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Dispute Settlement Body
31 August 2004

MINUTES OF MEETING

Held in the Centre William Rappard
on 31 August 2004

Acting Chairperson: Mrs. Puangrat Asavapisit (Thailand)

Prior to the adoption of the agenda, the item concerning the Panel Report in the case on "United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina" was removed from the proposed agenda following the US decision to appeal the Panel Report.

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.29 - WT/DS162/17/Add.29)

(b) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.22)

(c) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.22)

(d) United States – Continued Dumping and Subsidy Offset Act of 2000: Status report by the United States (WT/DS217/16/Add.7 – WT/DS234/24/Add.7)

1. The Chairperson 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". She proposed that the four sub-items to which she had just referred be considered separately.

(a) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.29 - WT/DS162/17/Add.29)

2. The Chairperson drew attention to document WT/DS136/14/Add.29 – WT/DS162/17/Add.29, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US Anti-Dumping Act of 1916.

3. The representative of the United States said that his country had provided an additional status report in these disputes on 19 August 2004, in accordance with Article 21.6 of the DSU. As noted in the report, legislation repealing the 1916 Act was pending in both the US Senate and US House of Representatives. On 29 January 2004, HR 1073, which would repeal the 1916 Act, had been reported favorably out of the Committee on the Judiciary of the US House of Representatives. On 30 June 2004, Ambassador Zoellick had written a letter to the leadership of the US House of Representatives urging the passage of repeal legislation "at the earliest opportunity." He noted that Congress had been in recess since 23 July. The US administration would continue to work with Congress when it returned in September to achieve further progress in resolving these disputes with the EC and Japan.

4. The representative of the European Communities said that it was with great disappointment that the EC noted that, once again, the US status report did not show any progress. For almost four years, the United States had totally ignored its duty to comply promptly with the DSB's ruling and recommendations. The EC strongly hoped that the US administration would continue to convey to Congress the urgency of complying with the WTO decision and would report to the DSB any new steps undertaken in this respect. The EC recalled that it might adopt anytime a specific anti-dumping legislation applicable to US products pursuant to its right to suspend the application to the US of its obligations under the GATT 1994 and the Anti-Dumping Agreement.

5. The representative of Japan said that the continued lack of implementation by the United States of the DSB's recommendations and rulings in this proceeding over three years and 11 months remained to be a great and ongoing concern to Japan. From a systemic point of view, this was also highly problematic for the credibility of the WTO dispute settlement system. On the positive side, Japan had taken note of a couple of recent developments referred to in the US status report, namely, the administration's explicit support to the legislation repealing the 1916 Act in the 2004 Report to the

Leaders on the "US – Japan Regulatory Reform and Competition Policy" and Ambassador Zoellick's letter to the leadership of the US House of Representatives. Japan urged the US administration to re-double its effort in urging the Congress so that the repealing legislations were to be passed during the current session of the 108th Congress. In the interest of specific Japanese companies involved in the lawsuits filed under the 1916 Act, Japan had been appealing for legislation repealing the 1916 Act with proper retroactive effect. Against such background, the Federal District Court had passed judgment in May upholding the order imposing on a Japanese company a payment of damages amounting to US$30 million, much to Japan's regret. In this light the top priority for Japan remained that the US Congress pass legislation repealing the 1916 Act with proper retroactive effect. Pending the passage of any such legislation, Japan urged the US administration to take actions which would prevent damages being inflicted upon Japanese companies under the 1916 Act. In this regard, however, Japan regretted that, thus far, no such action had been taken by the administration. Once again, Japan urged the United States to secure the implementation by way of repealing the 1916 Act with proper retroactive effect. Japan further requested the United States to be more specific when reporting on any further developments regarding the status of all the bills repealing the 1916 Act. Should the United States fail to implement the DSB's recommendations and rulings, Japan had no other option than to proceed to reactivation of the arbitration under Article 22 of the DSU, and to exercise its right to suspend concessions or other obligations.

