strongly felt that to ensure effective resolution of disputes to the benefit of all Members, the principle of prompt compliance was essential. India, therefore, urged the parties to this dispute to inform the DSB as to how they intended to fulfill the objective of prompt settlement.

11. The representative of China said that his country thanked the Unites States for its status report and the statement. As other delegations had stated, it had been about five years since the DSB had adopted both the Panel and the Appellate Body reports pertaining to this case. The implementation in this case was still under discussion in the DSB. Besides, it was regrettable that this status report was identical to the report submitted by the DSB in March, and did not provide new information as to when this matter would be resolved to the satisfaction of the parties to the dispute and other WTO Members. Although Members were conscious of possible difficulties involved in implementation, the undue delay of full implementation of the DSB's rulings had caused systemic concerns about the functioning and efficiency of the dispute settlement system. Article 21.1 of the DSU stipulated that prompt compliance with the recommendations or rulings of the DSB was essential to ensure effective resolution of disputes to the benefit of all Members. Therefore, China again urged the United States to fully implement the decision of the DSB regarding this dispute as soon as possible.

12. The representative of Brazil said that, in view of the systemic relevance of the issue discussed under this agenda item, Brazil wished to reiterate its concerns about the continued non-compliance situation in this dispute. More than five years had passed since the adoption of the reports of the Panel and the Appellate Body by the DSB, and no implementing action had been taken by the United States thus far. Further, Members could not discern from the short status reports provided by the United States that the matter would soon be settled. As Brazil had repeatedly stated, prompt and full implementation of the DSB's rulings and recommendations was one of the major means to keep the rules-based multilateral trading system credible and vibrant. A protracted non-compliance situation, as in this case, by one of the major WTO players clearly undermined the credibility of the system and altered the balance of rights and obligations. Brazil, therefore, called on the United States to take the necessary and urgent steps to implement the relevant DSB's rulings and recommendations

13. The representative of the Bolivarian Republic of Venezuela said that his country thanked Cuba for its statement, which it fully endorsed, given that, as his delegation had stated on previous occasions, his country considered Cuba's complaint to be legitimate. This had been demonstrated by the DSB when it had adopted the finding that Section 211 was inconsistent with the WTO Agreements and the fundamental WTO principles. His country also took note of the status report submitted by the United States. His delegation, once again, wished to draw attention to the continued indifference of the United States to this case. As his delegation had stated at the previous meeting, his country would appreciate more detailed information on concrete efforts being made by the respective US authorities to comply with the Panel's recommendations. The reiteration of the status report merely served to demonstrate the static nature of the situation. His delegation wished to stress that

this continued failure to comply with the provisions of the TRIPS Agreement undermined the authority of that Agreement, the impartiality of the DSB, and as a result, the credibility of the WTO. This situation had a greater significance at the present time since the negotiations to conclude the Doha Development Round were under way. His country, therefore, urged the United States, the only WTO Member that systematically failed to comply with the Panel's rulings under the TRIPS Agreement, to bring itself into compliance therewith.

14. The representative of Nicaragua said that, like previous speakers, her country reiterated systemic concerns regarding this matter. Failure to reach a prompt settlement of this dispute continued to put at risk the balance of rights and obligations among WTO Members, the legitimacy and efficiency of the dispute settlement system, and the protection of intellectual property rights. Nicaragua hoped that the US Congress would adopt the appropriate legislative measures in the near future.

15. The representative of Zimbabwe said that her delegation wished to join those delegations who had expressed concern about the non-implementation of the DSB's recommendations and rulings with regard to Section 211 of the Omnibus Appropriations Act of 1998. Five years was, indeed, a long time, especially as the credibility of the rules-based multilateral trading system was at stake. Zimbabwe noted in the US status report that the US Administration continued to work with the US Congress to ensure the development of appropriate statutory measures to resolve the matter. Zimbabwe joined previous speakers in urging the United States to fully implement, as soon as possible, the DSB's recommendations and rulings pertaining to this case. Her country hoped that those who had to endure this situation of non-compliance for a long time would not have to wait any longer and would finally witness the US compliance. Zimbabwe hoped that there would be an early settlement of the issue.

