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Dispute Settlement Body
24 July 2007

MINUTES OF MEETING

Held in the Centre William Rappard
on 24 July 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.56)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.56)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.31)

(d) United States – Laws, regulations and methodology for calculating dumping margins ("Zeroing"): Status report by the United States (WT/DS294/20/Add.5)

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.56)

2. The Chairman drew attention to document WT/DS176/11/Add.56, 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 July 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 US 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 on 21 June 2007, new bills that would, *inter alia*, repeal Section 211 had been introduced in the US Congress. These bills were bipartisan and had already received support from 55 co-sponsors. This added to other bills introduced earlier that would also repeal Section 211 and were already supported by 61 co-sponsors. The EC hoped that the introduction of these bills showed a renewed and genuine interest of the United States to finally put itself into compliance with its TRIPS obligations. The United States might deny it, but the fact remained that the authority of the TRIPS Agreement and the credibility of actions to enforce it necessarily suffered when one of its main promoters appeared to simply ignore its obligations under that Agreement. In the interest of all, the EC again urged the United States to comply with its obligations under the TRIPS Agreement.

5. The representative of Cuba said that the dispute on Section 211 was one of the longest-standing issues on the agenda of the DSB. Month after month, for more than five years now, WTO Members had been told by the United States that the US administration was working with the US Congress on measures that would resolve this dispute, and yet there was no concrete evidence pointing to a short- or medium-term solution. Cuba questioned the willingness of the US administration or the US Congress to implement the DSB's recommendations in this dispute, in spite of the fact that at least one bill had been submitted, both to the House of Representatives and the

Senate, in different legislatures that would abolish the discriminatory Section 211. The United States was defying the rules of the WTO and undermined its reputation by safeguarding the trade interests, the commitments and political sympathies of the Bacardi company and helping it to rid itself unfairly of its competitor, the Franco-Cuban Company Havana Club Holding, S.A.

6. Section 211 bore the seal of Bacardi. It was Bacardi's lawyers that had drafted the bill and had lobbied in the US Congress to ensure its immediate adoption. The US Congress had openly acceded to the request of this company, which was a front for the right-winged Miami Cubans, and hastened to tack Section 211 onto the Budget Act of 1998. Section 211, which allowed Bacardi to usurp the trademark from its legitimate holder, had been adopted on 21 October of that same year. However, for more than five years now, it had not been possible to repeal it. Using Section 211 as a pretext, Bacardi wanted to demonstrate that it owned the trademark Havana Club, and that it had purchased the mark from the Arechabala family. In fact, the trademark had been abandoned by its former holders long before the nationalization, which had taken place in Cuba in 1960, in accordance with the principles and rules of international law. Although Cuban rum could not be sold in the United States due to the economic, commercial and financial blockade imposed by the United States on Cuba for more than 45 years, the disputed trademark had been registered in the United States as of 1976 by the Cuban company CUBA EXPORT. This month, it would be two years since the EC, adopting a collaborative and tolerant attitude, had agreed to sign an understanding which enabled the United States to extend indefinitely its non-compliance with the decisions of the DSB and to maintain Section 211 in force. Like at the previous meeting, Cuba wished that the United States and the EC explain how they reconciled the irregular and increasingly drawn-out situation created by this agreement with the letter of the DSU. The continued US non-compliance with the rulings of the DSB jeopardized the credibility, predictability and effectiveness of the dispute settlement mechanism, undermined the balance of rights and obligations among Members, and was a constant threat to the multilateral trading system and the WTO Agreement. Cuba requested, once again, that the United States comply immediately with its obligations and that it recognize that the only possible solution to this dispute would be to repeal Section 211.

7. The representative of India said that her country, while thanking the United States for its status report and the statement made at the present meeting, wished to renew its systemic concerns about the lack of progress in the implementation of the DSB's rulings and about the situation of non-compliance in this dispute. As mentioned earlier several times, a protracted non-compliance situation by the WTO Members clearly undermined the credibility of the system and the carefully negotiated balance of rights and obligations of the whole Membership.