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

(b) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.22)

7. The Chairperson drew attention to document WT/DS176/11/Add.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 Section 211 Omnibus Appropriations Act of 1998.

8. The representative of the United States said that his country had provided a status report in this dispute on 19 August 2004, in accordance with Article 21.6 of the DSU. As noted in the report, legislation amending or repealing Section 211 was pending in the US Senate and the US House of Representatives, and the Senate had held hearings on this legislation last month. The US administration would continue to work with the US Congress concerning appropriate statutory measures that would resolve this matter.

9. The representative of the European Communities said that, as indicated in the US status report, two bills were pending respectively in the Senate and the House of Representatives to enact the "US – Cuba Trademark Protection Act". This legislation purported to provide enhanced and effective protection of intellectual property rights both in Cuba and in the United States and, in this framework, to repeal Section 211. The adoption of this Act would allow to solve this dispute to the benefit of all. The EC expected that the US administration would support the "US – Cuba Trademark Protection Act" as an appropriate solution to this dispute in conformity with the United States' long advocated objective to guarantee in each country effective and non-discriminatory protection of intellectual property rights.

10. The representative of Cuba said that it was now a matter of routine for Cuba to deplore, month after month, the failure of the United States to comply with the DSB's recommendations and rulings, not only in relation to this dispute, but in relation to all those being examined under this agenda item, which was a truly disgraceful state of affairs. Her delegation had been instructed to read out at the present meeting a communication from Mr. Ricardo Cabrisas Ruiz, Minister of the Government of the Republic of Cuba, addressed to the Director-General of the WTO, which had been circulated to Members as document WT/DSB/COM/7 and Corr.1. She then read out the following: "The Government of Cuba has stated on many occasions that the approval of Section 211 of the

Omnibus Appropriations Act of 1998 was the United States' way to extend internationally the economic, commercial and financial blockade and its aggressive policy against Cuba to the area of intellectual property, in blatant violation of the principles and multilateral rules established by the World Trade Organization. The purpose of this communication is to draw your attention, as Director-General of the WTO, to the urgent need for the United States to eliminate Section 211 once and for all, in conformity with international law and the principles upheld by the WTO. Since the DSB's ruling 30 months ago, the Government of the United States has failed to comply with its obligations as a WTO Member to find a rapid and definitive solution to this issue. Instead, its efforts have boiled down to requesting and obtaining successive extensions of the period of time granted for that purpose and to submitting repetitive reports containing only the slightest indication that the Administration is working with Congress. This has been going on for two and a half years now, without any arguments by the United States to justify such a delay. At the same time, the Government of Cuba has continuously denounced this status quo imposed by the United States, which casts doubt on the very viability of DSB rulings, and has reiterated the need to repeal Section 211 because it violates basic WTO principles such as national treatment and most-favoured-nation treatment. Allow me to draw your attention to the fact that, since it is the US Congress that is competent to decide on the repeal of this Law, the time remaining to comply with the DSB's mandate by the latest deadline of December 2004 is merely a few weeks, given that the presidential elections are not far off. This is the main reason why I am calling upon you to help act in order to ensure that the United States complies with the principles of the WTO and repeals Section 211 of the Omnibus Appropriations Act of 1998, thereby meeting its obligations as a WTO Member. I would also ask you to circulate this communication to the Member countries as an official document from the Government of Cuba. The Government of Cuba takes this opportunity to reiterate to you and to the WTO Secretariat the assurances of its highest consideration."

11. The representative of the United States said that the United States would continue to work with the other party to this dispute in seeking to resolve it.

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

(c) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.22)

13. The Chairperson drew attention to document WT/DS184/15/Add.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 anti-dumping measures on certain hot-rolled steel products from Japan.