16. The representative of Argentina noted that the United States had, once again, made a brief status report regarding the DSB's recommendations pertaining to the Section 211 dispute. Argentina thanked Cuba for its statement in which it had informed delegations about the status of this dispute. One of the virtues of diplomacy was patience and in this case, Members had had sufficient amount of patience in the past five years. This matter had been raised over the past five years not just at the present meeting. Therefore, Argentina asked that the United States heed the requests of Members and noted that this non-compliance situation undermined the credibility of the dispute settlement system and the WTO. Furthermore, Argentina requested that the United States submit a detailed status report on developments regarding implementation and inform the DSB of a possible date for compliance.

17. The representative of Bolivia said that her country noted the US report, which was brief. It also noted, once again, the lack of progress in lifting the restrictions under Section 211. Bolivia wished to reiterate its concern regarding the status of this particular dispute, which had started five years ago. Such a failure to comply with the rulings undermined the credibility of the multilateral trading system, the DSB, the quality of the commitments that countries had undertaken under the TRIPS Agreement. For the above reasons, Bolivia, once again, urged the United States to comply with the DSB's rulings and recommendations and to renew its effort to ensure that the US authorities remove the restrictions imposed under Section 211.

18. The representative of the United States said that his country thanked the EC for its recognition of the US commitment to intellectual property rights and the recent activities in the US Congress. The United States regretted that some Members had, once again, suggested that the US Administration was not providing sufficient details of how it was working with the US Congress to implement the recommendations and rulings in this dispute. As the United States had explained at a previous DSB meeting, it would be incorrect to suggest that nothing was being done. The United States wished to recall again that it was not always possible or appropriate to recount internal governmental efforts to pass legislation. And, as his delegation had previously stated, the United

States had heard similar criticisms about the level of detail of US status reports in other disputes in which the US Congress had ultimately passed legislation.

19. The representative of Cuba said that, once again, his country wished to be associated and agreed with the statements made by some delegations under this agenda item. Cuba raised this matter over a long period of time and wished that the United States provide information as to when it would comply with the recommendations as well as that it provide more details regarding this dispute. The United States had stated that its Administration had worked over years with the Congress in order to avoid reconsideration and approval of bills or amendments, which would correct or eliminate Section 211. Cuba wished to know whether or not the US President had stated that any legislation, which would eliminate Section 211, would be vetoed. That was what Cuba was awaiting, not just short statements of goodwill. He noted that the statements of goodwill had not been translated into reality.

20. 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.53)

21. The Chairman drew attention to document WT/DS184/15/Add.53, 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.

22. The representative of the United States said that his country had provided a status report in this dispute on 12 April 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 new Congress, which had convened in January 2007, with respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities by 23 November 2002.

23. The representative of Japan said that his country took note of the statement by the United States along with its latest status report 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. Japan recalled that the DSB had adopted the recommendations and rulings regarding this case in August 2001, almost six years ago. Unfortunately, though, the issue of implementation in this case remained on the agenda of the DSB and the United States still had to report on the status of its implementation. As Members recognized, a full and prompt implementation of the DSB's recommendation and ruling was essential for the effectiveness and credibility of the WTO dispute settlement system. Japan strongly urged the United States to accelerate its effort and work to complete full implementation in this dispute at the earliest possible date.

24. The representative of Argentina said that Japan had just reminded delegations that this case dated back to 2001. Once again, Argentina thanked the United States for its report and wished to be associated with Japan's request that the United States fully implement the DSB's recommendations and rulings pertaining to this dispute.

25. 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.28)

26. The Chairman drew attention to document WT/DS160/24/Add.28, 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.

27. The representative of the United States said that his country had provided a status report in this dispute on 12 April 2007, in accordance with Article 21.6 of the DSU. The US Administration would work closely with the new 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 EC's statement at the 20 March 2007, DSB meeting that the EC was prepared to work 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.

28. The representative of the European Communities said that it seemed that the new US Congress might be more receptive to the deference of TRIPS-derived rights. The EC sincerely hoped that the United States would not miss this opportunity to put its own house in order. The EC's position on this dispute was well known, the EC wished to see the law conform to the WTO obligations of the United States. 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.