8. The representative of China said that, due to its systemic interests, his country once again wished to express its concerns about this protracted implementation process in the dispute under consideration. China thanked the Unites States for its status report and the statement. However, as other delegations had stated, five years had passed, but the issue of implementation in this dispute was still being discussed in the DSB. It was very regrettable that there was no development as to when this matter would be resolved. The DSU more than once reiterated the importance of prompt and full implementation of the DSB's rulings and recommendations, which was essential to ensuring the effective resolution of disputes and the authority of the DSB. Although China was conscious of possible difficulties involved in the process of implementation, which was common for everyone, the undue delay of full implementation of the DSB's rulings inevitably caused systemic concerns about the integrity and efficiency of the dispute settlement system. Therefore, China again urged the United States to double its effort to fully implement the decision of the DSB regarding this dispute.

9. The representative of the Bolivarian Republic of Venezuela said that his country thanked Cuba for its statement, which it fully endorsed. His delegation noted the status report submitted by the United States. Members, once again, had to discuss the case of Section 211 Omnibus Appropriations Act of 1998. Judging from what the United States had indicated in its latest status

report, the short-term solution had not yet been found. His country still hoped that the United States would keep its promise and that it would work actively towards compliance with the DSB's recommendations and rulings in all pending disputes. Unfortunately, as his country had already stated in the past, the continued indifference of the United States towards its WTO obligations was affecting the balance of rights and obligations previously negotiated by Members, undermining the credibility of the DSB and of the multilateral trading system. This repeated non-compliance merely highlighted the challenge involved in improving the provisions of the DSU in order to boost its effectiveness. It was his country's understanding that a number of proposals to this effect were on the negotiating table in the context of the current DSU negotiations. His country hoped that Members would not have to wait too long to put an end to this continuing failure to comply with the TRIPS Agreement and Article 21.1 of the DSU. As a Member with a systemic interest in the case at issue, his country, therefore, appealed once again to the United States to comply once and for all with the provisions of the DSB and to put an end to this dispute.

10. The representative of Nicaragua said that her country thanked the United States for its latest status report in connection with this agenda item. However, Nicaragua continued to maintain a systemic interest in the failure of the United States to comply with what had been established by the DSB more than five years ago. As previous speakers had repeatedly pointed out, this non-compliance cast doubt on the legitimacy and effectiveness of the dispute settlement process, and demonstrated that there was a lack of coherence and rigour in the protection and application of intellectual property rights. Nicaragua hoped that the US Congress would rapidly adopt the legislative measures needed to resolve this situation as quickly as possible.

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

12. The representative of the United States said that the EC's comments about the US commitment to intellectual property rights and to compliance with the DSB's recommendations and rulings were as unwarranted and unfounded now as they had been at previous DSB meetings. For further details the United States referred the EC, its member States and other delegations to the statement made by the United States on 26 October 2006. Finally, in response to some suggestions made at the present meeting that the US compliance record was poor, it noted that the facts simply did not support that assertion. The record showed that the United States had fully complied in the vast majority of its disputes. As for the remaining few, the United States was actively working towards compliance. Indeed, one could wonder what the compliance record of certain other Members would look like if they accounted for such an important proportion of world imports as the United States did.

13. The representative of Cuba said that her delegation wished to thank the United States for its explanation. However, it was difficult to believe that the United States had a good record of compliance when one looked at the DSB agenda. He noted that the agenda of the present DSB meeting contained four disputes involving the United States where compliance with the DSB's rulings and recommendations was still pending and many of those cases were long-standing.

14. 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.56)

15. The Chairman drew attention to document WT/DS184/15/Add.56, 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.

16. The representative of the United States said that his country had provided a status report in this dispute on 12 July 2007, in accordance with Article 21.6 of the DSU. As of 23 November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. Details were provided in document WT/DS184/15/Add.3. The US administration would work with the US Congress with respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities by 23 November 2002.