14. The representative of the United States said that his country had provided a status report in this dispute on 19 August 2004, in accordance with Article 21.6 of the DSU. The administration would continue to work with the US Congress with respect to the DSB's recommendations and rulings that had not been addressed by 23 November 2002. Following consultations with Japan, the United States had proposed that the "reasonable period of time" for implementation of the remaining recommendations and rulings be extended. That proposal would be considered under item 2 of the agenda of the present meeting.

15. The representative of Japan said that his country had to express its grave disappointment over the fact that the United States had missed the deadline for implementing the DSB's recommendations and rulings in this proceeding, which had been extended in December 2003 until 31 July 2004. It was of serious concern to Japan that not even a bill to amend the relevant US anti-dumping statutes had been introduced to the US Congress for consideration and passage. As Japan had repeatedly stated, such a prolonged non-implementation undermined the credibility of the WTO dispute settlement system. The United States and Japan had held consultations over the request made by the United States for the extension of the reasonable period of time, as indicated by the United States at the

present meeting. Since this issue would be dealt with under agenda item 2 of the present meeting, Japan wished to make further comments in the context of that item.

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

(d) United States – Continued Dumping and Subsidy Offset Act of 2000: Status report by the United States (WT/DS217/16/Add.7 – WT/DS234/24/Add.7)

17. The Chairperson drew attention to document WT/DS217/16/Add.7 – WT/DS234/24/Add.7 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US Continued Dumping and Subsidy Offset Act of 2000.

18. The representative of the United States said that his country had provided a status report on 19 August 2004, in accordance with Article 21.6 of the DSU. As noted in the report, on 19 June 2003, legislation to bring the Continued Dumping and Subsidy Offset Act (CDSOA) into conformity with the US WTO obligations had been introduced in the US Senate (S. 1299). On 10 March 2004, legislation repealing the CDSOA had been introduced in the US House of Representatives (H.R. 3933). In addition, on 2 February 2004, the US administration had, once again, proposed repeal of the CDSOA, in its budget proposal for fiscal year 2005. The US administration would continue to work with Congress after it returned from recess in September to achieve further progress in resolving these disputes with the complaining parties.

19. The representative of the European Communities said that the introduction of bills was unconvincing since month after month the US Congress had not shown the slightest intention to act on those bills and thus to move towards full compliance with the WTO rulings and recommendations. This was all the more serious that this scenario had recurred basically in all disputes involving a change of US legislation and the need to implement the WTO decision in this dispute had been openly and repeatedly questioned. Prompt compliance was at the core of the dispute settlement mechanism and all Members, including the United States, should be seriously concerned by the very damaging precedent that this set. The EC called on the US administration to convey to Congress the importance for the US credibility in the WTO to respect other Members' rights without further delay.

20. The representative of Chile said that the lack of progress by the United States with regard to compliance with the DSB's recommendations in this dispute was, once again, to be regretted. Likewise, Chile regretted the failure of the United States to provide clarification of the consultations which the US administration claimed to be holding with Congress with a view to approving legislation repealing the Byrd Amendment, in spite of his delegation's request at the July DSB meeting for further details regarding the background of these consultations, in particular the next legislative steps to secure the earliest repeal of the Continued Dumping and Subsidy Offset Act of 2000. Chile hoped that such a repeal would be approved in the remaining time before the end of the current legislative period, thereby avoiding the need for recourse to the suspension of concessions or other equivalent obligations, in accordance with the Arbitrator's decision to be circulated within the next few hours.

21. The representative of Canada said that his country, once again, noted the status report of the United States and its continued failure to comply with its WTO obligations with regard to the Byrd Amendment. The DSB had ruled on this dispute over one year ago. The lack of any progress by the United States to bring itself into conformity with the DSB's recommendations and rulings remained an ongoing concern to Canada. He noted that the WTO Arbitrators were expected to render their decision regarding the level of retaliation that parties to this arbitration might take against the United States. It was unfortunate that the United States' failure to comply with its international trade obligations had brought Canada to this stage in the process. Canada has repeatedly stated that its

objective was not retaliation, but the repeal of this WTO-inconsistent measure. Canada called upon the United States, once again, to end this dispute and repeal the Byrd Amendment.