29. 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.2)

30. The Chairman drew attention to document WT/DS294/20/Add.2, 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.

31. The representative of the United States said that his country had provided a status report in this dispute on 12 April 2007, in accordance with Article 21.6 of the DSU. From 22 February 2007, the US Department of Commerce had provided offsets for non-dumped comparisons when conducting average-to-average comparisons in investigations. Further, on 9 April 2007, the Department of Commerce had issued determinations to provide offsets in connection with investigations that were the subject of this dispute. Details on these determinations were provided in the US status report (WT/DS294/20/Add.2). The Department of Commerce continued to work towards completion of a determination in one investigation in which the respondent had alleged a clerical error which it had requested that it be corrected. The United States was pleased to report that it had otherwise implemented the recommendations and rulings of the DSB in this dispute.

32. The representative of the European Communities said that the reasonable period of time for implementation of the DSB's rulings in this dispute had expired on 9 April, and the situation as of now called for some satisfaction and more disappointment. On the positive side, the EC welcomed the decision to abandon zeroing in original investigations when calculating the dumping margin on a weighted average-to-weighted average basis. The EC also welcomed the revocation of the anti-dumping order, or reduction of the duty rate following the re-calculation of the dumping margin without zeroing, in 14 of the 15 specific original measures found in breach of the US obligations. Unfortunately, the EC must once again express its disappointment at yet another failure of the United States to solve completely a WTO dispute by the required deadline. The EC was currently

analyzing in more detail the actions taken by the United States, but a number of issues already appeared still open. In the 15 specific original investigations, the EC considered that its comments on the preliminary results had not been properly addressed in the final results. At the present meeting, the EC wished to mention two of them. First, the United States apparently intended to continue to apply zeroing after 9 April 2007 as regards the duty assessment of imports which had entered before that date. This was not acceptable. The non-zeroed duty rate should replace the zeroed rate to liquidate duties even if the import pre-dates the date of implementation. Continuing to collect duties on the basis of rates inflated by zeroing is tantamount to maintaining zeroing in breach of the obligation to cease this illegal practice by 9 April. It was regrettable that the USDOC still seemed determined to issue instructions to this effect in a number of cases.

33. Second, the USDOC had also maintained the massive increase of the "all others" rate in certain cases. As a side effect of revoking the duty for certain exporters which had been shown not to be dumping without zeroing, the USDOC re-calculated the "all others" duty, basing it mainly on the duty for exporters with "adverse facts available". This was in effect putting exporters subject to the "all others rate" in the same basket as firms which had allegedly actively impeded the investigation, without demonstrating that such treatment was appropriate. To give an example, the all-others rate for Stainless Steel Bars from the UK had increased from 4.48 per cent to 83.85 per cent from one day to the next. Yet no firms subject to this rate were concerned by the implementation procedure in DS294 and no US party requested any increase in their duty. The consequences had been to shut a number of small exporters out of the market. Turning now to the 16 periodic reviews also found WTO- incompatible, the United States had now alleged that it did not have to take any action as each of these measures would have been "superseded" by later administrative reviews. In at least one case, this was simply not correct, but in any event it ignored completely the issue of duties still to be liquidated on the basis of measures condemned by the WTO. By liquidating these duties on the basis of zeroed rate, the United States, again, granted itself the right to apply WTO-incompatible measures after the expiry of the implementation period. It also purported to shield in practice its administrative reviews from WTO control and obligations since in almost all cases there would have been a subsequent administrative review by the time the United States had to implement the DSB ruling condemning a previous administrative review. Following the US reasoning, would mean that the United States could accumulate WTO-incompatible measures without proper remedy. Thus, in most cases, the administrative reviews subsequent to the ones condemned in DS294 were also affected by zeroing and were currently subject to the DS350 dispute brought by the EC in October 2006. The EC would further analyze the situation and would take the appropriate steps to protect its rights should the outstanding issues remained open.

34. The representative of Japan said that on 9 April 2007, the reasonable period of time for the United States to implement the recommendations of the DSB in this dispute had expired. Japan noted favorably that, as part of its implementation efforts, the United States had put an end to the use of zeroing methodology in the weighted average-to-weighted average price comparison in its anti-dumping investigations and had recalculated the dumping margins without zeroing in the specific original investigations challenged by the EC. However, it appeared that implementation was only partial and more work needed to be done for full implementation, in particular, in relation to the collection of anti-dumping duties on non-liquidated entries that had entered before the date of implementation, as well as the application of zeroing in periodic reviews, which the EC had challenged and were also found to be WTO-inconsistent on the as-applied basis. Japan had been a third party actively participating in this dispute and was also a party to another closely related dispute regarding the United States' zeroing measures. Thus, Japan had a strong and substantive interest and stake in how and when the United States would take measures to comply with the non-implemented part of recommendations and rulings of the DSB in this dispute. Japan was, therefore, closely monitoring any US action in this respect. Japan strongly hoped that the Untied States would promptly and fully implement the DSB's recommendations and rulings to "ensure effective resolution of [this] dispute[] to the benefit of all Members" (Article 21.1 of the DSU).