17. The representative of Japan said that his country thanked the United States for its statement and the latest status report in this dispute. Japan also acknowledged that in November 2002 the United States had taken certain measures to implement a part of the DSB's recommendations, as reported by the United States. However, it was regrettable that more than three and half years since then, and almost six years after the adoption by the DSB of the recommendations, the issue of implementation in this dispute still remained on the DSB agenda. As it had repeatedly been stated before the DSB, Japan believed that a full and prompt implementation of the DSB's recommendations and rulings was essential for maintaining the credibility of the WTO dispute settlement system. In this regard, Japan noted the statement made by the United States along with its latest status report in which the United States indicated 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 wished to renew its strong hope that the US administration would accelerate its efforts to work with the US Congress in order to come to full compliance without further delay.

18. 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.31)

19. The Chairman drew attention to document WT/DS160/24/Add.31, 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.

20. The representative of the United States said that his country had provided a status report in this dispute on 12 July 2007, in accordance with Article 21.6 of the DSU. The US administration would work closely with the US Congress and, continued 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 made at the 20 June 2007 meeting that it 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.

21. The representative of the European Communities said that the EC's position on this dispute was well known and did not require repetition. This dispute had gone on for too long without concrete action to ensure compliance, and the EC wished to see the US action soon. 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.

22. The representative of Cuba said that her country wished to express its systemic concerns regarding this dispute as well as the one which had been discussed under the previous agenda item. Cuba shared the EC's view on this matter. The United States had several disputes where implementation had been pending for a long period of time. As Cuba had previously stated, the United States was one of the major users of the dispute settlement mechanism. Thus, Cuba hoped that the United States would comply shortly with the DSB's recommendations.

23. 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.5

24. The Chairman drew attention to document WT/DS294/20/Add.5, 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.

25. The representative of the United States said that his country had provided a status report in this dispute on 12 July 2007, in accordance with Article 21.6 of the DSU. As stated previously, the US Department of Commerce continued to work towards completion of a determination in one investigation in which the European respondent had alleged a clerical error which it had requested to be corrected, having completed implementation with respect to the other matters covered by this dispute.

26. The representative of the European Communities said that on 9 July 2007, the EC had requested consultations with the United States on the measures allegedly taken to comply with the DSB's rulings and recommendations in this dispute. Details of the EC's claims were contained in the request that had been circulated on 12 July 2007 and had already been explained in previous DSB meetings. In short, the EC considered that the US actions had failed to put the United States into full compliance with its WTO obligations and had in addition brought new issues of WTO-incompatibility. Considering that none of the shortcomings of the US actions had been corrected and that there was no prospect of them being corrected in the near future, the EC had no choice but to preserve its right and had made the first move to challenge the implementing measures taken by the United States.

27. 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

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

29. 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.

30. The representative of the European Communities said that the United States was currently preparing for the seventh distribution of anti-dumping and countervailing duties under the Continued Dumping and Subsidy Offset Act. Provisional amounts showed that on 30 April 2007, already more than US$279 million had been collected and could be distributed as of 1 October 2007. This exceeded, by more than US$100 million, the provisional amount that was available on 30 April 2006. This comparison of figures gave a serious indication that the distribution to come would likely be substantially higher than the distribution in 2006. And the EC wished to recall that this 2006 distribution had already registered a substantial increase in comparison to the previous distributions. The EC was still waiting for a convincing explanation as to how this reconciled with the US assertion month after month that it had taken all actions necessary to bring itself in compliance with its WTO obligations. In fact, as long as the distributions under the CDSOA continued, the United States would be in breach of Articles 18.1 of the Anti-Dumping Agreement and 32.1 of the SCM Agreement. Therefore, the EC wished to ask again the United States if and what steps it intended to take to stop the transfer of anti-dumping and countervailing duties to its industry. The EC also renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit implementation reports in this dispute.