22. The representative of Japan said that his country took note of the status report of the United States. This month again, however, with a strong sense of disappointment that there had been no development in terms of the implementation of the DSB's recommendations and rulings. While awaiting the award of the Arbitrator under Article 22.6 of the DSU, Japan wished to remind the United States that a top priority for Japan and the other complaining parties remained the repeal of the WTO-inconsistent CDSOA.

23. The representative of India said that his country regretted that the United States had reported no progress at all in many previous DSB meetings. As stated by the United States in the context of an earlier sub-item of this agenda item, the United States had a window of opportunity in the reconvening of the US Congress in September. India urged the US administration to redouble its efforts to repeal the CDSOA within the window of opportunity available to it.

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

2. United States – Anti-dumping measures on certain hot-rolled steel products from Japan

(a) Request for modification of the reasonable period of time (WT/DS184/18)

25. The Chairperson drew attention to the communication from the United States contained in document WT/DS184/18.

26. The representative of the United States said that, as mentioned under a previous agenda item, the US administration would continue to work with the US Congress with respect to the recommendations and rulings of the DSB that had not been addressed by 23 November 2002. After consultations with Japan, the United States was requesting that the reasonable period of time for implementation of the remaining recommendations and rulings in this dispute be modified so as to expire on 31 July 2005. The United States believed that such an extension of time would promote a principal aim of the dispute settlement system, which was to provide mutually satisfactory solutions to disputes. The United States understood from Japan that Japan would not oppose this proposal. The United States intended to continue discussions with Japan on implementation of the DSB's recommendations and rulings.

27. The representative of Japan said that, as his delegation had stated under the previous agenda item, to Japan's great regret, the reasonable period of time, which had been extended twice, had already lapsed without any sign of implementation by the United States of the DSB's recommendations and rulings. To Japan's dismay, the situation had little changed since December 2003, when the DSB had previously agreed to the modification of the reasonable period of time. Since then, the United States had not even been able to introduce any specific legislative amendments necessary for compliance, despite the US administration's pledge to support such amendments. Following the bilateral consultations, Japan had decided not to object to the modification of the reasonable period of time proposed by the United States. This decision by Japan, in no way, meant to condone the prolonged inaction on the part of the United States. Rather, Japan strongly urged the United States to expeditiously take necessary legislative actions so as to secure definitive solution of this long-standing dispute. Should the United States fail to secure fully-fledged implementation by 31 July 2005, Japan was entitled to have recourse to the rights accruing to it under the DSU. Japan looked forward to further consultations with the United States on its concrete plan for implementation.

28. The DSB took note of the statements and agreed to the request of the United States contained in document WT/DS184/18.

3. Korea – Anti-dumping duties on imports of certain paper from Indonesia

(a) Request for the establishment of a panel by Indonesia (WT/DS312/2)

29. The Chairperson drew attention to the communication from Indonesia contained in document WT/DS312/2.

30. The representative of Indonesia said that on 4 June 2004, Indonesia had requested consultations concerning the imposition of definitive anti-dumping duties by Korea on imports of business information paper and uncoated wood-free printing paper from Indonesia and certain aspects of the investigation leading to the imposition of such duties. This request had been circulated as document WT/DS312/1. In Indonesia's view, the imposition of definitive anti-dumping duties was inconsistent with the obligations of Korea under Article VI of GATT 1994 and several provisions of the Agreement on Implementation of Article VI of GATT 1994. Furthermore, such imposition frustrated the efforts taken by Indonesia to promote exports at a crucial stage in the economic development of Indonesia. Consultations had been held on 7 July 2004. Unfortunately, no mutually agreed solution had been found. Accordingly, considering that a period of more than 60 days had lapsed since the request for consultations had been received by Korea, pursuant to Article 4.7 of the DSU, Indonesia, therefore, requested the establishment of a panel.