35. The representative of the United States said that his country wished to reiterate that the US Department of Commerce had abandoned the use of "zeroing" in connection with average-to-average comparisons in investigations. The Department of Commerce had also recalculated the margins in the investigations that were the subject of this dispute, without engaging in "zeroing." This dispute involved a challenge to the use of "zeroing" in 16 specific assessment reviews. The United States was considering the issue of reviews more generally in connection with DS322.

36. 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

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

38. 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.

39. The representative of the European Communities said that on 16 April 2007, the Commission had adopted a regulation increasing the level of retaliation applied in the present dispute. As of 1 May 2007, the 15 per cent additional import duty would be extended to 32 new categories of products, which included paper products, furniture of plastics, textile products, pens, footwear and mobile homes. This would bring the level of retaliation to the US$81.19 million of retaliation authorized on the basis of the latest distribution under the CDSOA. This followed the incomplete implementation of the DSB's ruling by the United States and executed the obligation of annual adjustment imposed by the DSB authorization to suspend the application of concessions to the United States granted to the EC on 26 November 2004. Indeed, if the repeal of the CDSOA was a significant and welcome step in the right direction, but remained insufficient to bring the United States into full conformity with its WTO obligations as distributions would continue for a while under the transition clause. 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.

40. The representative of Japan said that, at previous DSB meetings, the United States had repeatedly claimed that by enacting the Deficit Reduction Act of 2005, it had taken all necessary actions to implement the DSB's recommendations and rulings and that it was not necessary to submit a status report under Article 21.6 of the DSU. However, under the transitional clause, the illegal distribution continued and would continue for years to come. The United States had never claimed otherwise, but maintained that the issue had been resolved. Japan failed to see why such contention was possible. It was unfortunate that the EC must renew its retaliatory measures and was forced to increase their level. Japan, on its part, had been imposing its retaliatory measure in accordance with the authorization granted by the DSB as from September 2005 in order to induce full compliance by the United States in this dispute. Japan, once again, called on the United States to terminate the illegal

distribution, and to completely remove the CDSOA not just in form but in substance. Japan also reiterated that the United States was under obligation to provide the DSB with a status report pursuant to Article 21.6 of the DSU. Japan reserved all its rights under the DSU until the United States would come into full compliance.

41. The representative of Brazil said that his country thanked Canada, the EC and Japan for raising this issue once again. Their resilience in keeping this highly relevant matter on the DSB's agenda was commendable, and was only comparable to that of the United States in defending the assertion that, with the prospective repeal of the Byrd Amendment, it had brought itself into conformity with the multilateral rules. Needless to repeat that Brazil had judged that the prospective repeal of that illegal measure was not sufficient to sustain the claim by the United States that all necessary implementing actions had been put into place. Brazil recalled that, after the enactment of the US legislation containing such repeal, a US$380 million-disbursement occurred in October 2006, showing that the WTO-inconsistency found to exist by the DSB remained in force. Brazil did not want to downplay the relevance of the legislative action by the United States, but believed that Members should obtain, at a minimum, an explanation from the United States on how this could be reconciled with the US statements of compliance. Brazil remained of the opinion – solidly grounded in the DSB's recommendations in this dispute – that full compliance on the part of the United States would only come through the complete elimination of all disbursements under the Byrd Amendment. Given that this was not the case, the co-complainants could not be deprived of any right conferred by the DSU with respect to this situation of non-compliance.

42. The representative of Thailand said that her country thanked Canada, the EC, and Japan for continuing to bring this item before the DSB. As her delegation had noted at previous DSB meetings, Thailand remained disappointed at the United States' continued illegal disbursement of funds under the CDSOA. Thailand also remained disappointed at the Unites States' continued lack of status reports on its outstanding implementation in this dispute. Therefore, Thailand, once more, called on 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.