31. The representative of Japan said that on 29 May 2007, the United States had initiated yet another round of distribution process under the Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA"), by issuing a "notice of intent to distribute offset for Fiscal Year 2007".[1] In fact, the US Customs and Border Protection ("USCBP") stated explicitly that this latest notice had been made "[p]ursuant to the Continued Dumping and Subsidy Offset Act of 2000".[2] The USCBP had also published Fiscal Year 2007 preliminary CDSOA amounts available as of 30 April of 2007. Based on the data published by the USCBP, funds preliminary available to US domestic industries for FY 2007 would amount to some US$270 million. Japan's past experience with the CDSOA indicated that the final amounts that would be eventually distributed were likely to be substantially higher than these preliminary figures. The notice and announcement demonstrated that the CDSOA had been repealed only in form but was still in force and fully operational. Thus, contrary to the repeated US assertion that the United States had taken all necessary steps for implementation in this case, these latest US actions rendered further support to the view that the United States still failed to fully implement the DSB's recommendations and rulings in this case. Japan, once again, urged the United States to immediately terminate the illegal distribution and repeal the CDSOA not just in form but also in substance. Until then, Japan considered that the US compliance was incomplete and the issue of implementation in this dispute must be under surveillance by the DSB, pursuant to Article 21.6 of the DSU. In this connection, Japan reiterated that the United States was under obligation to provide the DSB with a status report pursuant to Article 21.6 of the DSU. Finally, Japan reserved all its rights under the DSU until the United States came into full compliance with the recommendations.

32. The representative of Brazil said that, once again, his country wished to thank Canada, the EC and Japan for raising this issue before the DSB. Brazil remained of the view that the "issue" was not resolved in this dispute within the meaning of Article 21.6 of the DSU. Significant and welcome as the repeal of the Byrd Amendment might have been, the conditions under which such repeal operated did not support the assertion that the United States had implemented the relevant DSB's recommendations. Brazil reiterated that there would be no full compliance on the part of the United States until and unless all disbursements under the Byrd Amendment ceased. As a consequence, the co-complainants could not be deprived of any right conferred by the DSU with respect to this

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

situation of non-compliance by the mere passing into law of the "Deficit Reduction Omnibus Reconciliation Act".

33. The representative of India said that her country thanked Canada, the EC and Japan for raising this issue at the present DSB meeting once again. India shared their concerns. As mentioned previously, India remained concerned about the US continued illegal disbursement of anti-dumping and countervailing duties to its industry. India, therefore, urged the United States to inform the DSB of the steps it proposed to take, to ensure full compliance and to submit implementation reports in this dispute.

34. The representative of Thailand said that first his country wished to join previous speakers in thanking Canada, the EC, and Japan for bringing this matter before the DSB once more. As noted in previous DSB meetings, Thailand remained disappointed at the US continued illegal disbursement of funds under the CDSOA. Thailand also remained disappointed at the continued absence of status reports from the United States on its outstanding implementation in this dispute. Therefore, Thailand again urged the United States to cease its WTO-inconsistent disbursements, to repeal the Byrd Amendment with immediate practical effect, and to resume providing status reports until such actions were taken and this matter had been fully resolved.

35. The representative of China said that his country, once again, thanked and supported Canada, the EC and Japan for raising this matter before the DSB. 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 of the previous speakers that the implementation issue had not been resolved in this dispute within the framework of Article 21 of the DSU. Therefore, China wished to join previous speakers in urging the United States to fully comply with the DSB's rulings.

36. 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 the United States had explained, 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. Finally, the United States continued to be surprised by the assertions that the United States would not have implemented the DSB's rulings and recommendations until the last CDSOA distribution was made. Of course, such questions were for panels to decide as Members appeared to recognize in disputes other than this one.

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

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

37. The Chairman recalled that the DSB considered this matter at its meeting on 20 June 2007 and had agreed to revert to it. He then drew attention to the communication from Argentina contained in document WT/DS355/2, and invited the representative of Argentina to speak.