31. The representative of Korea said that his country found it regrettable that Indonesia had decided to pursue this matter by requesting the establishment of a panel for several reasons. First, Korea has exercised its utmost efforts to resolve the dispute in a mutually satisfactory manner. Korea had held consultation with Indonesia on 7 July 2004 to discuss Indonesia's concerns with respect to Korea's anti-dumping measures imposed on certain papers from Indonesia. In the consultation, Korea had provided its full explanation of various aspects of its anti-dumping investigation and the basis of the determination. Following the consultation, Korea had expressed its willingness to have further consultations. Second, a domestic proceeding on this issue was still pending in the Korean administrative court and the court was expected to come up with a ruling in the near future. Considering all this, Korea believed that Indonesia's current request for the establishment of a panel was premature. Third, it was regrettable that some issues that Korea believed had been cleared through the consultation were still included in the panel request. For example, Indonesia had accused Korea in paragraph 6 of its panel request of violating Article 12.1.1(iv) of the Anti-Dumping Agreement by failing to provide information on injury factors in the Notice of Initiation. Korea had clarified in the consultation that the information on injury factors was readily available to the public on the Korean investigation authority's website indicated in the Notice of Initiation. Korea found it hard to imagine how the failure of notice accusation could stand in spite of this plain fact. Finally, despite Indonesia's blanket accusations listed in its panel request regarding Korea's anti-dumping measures on certain papers from Indonesia, Korea was confident that its anti-dumping measures were consistent with the relevant provisions of Article VI of GATT 1994 and the Anti-Dumping Agreement. In light of the above, Korea was not in a position to accept the establishment of a panel at this present meeting.

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

4. United States – Final dumping determination on softwood lumber from Canada

(a) Report of the Appellate Body (WT/DS264/AB/R) and Report of the Panel (WT/DS264/R)

33. The Chairperson drew attention to the communication from the Appellate Body contained in document WT/DS264/8 transmitting the Appellate Body Report on "United States – Final Dumping

Determination on Softwood Lumber from Canada", which had been circulated on 11 August 2004 in document WT/DS264/AB/R, in accordance with Article 17.5 of the DSU. In accordance with the Decision on Procedures for the Circulation and Derestriction of WTO Documents contained in document WT/L/452, the Appellate Body Report and the Panel Report pertaining to this case had been circulated as unrestricted documents. She recalled that Article 17.14 of the DSU required that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report".

34. The representative of Canada said that his country wished to thank the Panel and the Appellate Body as well as the respective Secretariats for their work on this matter. Canada welcomed these Reports and the additional clarity they brought to the disciplines of the Anti-Dumping Agreement. The Panel and the Appellate Body had found that the United States had failed to evaluate accurately all Canadian softwood lumber exports and had thereby failed to establish a single margin of dumping in a manner consistent with the Anti-Dumping Agreement. Canada also welcomed the Appellate Body's clarification of the Panel's legal interpretation of the obligation with respect to cost allocation methodologies in the Anti-Dumping Agreement. Canada requested that the DSB adopt the Panel and the Appellate Body Reports in this matter and that it recommend that the United States bring its measures into conformity with the WTO rules as soon as possible.