43. The representative of India said that her country thanked Canada, the EC and Japan for raising this issue in the DSB again. With due indulgence, India wished to repeat its previous statement. India was unable to understand how the United States could claim to be in compliance in this matter while continuing to disburse anti-dumping and countervailing duties to their industry. India shared the views of Canada, the EC and Japan that the "issue" was not resolved in this dispute within the meaning of Article 21.6 of the DSU. India, therefore, urged the United States to inform the DSB of the steps it proposed to take to ensure full compliance, and reiterated its request that the United States resume submitting status reports in this dispute.

44. The representative of China said that his country thanked and supported Canada, the EC and Japan for raising this item at the present 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 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 the previous speakers in urging the United States to comply fully with the DSB's rulings.

45. The representative of the United States said that, as his country 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. 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. The United States also regretted that Japan and the EC had decided to continue to suspend concessions and that the EC had decided to increase the level of suspension of concessions. Indeed, in the course of these disputes, these Members had made clear that their purpose in suspending concessions was to "induce compliance". Now that the United States had taken all steps necessary to comply with the recommendations and rulings of the DSB, the United States failed to see how the continued suspension of concessions will further that purpose.

46. The DSB took note of the statements.

3. Chile – Provisional safeguard measure on certain milk products/Chile – Definitive safeguard measure on certain milk products

(a) Request for the establishment of a panel by Argentina (WT/DS351/2 – WT/DS356/2)

47. The Chairman recalled that the DSB had considered this matter at its meeting on 20 March 2007, and had agreed to revert to it. He drew attention to the communication from Argentina contained in document WT/DS351/2 – WT/DS356/2, and invited the representative of Argentina to speak.

48. The representative of Argentina said that the request for the establishment of a panel to resolve this dispute had first been submitted by Argentina at the DSB meeting on 20 March 2007 and had been circulated to Members as document WT/DS351/2 – WT/DS356/2. On that occasion, the reasons for Argentina's decision to submit such a request had clearly been explained and a description had been given regarding the violations committed by Chile throughout the investigation procedure in respect of its undertakings under the GATT 1994 and the Agreement on Safeguards. At the risk of reiterating what had already been stated at that meeting, Argentina considered that it was important to underscore some of the more blatant infringements committed by Chile during the investigation procedure, details of which could be found in Argentina's panel request. He recalled that, between September and December 2006, Chile had first imposed a provisional measure and then a definitive measure on liquid milk, powdered milk and Gouda cheese from Argentina. These measures had been imposed within the framework of a single investigation initiated in August 2006, and consisted of a tariff surcharge of 23 per cent, applicable for a period of 200 days, and one year, respectively.

49. Argentina emphasized that during the investigation procedure and in terms of the measure itself, both of which had been directed exclusively against imports from Argentina, Chile had infringed a fundamental principle of the legal system governing international trade: i.e. most-favoured-nation treatment. The above was without prejudice to other inconsistencies which, according to Argentina, had been attributable to Chile both during the initiation of the investigation and in the course of the procedure for adopting the safeguard measures. The following examples would suffice to make this clear: (i) Chile had failed to provide an adequate definition of the like or directly competitive products or of the domestic industry manufacturing like products or products directly competing with imported products; (ii) no findings or reasoned conclusions on all pertinent issues of fact and law had been drawn up or stated in the record; (iii) it was not demonstrated that unforeseen developments had occurred or that the alleged increase in imports and the conditions under which they had taken place were the result of unforeseen developments and the effect of obligations assumed under the GATT 1994; (iv) it was not established that the alleged increase in

imports had occurred under such conditions so as to cause or threaten to cause serious injury; (v) there was not demonstration of a significant overall impairment in the position of the relevant domestic industry or any clearly imminent serious injury, nor an evaluation of all relevant factors carried out to determine serious injury or the threat thereof; and (vi) there was no demonstration of causal link between the alleged increase in imports of the products at issue and the alleged serious injury to the domestic industry. In view of the foregoing, and given that Argentina and Chile had not yet found a mutually agreed solution, Argentina, pursuant to Article 6 of the DSU, requested the establishment of a panel, with standard terms of reference, to examine its claims.