38. The representative of Argentina said that his country regretted that it had to draw the DSB's attention, for the second time, to the dispute arising from the anti-dumping measures imposed by Brazil on imports of polyethylene terephthalate (PET) resins from Argentina. As his country had stated at the 20 June DSB meeting, the issue with regard to which Argentina was requesting the

establishment of a panel was a long-standing one, and was a subject of serious concern to Argentina. At the previous DSB meeting, his delegation had explained Argentina's concern regarding the anti-dumping duties imposed by Brazil in August 2005, and had referred to the main inconsistencies of those measures with the Anti-Dumping Agreement and the GATT 1994. Argentina had also referred to certain aspects of Brazil's legislation governing the competencies of the Brazilian authority in charge of imposing anti-dumping duties. Thus, at the present meeting it was not necessary to reiterate the details of Argentina's request for the establishment of a panel, which had been circulated as document WT/DS355/2. His delegation, however, stressed that although Argentina and Brazil had tried to reach a bilateral solution to the matter at issue, this had not been possible. As a result, Argentina had no alternative, but to request, once again, the establishment of a panel under Article XXIII of the GATT 1994, Articles 4.7 and 6 of the DSU, and Article 17.4 of the Anti-Dumping Agreement so that this matter could at long last be resolved.

39. The representative of Brazil said that his country regretted that Argentina had decided to present a second request for the establishment of a panel in this dispute. Brazil had been working with Argentina in an effort to resolve this matter, and considered that good progress had been made in consultations. In that regard, Brazil continued to believe that the matter could be resolved without further recourse to the dispute settlement procedures. Nevertheless, Brazil was confident that the panel to be established at the present meeting would find that the anti-dumping measures at issue fully complied with Brazil's WTO obligations.

40. 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.

41. The representatives of the European Communities, Chinese Taipei, Japan and the United States reserved their third-party rights to participate in the Panel's proceedings.

4. China – Certain measures granting refunds, reductions or exemptions from taxes and other payments

(a) Request for the establishment of a panel by the United States (WT/DS358/13)

(b) Request for the establishment of a panel by Mexico (WT/DS359/13)

42. The Chairman proposed that the above-mentioned sub-items be considered together since they pertained to the same matter. He then drew attention to the communication from the United States contained in document WT/DS358/13 and invited the representative of the United States to speak.

43. The representative of the United States said that his country was deeply concerned that China was providing numerous subsidies that appeared to be prohibited under WTO rules. As described in the US panel request (WT/DS358/13), China offered tax refunds, reductions, and exemptions that discriminated against imported products (that is, they appeared to be contingent on a firm's use of domestic over imported products) or that subsidized China's exports (that is, they appeared to be contingent on a firm's export performance). Accordingly, these measures appeared to be inconsistent with several provisions of the WTO Agreement, including Article 3 of the SCM Agreement, Article III of the GATT 1994, Article 2 of the TRIMS Agreement, and several provisions of China's Protocol of Accession.

44. The United States had consulted extensively with China on this matter, and the United States remained open to reaching a mutually acceptable solution. Regrettably, US discussions with China had not yet led to a resolution of this dispute. The United States, therefore, requested that the DSB

establish a panel at the present meeting. The United States further requested that a single panel be established to examine the US and Mexican complaints in accordance with Article 9.1 of the DSU.

45. The Chairman drew attention to the communication from Mexico contained in document WT/DS359/13 and invited the representative of Mexico to speak.

46. The representative of Mexico said that his delegation agreed with the statement made by the United States regarding the subsidies granted by China. Mexico regretted that it had had to request the establishment of a panel. Like the United States, Mexico wished that, in accordance with Article 9.1 of the DSU, the DSB establish a single panel to examine Mexico's and the US complaints. Finally, Mexico stressed that, in spite of the legal proceedings that it had initiated, it would continue to seek a negotiated solution to this dispute.