35. The representative of the United States said that with the exception of one issue to be discussed shortly, the United States supported the conclusions of the Panel and the Appellate Body, a number of which it wished to highlight. This was an enormously complex dispute, in which Canada had asserted no fewer than 13 discrete claims concerning the initiation and conduct of an anti-dumping duty investigation by the US Department of Commerce. Except for the issue of "zeroing," the Panel had properly rejected each of those claims. With respect to initiation of an investigation, the Panel had properly found that as long as an application for anti-dumping relief contained the type of information on dumping, injury, and causation identified in Article 5.2 of the Anti-Dumping Agreement, it needed not contain all of the information on these issues available to the applicant. Thus, the Panel had confirmed that Article 5.2 was, among other things, "intended to avoid putting an undue burden on the applicant". With respect to the scope of an anti-dumping investigation, the Panel had found that the definition of the product under investigation was up to the investigating authority. It had properly rejected Canada's argument that an authority's definition of the product under investigation was limited by Article 2.6. With respect to the requirement in Article 2.4 that an investigating authority make "due allowance" for certain differences in two transactions being compared, the Panel had properly confirmed that – as an initial matter – a difference must be demonstrated to affect price comparability in order for due allowance to be warranted. Here, the proponents of a due allowance had failed even to make this demonstration. The United States had also noted that the Panel had made several findings with regard to Canada's company-specific claims. In each case, the Panel had concluded that Commerce's methodology was consistent with the US obligations under the Anti-Dumping Agreement. While Canada had cross-appealed with respect to two of those findings, the Appellate Body had correctly declined to reverse these conclusions.

36. While the United States was pleased with virtually all of the Panel and Appellate Body findings in this dispute, it regretted the finding on whether Article 2.4.2 of the Anti-Dumping Agreement required an investigating authority to offset non-dumped transactions against dumped transactions in determining an aggregate margin of dumping for a producer or exporter. There was a widespread view among the GATT Contracting Parties – including Canada – that such offsetting had not been required in the years and decades before the WTO Agreement, and they had continued in this view as WTO Members after 1995. Thus, it was surprising to find now that the Anti-Dumping Agreement required it. The United States noted that one member of the original panel had disagreed with this conclusion, finding that Article 2.4.2 contained no such requirement. It was silent on the question of how an aggregate margin of dumping was to be determined. The dissenting panel

member stated, "If Members consider that the issue of how to aggregate the results of multiple comparisons is a lacuna that needs to be filled, then they should negotiate such rules in the appropriate forum." The United States agreed, and regretted both that Canada had chosen to litigate this issue despite its own on-going use of "zeroing," and that the Panel and the Appellate Body had agreed with Canada. In light of this, the United States questioned how Canada itself was ensuring "the conformity of its laws, regulations and administrative procedures" with its WTO obligations, as required by Article XVI:4 of the Marrakesh Agreement. In sum, while the United States was disappointed with the disposition of the "zeroing" issue, it was pleased that the Panel and the Appellate Body had confirmed that Commerce's initiation and conduct of its lumber anti-dumping investigation were, in every other respect, entirely consistent with US obligations under the WTO Agreement.

37. The representative of the European Communities said that the EC was in full agreement with the Appellate Body's decision on "zeroing". The EC had ceased to apply this practice following the finding in the "Bed Linen" case. In order to ensure a "level playing field" for exporters, the EC had now been obliged to challenge the practice of "zeroing" by the United States, with regard to both US law and 31 measures. A request with regard to more recent measures would probably follow. Although the Appellate Body's findings only pertained to the measure against softwood lumber, it was clear that the US practice of "zeroing" was fundamentally WTO-inconsistent. The EC, therefore, asked the United States to carefully consider the wider implications of this important ruling. Instead of wasting the time and resources of the WTO and its Members by trying to defend further cases, it should do as the EC had done and abolish the practice of "zeroing" as soon as possible.

38. The representative of Japan said that his country had participated in this proceeding as a third party. Japan welcomed both the Appellate Body and the Panel Reports, especially on the point that they both had found that the "zeroing" methodology was WTO-inconsistent. Japan certainly hoped that the United States would now conduct its anti-dumping measures in a manner consistent with its obligations under the WTO Agreements and in accordance with the findings of the Appellate Body and the Panel.