50. The representative of Chile said that his country took note of Argentina's second panel request and regretted that during the time that had elapsed since the previous meeting, Argentina had failed to clarify the legal basis and the reasons which, in its view, warranted joining two requests for consultations on different measures to form a single request for the establishment of a panel. Thus, instead of explaining the implications of that single request, Argentina had opted for maintaining a state of uncertainty as to its claims. While repeating that it had sought no legal grounds for joining two requests for consultations on different measures to form a single panel request, Chile reserved the right to challenge that request, including its inconsistency with Article 6.2 of the DSU, at the first possible opportunity.

51. 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.

52. The representative of the United States reserved third-party rights to participate in the Panel's proceedings.

4. India – Measures affecting the importation and sale of wines and spirits from the European Communities

(a) Request for the establishment of a panel by the European Communities (WT/DS352/4)

53. The Chairman recalled that the DSB had considered this matter at its meeting on 10 April 2007, and had agreed to revert to it. He drew attention to the communication from the European Communities contained in document WT/DS352/4, and invited the representative of the European Communities to speak.

54. The representative of the European Communities said that the present meeting was the second time that the EC was requesting the DSB to establish a panel on India's measures on imports of wines and spirits from the EC. This was a long-standing issue and of very serious concern to the EC. At the present meeting, the EC would not repeat the reasons which had led to this request. The details regarding the fundamental concerns raised by India's measures, and the extent to which these measures continued to restrict access of wines and spirits from the EC into the Indian market, were contained in the EC's request for the establishment of a panel. Pursuant to Article 6 of the DSU, the EC, therefore, requested for the second time that a panel be established to examine India's measures.

55. The representative of India said that her country remained disappointed that the EC had chosen to pursue the matter further by requesting the establishment of a panel. Both India and the EC had had constructive and fruitful consultations. India and the EC had agreed to work towards a mutually acceptable solution. India was confident that the panel would find that the measures were consistent with India's WTO obligations. Nevertheless, India understood that the panel would be established at the present meeting to consider the EC's claims.

56. The representative of the United States said that his country continued to share the EC's concern that India's additional and extra additional duties appeared to be inconsistent with India's

WTO obligations. The United States had now also consulted with India with respect to these duties. The United States continued to urge India to remove the duties quickly to resolve both disputes.

57. 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.

58. The representatives of Australia, Chile, Japan and the United States reserved their third-party rights to participate in the Panel's proceedings.

5. United States – Anti-dumping measures on oil country tubular goods (OCTG) from Mexico

(a) Recourse to Article 21.5 of the DSU by Mexico: Request for the establishment of a panel (WT/DS282/14)

59. The Chairman drew attention to the communication from Mexico contained in document WT/DS282/14, and invited the representative of Mexico to speak.

60. The representative of Mexico said that, as stated in its communication of 12 April 2007, Mexico requested the establishment of a panel pursuant to Article 21.5 of the DSU and the sequencing agreement, which Mexico and the United States had jointly notified to the WTO on 11 July 2006 (WT/DS282/12). This request was a response to the failure of the United States to implement the DSB's recommendations and rulings of 28 November 2005 within the reasonable period of time, which had been agreed upon by both parties. That period of time had expired almost a year ago. Since then, Mexico had been monitoring the action taken by the US authorities in the hope that, at some point, the United States would comply with the DSB's recommendations and rulings, which had found that the United States had acted inconsistently with Article 11.3 of the Anti-Dumping Agreement in the sunset review for OCTG from Mexico, because the determination issued by the USDOC that dumping was likely to continue or recur was not supported by reasoned and adequate conclusions based on the facts before it. Given that the measures subsequently adopted by the United States continued to fail to implement the DSB's recommendations and rulings, having, moreover, been adopted in breach of US obligations under Articles 1 and 18.1 of the Anti-Dumping Agreement and Article XVI:4 of the WTO Agreement, Mexico had been compelled to request consultations with the United States. These consultation had been held on 31 August 2006, but had not led to a satisfactory settlement. In view of the above, Mexico had no alternative, but to reiterate the request for the establishment of a panel under Article 21.5 which had originally been formulated on 12 April 2007 and which had been circulated to Members, so that at the present meeting, pursuant to paragraph 3 of the sequencing agreement set forth in document WT/DS282/12, the compliance panel requested by Mexico could be established.