47. The Chairman invited the representative of China to speak.

48. The representative of China said that his country had held two rounds of consultations with the United States and Mexico in March and June 2007. China was always open to solve this issue through consultations in a mutually satisfactory manner. China had shown great sincerity tabling responses and clarification to plenty of questions and concerns of the two complainants and providing relevant documents in the consultations. However, China regretted that the complainants had chosen to request the establishment of a panel, instead of continuing the joint efforts to resolve this issue through consultation. As to the measures in relation to the current disputes, China believed that, with the recent issuance of Enterprises Income Tax Law of China, relevant measures identified by the complainants were fully consistent with WTO subsidy rules. Furthermore, the inclusion of several non-existent measures could only prove the misunderstanding and misallegation of the complainants. Therefore, China was puzzled by the complainants' decision to initiate the panel process. For the above-mentioned reasons, China was not in a position to accept the establishment of a panel at the present meeting.

49. The DSB took note of the statements and agreed to revert to these matters.

5. United States – Measures affecting the cross-border supply of gambling and betting services

(a) Recourse to Article 22.2 of the DSU by Antigua and Barbuda (WT/DS285/22)

50. The Chairman drew attention to the communication from Antigua and Barbuda contained in document WT/DS285/22. He noted that the representative of Antigua and Barbuda was not present in the meeting room, and invited the representative of the United States to speak.

51. The representative of the United States said that his country regretted that Antigua and Barbuda had requested authorization to suspend concessions or other obligations in connection with this dispute. The dispute involved a finding of GATS-inconsistency with respect to an area of services regulation – gambling and betting services – that the United States had never intended to be included in its GATS schedule. In fact, the original Panel in this dispute had appreciated that the United States had not intended to cover gambling services in its schedule of services commitments. Indeed, gambling was viewed in the United States as an issue of public morality and public order, involving the protection of children and other vulnerable groups, as opposed to an issue of international trade. At the same time, he emphasized that the United States accepted the results of the dispute settlement process, including the finding that the United States had not shown that certain of its gambling laws were consistent with its current WTO commitments. Accordingly, as the United States had explained at the 22 May DSB meeting, the United States had decided to invoke the procedures Members provided in the GATS to modify the schedule of US commitments. This

procedure would ensure that the US schedule of services commitments reflected the original US intent to exclude gambling from the scope of US commitments and would resolve this dispute permanently and fairly.

52. The United States noted that a number of Members, including Antigua and Barbuda, had made claims that they would be affected by the proposed US modification of its services commitments. The United States had entered into negotiations with those Members as called for under Article XXI of the GATS. When the Article XXI process is completed, the GATS commitments of the United States would be modified, the United States would be in compliance, and the balance of benefits would be restored. Given that the United States had initiated the GATS Article XXI procedure, the United States did not believe it was productive for Antigua and Barbuda to request authorization to suspend concessions. The purpose of suspending concessions was to encourage compliance with the DSB's recommendations and rulings. Since the United States had already initiated the formal process under the GATS for modifying its schedule of commitments, no purpose would be served by suspending concessions. And it would be WTO-inconsistent to apply a suspension of concessions once the United States had brought itself into conformity with the WTO Agreements.

53. Furthermore, the United States strongly disagreed with Antigua and Barbuda's specific proposal for the suspension of concessions. On 23 July 2007, the United States had referred this matter to arbitration by objecting both to the level of suspension of concessions and obligations proposed by Antigua and Barbuda and by noting that Antigua and Barbuda's proposal did not follow the principles and procedures set forth in paragraph 3 of Article 22 of the DSU. Although these matters would be considered in detail during the arbitration, the United States would emphasize that the level of Antigua's request was patently excessive. In particular, the level sought by Antigua and Barbuda was several times higher than Antigua and Barbuda's annual gross domestic product of all goods and services.

54. Finally, as noted previously, the US objection of 23 July 2007 to Antigua's request had referred the matter to arbitration pursuant to Article 22.6 of the DSU. Thus, the present meeting did not need to consider this agenda item. Nevertheless, the United States had no objection if the DSB wished to take note of that fact and confirmed that it may not consider Antigua's request for authorization, which was the item on the agenda of the present meeting, since the matter had been referred to arbitration.