39. The representative of Hong Kong, China said that her delegation wished to thank the Panel and the Appellate Body for their work on this case. Hong Kong, China welcomed the decisions by the Appellate Body and the Panel especially on the issue of "zeroing". The practice of "zeroing" had long been a problem causing grave concern to many Members including Hong Kong, China. Such practice effectively distorted the price comparison under Article 2.4.2 of the Anti-Dumping Agreement by inflating the dumping margin, and severely undermined the objective of "fair comparison" required by the Agreement. Although the current case was limited to the consideration of "zeroing" in case of weighted average to weighted average comparisons, Hong Kong, China welcomed the decisions as useful in confirming, once again, the WTO-inconsistency of "zeroing" in this context. Specifically, it welcomed clarification by the Appellate Body and the Panel that, in the course of dumping margin determination, the results of multiple comparisons reflected only intermediate calculations. All these intermediate values must be aggregated in order to establish margins of dumping for the product under investigation as a whole. It was inconsistent with Article 2.4.2 to exclude some of the intermediate values which represent "negative margins". The Appellate Body had succinctly recounted an important principle of the Anti-Dumping Agreement, namely, that both dumping and dumping margin must be established for the product under investigation as a whole, and could not be found to exist for a product type, model or category of that product, and that this was in consonance with the need for consistent treatment of a product in an anti-dumping investigation. This statement was particularly useful in showing that the Agreement did not perceive dumping on a piecemeal basis. To find dumping and dumping margin, one needed to look at the sale of the product under investigation in its entirety. Hong Kong, China urged the United States to take prompt action to implement the Appellate Body's decision, and to bring its practice into conformity with the Anti-Dumping Agreement.

40. The representative of Mexico said that his country noted with interest the findings with regard to prohibition of the practice of "zeroing". Mexico hoped that the United States would abide by this ruling in other investigations so as to avoid further disputes in this area.

41. The representative of India said that his country was a third party in this dispute. India was satisfied that the Appellate Body had ruled against the US practice of "zeroing" after due examination of all the arguments by all the parties. India welcomed the Appellate Body's consistent interpretation of the issue of "zeroing".

42. The DSB took note of the statements, and adopted the Appellate Body Report contained in WT/DS264/AB/R and the Panel Report contained in WT/DS264/R, as modified by the Appellate Body Report.

5. Proposed nomination for the indicative list of governmental and non-governmental panelists (WT/DSB/W/264)

43. The Chairperson drew attention to document WT/DSB/W/264 which contained an additional name proposed for inclusion on the indicative list in accordance with Article 8.4 of the DSU. She proposed that the DSB approve the name contained in document WT/DSB/W/264.

44. The DSB so agreed.

6. Mexico – Measures affecting telecommunications services

(a) Statement by Mexico

45. The representative of Mexico, speaking under "Other Business", said that at the present meeting, his country wished to briefly refer to the agreement reached with the United States with a view to ensuring compliance with the DSB's recommendations and rulings in the dispute "Mexico – Measures Affecting Telecommunications Services" (WT/DS204). He said that Mexico had complied with the first phase of that agreement with the publication, on 11 August 2004, of its new international telecommunications rules. These rules eliminated the uniform settlement rate system, the proportional return system and the right of the carrier with the greatest proportion of outgoing traffic to negotiate the related settlement rates. The new system would enable all of Mexico's long-distance carriers to negotiate their rates freely, not merely with US carriers, but with carriers worldwide. There could be no doubt that this would make the Mexican telecommunications market yet more competitive. Furthermore, Mexico was already drafting regulations for the establishment of commercial agencies. Once these had been developed, Mexico would have fully complied with the DSB's recommendations and rulings. The publication of the above-mentioned rules served as further proof of Mexico's clear commitment to strengthening the WTO dispute settlement mechanism. Mexico hoped that other Members would follow its example and would meet their obligations in a proper and timely fashion, regardless of whether or not they agreed with the findings of a particular panel or the Appellate Body report.

46. The representative of the United States said that his country appreciated Mexico's statement regarding its compliance efforts and looked forward to continuing consultations with Mexico as Mexico worked to complete its implementation of the DSB's recommendations and rulings.

47. The DSB took note of the statements.