61. The representative of the United States said that his country was disappointed that Mexico was seeking the establishment of a panel. However, pursuant to the understanding between the United States and Mexico, which had been circulated to the DSB Members in document WT/DS282/12, the United States would accept establishment of a panel at the present meeting. As the United States had informed Mexico during consultations, the United States had complied fully with the DSB's recommendations and rulings. The United States was confident that the panel would so agree.

62. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by Mexico in document WT/DS282/14. The Panel would have standard terms of reference.

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

6. Indicative list of governmental and non-governmental panelists

(a) Statement by the Chairman

64. The Chairman said that, as he had announced at the DSB meeting on 20 March 2007, at the present meeting he wished to make a statement regarding the need to update the indicative list of governmental and non-governmental panelists. As Members were aware, in accordance with the proposals for the administration of the indicative list of panelists, approved by the DSB on 31 May 1995 and contained in an annex to document WT/DSB/33, the list should be updated every two years. To this effect, Members were required to forward updated curricula vitae of persons appearing on the list as well as to provide any modifications they wished to make to the list. Therefore, in line with the mentioned requirement, he asked delegations to submit updated curricula vitae of persons appearing on the current indicative list, contained in documents WT/DSB/33 and Add.1 through Add.10, as well as to indicate any modifications they wished to make to the list. He encouraged delegations to submit, to the extent possible, electronic versions of updated CVs together with hard copies. Finally, he proposed that any modifications and updated CVs be forwarded to the Secretariat (Council & TNC Division) by the end of July 2007 so that an updated and consolidated list could be circulated after the Summer break.

65. The representative of the United States said that it was his delegation's understanding that, as part of the revision of the indicative list, the Secretariat would be including the full names of individuals put forward by Members. This would be an improvement on the current list, increasing its utility to Members.

66. The DSB took note of the statements.

7. Integrated database of trade disputes regarding Latin America and the Caribbean

(a) Statement by Chile

67. The representative of Chile, speaking under "Other Business", said that his delegation wished to inform Members of a project developed by the Economic Commission for Latin America and the Caribbean (ECLAC), which was building up an integrated database of trade disputes for Latin America and the Caribbean (IDATD). The database contained information on ongoing and settled trade disputes under the WTO, NAFTA, Andean Community, MERCOSUR, Central American Common Market, and CARICOM dispute settlement systems. The purpose of this database was to provide simple, consolidated and up-to-date access to backgrounds of disputes throughout the course of the proceedings – from the initiation to the final compliance stage. It consisted of a user-friendly and interactive electronic system that permitted multiple entries, cross-referencing and the automatic generation of charts on the information consulted, and provided an overall picture of trade disputes, allowing comparisons between procedural systems and case law in the different trade forums. He noted that the database was available in English at http://idatd.eclac.cl and in Spanish at http://badicc.eclac.cl.

68. The DSB took note of the statement.

8. Appointment of Appellate Body members

(a) Statement by the Chairman

69. The Chairman, speaking under "Other Business", said that as he had announced at the outset of the meeting, he wished to make a statement under "Other Business" regarding matters related to the process for selecting Appellate Body members. He recalled that, under Article 17.2 of the DSU, "The DSB shall appoint persons to serve on the Appellate Body for a four-year term and each person may be reappointed once". As Members were aware, on 10 December 2007, Ms. Merit Janow's first term of office would expire. On the same date, Mr. Yasuhei Taniguchi's second and final term of office would expire. In addition, on 31 May 2008, the second and final terms of office of two other Appellate Body members, Messrs. Georges Abi-Saab and A.V. Ganesan, would expire. In light of this, the DSB would, in the not too distant future, be required to take certain actions with respect to these Appellate Body positions. He said that, as a preliminary matter, it was his intention to consult with delegations as how best to proceed and, in particular, whether Members wished to carry out a single process regarding these Appellate Body positions. To this effect, he intended to hold informal consultations in the first half of May with interested Members to hear their views in this regard. Based on the results to these consultations, it was his hope that he, as Chairman of the DSB, would be able to present, at the 22 May DSB meeting, a specific proposal regarding the procedures that Members should follow with respect to the positions in question. While he would be contacting a representative cross-section of the Membership himself, he would also like to invite any delegations wishing to provide views on this matter to contact him directly. He asked if any delegation wished to say anything at this point on this matter. He said that he looked forward to upcoming informal consultations and hoped to have a specific proposal for delegations at the next regular DSB meeting.

70. The DSB took note of the statement.