55. The representative of the European Communities said that the GATS provided significant flexibility to Members on the level and the way in which they had undertaken commitments. It also recognized the right of WTO Members to regulate the supply of services within their territories in order to meet public policy objectives. The EC did in no way want to put that into question. However, Members also had to ensure that they complied with the obligations that they had undertaken. The EC regretted that the United States had refused to bring its laws at stake in this dispute into conformity with its commitment. The EC had hoped for a non-discriminatory solution, in accordance with the US obligations. The EC noted that the US unwillingness to bring the relevant legislation into line with its obligations had resulted in a procedure under Article XXI GATS for the withdrawal of the US gambling and betting services commitments. The EC, as well as several other Members, had declared itself affected and expected to be able to agree on compensation with the United States in this context. The Article XXI GATS procedure did not affect the rights of Antigua and Barbuda under the DSU. The EC hoped for an early resolution of this matter in the event that it was referred to arbitration, pursuant to Article 22.6 DSU.

56. The representative of Hong Kong, China said that her delegation appreciated the efforts made in the current dispute by the parties concerned. While Hong Kong, China recognized Members' right to invoke Article XXI of the GATS for justifiable modifications of their existing commitments, this

right, however, should not be made as a tool for circumventing the WTO dispute settlement mechanism. Hong Kong, China considered that Members should give full respect to the DSU provisions and bring the DSB's rulings and recommendations into full compliance in order to uphold the primacy of the WTO dispute settlement mechanism. Hong Kong, China urged all to fully respect the WTO rules and agreements including the DSU and the GATS so as to safeguard the systemic robustness of our multilateral trading system.

57. The representative of the United States said that in response to the previous intervention, his country could not agree that invoking Article XXI of the GATS set a bad precedent. The United States must emphasize that in this unique case no other course of action would make sense. There could be no question of responding to a finding of an unintentional commitment on gambling in a way which would undermine the important public policy of preserving public morals and public order. The United States did not believe any other responsible WTO Member would act any differently towards its own citizens.

58. The DSB took note of the statements, and it was agreed that the matter raised by the United States in WT/DS285/23 is referred to arbitration, as required by Article 22.6 of the DSU.

6. Mexico – Anti-dumping duties on steel pipes and tubes from Guatemala

(a) Report of the Panel (WT/DS331/R)

59. The Chairman recalled that at its meeting on 17 March 2006, the DSB had established a panel to examine the complaint by Guatemala pertaining to this matter. He said that the Report of the Panel, contained in document WT/DS331/R had been circulated on 8 June 2007 as an unrestricted document. The Panel Report was now before the DSB for adoption at the request of Guatemala. This adoption procedure was without prejudice to the right of Members to express their views on the Panel Report.

60. The representative of Guatemala said that his country wished to express its satisfaction at the Panel Report in the dispute: "Mexico – Anti-Dumping Duties on Steel Pipes and Tubes from Guatemala". The Report was a confirmation of the effectiveness of the WTO dispute settlement mechanism, and of its importance as one of the pillars of the rules-based multilateral trading system. At the same time, Guatemala wished to commend the Panel for its work, in particular for the quality and detail of its various analyses, most of which his country endorsed. In Guatemala's view, the Panel had given due consideration to the concerns and different arguments of the parties, as clearly reflected in the reasoning that had led to different conclusions and recommendations in its Report. Furthermore, Guatemala was also pleased and grateful that the Panel had used the authority granted to it under Article 19.1 of the DSU to "suggest ways in which the Member concerned could implement the recommendations". Guatemala fully supported the Panel's suggestion and sincerely hoped that Mexico would proceed along those lines.

61. At the same time, Guatemala noted that this dispute was the first dispute to be handled entirely in Spanish since the GATT had been signed and the WTO had been created. Guatemala was pleased that the dispute settlement system had been able to respond positively to the requests of Members whose official language was Spanish. The parties to this dispute had been able to rely on the panelists of the highest level, chaired by Ambassador Julio Lacarte-Muro, who had been in a position to allow the parties to present their arguments and views and to submit their evidence in Spanish. Guatemala also commended the work of the Secretariat that had assisted this Panel and had ensured throughout that the proceedings could go ahead smoothly regardless of the working language chosen by the parties. Guatemala thought that this dispute represented an important precedent in this respect. Finally, since the 20 days stipulated in Article 16.1 of the DSU had already elapsed, and since it was still within 60 days of the circulation of the Panel Report, Guatemala respectfully

requested the DSB, in accordance with Article 16.4 of the DSU, to adopt the Panel Report contained in WT/DS331/R.

62. The representative of Mexico said that first he wished to stress the importance for Mexico of the proceedings in the case under consideration since it had been conducted entirely in Spanish, and he believed that this way of proceeding marked the beginning of a trend in disputes involving Spanish-speaking WTO Members. Mexico thanked Guatemala for supporting its request that the proceedings be conducted entirely in Spanish, as well as the Secretariat for its efforts to meet this commitment and the panelists for accepting to work entirely in Spanish. At the same time, Mexico wished to stress the need for the WTO Secretariat, in anticipation of possible future cases in Spanish, to ensure that it could provide the same capacity for working in Spanish as it could offer for disputes conducted in English.

63. At the present meeting, Mexico also wished to express some views on the Panel Report. With regard to the findings in paragraphs 7.15 to 7.61 and the conclusion in paragraph 8.1(a) of the Panel Report, according to which "[a]s there was no proper determination that there was sufficient evidence of dumping or injury to justify proceeding with the case under Article 5.3, the application should have been rejected and the investigation should not have been initiated by the terms of Article 5.8", Mexico wished to observe the following views. The question of Panel rulings imposing on Members' obligations that did not exist under the agreements negotiated in the framework of the WTO, or that established a standard higher than the one that had been negotiated, was a particularly delicate one. In this connection, Mexico noted that Articles 5.1 and 5.2 of the Anti-Dumping Agreement, in referring to the elements needed to initiate an investigation, referred clearly to alleged dumping and alleged injury (and not dumping and injury). In fact, if it were necessary for the domestic industry to submit evidence of dumping and injury – as opposed to alleged dumping and alleged injury – initiation would be practically impossible, and to a certain extent, the opening of an investigation would no longer make any sense, since an evaluation of the adequacy of the evidence submitted would suffice to immediately issue a final resolution. Thus, the standard set by the Panel in its Report represented a serious impediment to the smooth functioning of any anti-dumping system.

64. Likewise, as regards the findings in paragraphs 7.265 to 7.288 and the conclusion in paragraph 8.1(c) of the Report, Mexico failed to understand the Panel's reasoning – let alone the justification under the Anti-Dumping Agreement – in considering the information available to assess the evolution of import volumes from sources other than Guatemala. Mexico simply failed to understand the basis for its determinations. Finally, although Mexico did not agree with all of the Panel's assessments in its Report, it would do the necessary to comply with the Panel's recommendations within a reasonable period of time.

65. The representative of the European Communities said that the EC had participated as a third party in this case because of the important systemic issues that the Panel had been asked to address. The Panel Report, once again, underlined the importance of following the disciplines of the Anti-Dumping Agreement from the very beginning to the end of the investigation, and provided clear examples of what an objective and unbiased investigating authority should and should not do. Given the fundamental nature of the violations committed by Mexico identified by the Panel, the EC supported the Panel's decision to suggest the revocation of the measures. Indeed, only revocation could remedy breaches of such an importance and wide extent.

66. The DSB took note of the statements and adopted the Panel Report contained in WT/DS331/R.

7. Proposed nomination for the indicative list of governmental and non-governmental panelists (WT/DSB/W/354)

67. The Chairman drew attention to document WT/DSB/W/354, which contained an additional name proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the name contained in document WT/DSB/W/354.

68. The DSB so agreed.