WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/238
17 October 2007

(07-4474)

Dispute Settlement Body
31 August 2007

MINUTES OF MEETING

Held in the Centre William Rappard
on 31 August 2007

Chairman: Mr. Bruce Gosper (Australia)

Prior to the adoption of the Agenda, the item concerning the Panel Report on: "Japan – Countervailing Duties on Dynamic Random Access Memories from Korea" was removed from the proposed Agenda following Japan's decision to appeal the Report.

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.57)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.57)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.32)

(d) United States – Laws, regulations and methodology for calculating dumping margins ("Zeroing"): Status report by the United States (WT/DS294/20/Add.6)

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.57)

2. The Chairman drew attention to document WT/DS176/11/Add.57, 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 20 August 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 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. They added to other bills introduced previously that would also repeal Section 211 and had already been supported by 61 co-sponsors. The EC hoped that the introduction of these bills had demonstrated a renewed and genuine interest of the United States to finally bring 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 as simply ignoring its obligations under the Agreement. In the interest of all, the EC urged again the United States to comply with its obligations under the TRIPS Agreement.

5. The representative of Cuba said that the United States provided the most flagrant example of non-compliance with the DSB's recommendations and rulings, not only in relation to Section 211, but also in relation to other disputes under this agenda item. For more than five years, the United States had confined itself to the formality of submitting reports that did not differ in content and made no contribution to resolving the dispute. The US attitude was one of disrespect for the rights of other Members and established a negative precedent for the functioning of the dispute settlement mechanism. The United States was not exempt from the obligation to comply with the DSB's recommendations and rulings. Members were, therefore, faced with a unilateral decision which defied the authority of the DSU and called into question its legal force. Given such an attitude, one wondered how implementation of the results of the current round of negotiations was to be guaranteed. The obligation to comply with the DSB's recommendation or ruling had the same character and legal force as compliance with a market access commitment or a commitment under certain disciplines in any of the current areas of negotiation. Section 211 was not only inconsistent with the principles and rules governing the WTO, but it also disregarded other international commitments undertaken by the United States in the area of intellectual property and international law.

6. Section 211, which had been in force since 1999, was clearly intended to violate the intellectual property rights of Cuban right-holders. This was shown by the refusal of the US Patent and Trademark Office to renew registration of the recognized Havana Club trademark for Cuban rum in 2006. Before this provision had been approved, Cuba and the United States had practised mutual recognition of the rights of natural and legal persons in the area of trademark law. It should be noted that Cuba continued to offer protection, in accordance with national and international legislation, for the marks of US applicants, which demonstrated its respect for established norms. According to Article 21 of the DSU, prompt compliance with recommendations or rulings was essential in order to ensure effective resolution of disputes to the benefit of all Members. The attitude of the United States demonstrated a total lack of political will to meet its obligations. More than enough time had elapsed for the United States to bring its legislation into conformity with WTO rules. Cuba, once again, reiterated its concern at the ongoing irregularities in this case, which compromised the dispute settlement mechanism. This mechanism was one of the cornerstones of international trade law and any violation affected the credibility of the system. Cuba urged the DSB to find an effective solution to enforce the letter of the DSU by calling on the United States to respect the principle of prompt compliance with the DSB's decisions in this dispute. Cuba demanded the total, immediate and unconditional repeal by the United States of the illegal and discriminatory Section 211.

7. The representative of the Bolivarian Republic of Venezuela said that his country thanked Cuba for its statement, which it fully endorsed, and noted the status report submitted by the United States. Members were, once again gathered to listen to a reiterated status report in the dispute in question, which had been submitted by the United States. As his country had already stated, the US report did not give the impression that there would be a quick resolution of this matter. As his delegation had explained in its previous statement, his country hoped that Members would not have to wait for DSU reforms in order to put a stop to this continued violation of the TRIPS Agreement and of the provision of Article 21.1 of the DSU. As a Member with a systemic interest in the dispute at issue, Venezuela drew attention to the implications for the DSB, for Members generally, and for the

multilateral trading system in particular, of the continued indifference of the United States towards its WTO obligations. Accordingly, his country, once again, urged the United States to fulfil its promise to comply with the DSB's recommendations, and to put an end to this and to all the disputes that it had pending in this area.

8. The representative of India said that her country, while thanking the United States for the status report and the statement made at the present meeting, wished to renew its systemic concerns about the situation on non-compliance in this dispute. Though the DSB had adopted the Panel and the Appellate Body Reports more than five years ago, no implementing action had been taken nor could WTO Members discern any clear sign from the US statements that such an action could be envisaged in the near future. As mentioned on previous occasions, a protracted non-compliance situation by WTO Members clearly undermined the credibility of the system and the carefully negotiated balance of rights and obligations of the entire Membership.

9. The representative of China said that, due to its systemic interest, his country once again wished to express its concerns with regard to this protracted implementation process. China thanked the United States for its status report and the statement made at the present meeting. However, as other delegations had stated, five years had passed and the implementation in this case was still under discussion in the DSB. It was very regrettable that there was no indication when this matter would hopefully 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 ensure 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 pertaining to this case.

10. The representative of Thailand said that her country wished to thank the United States for its status report and the statement made at the present meeting. Thailand wished to join previous speakers in expressing its concern over systemic implications of this dispute. Non-implementation of the DSB's rulings and recommendations undermined the multilateral trading system. Thailand called on the United States to take the necessary and urgent steps to comply with its obligation under the TRIPS Agreement.

11. The representative of Bolivia said that Members, once again, had heard a report by the United States and were, once again, concerned that no progress had been achieved in compliance with the DSB's recommendations and rulings to remove restrictions under Section 211 of the Omnibus Appropriations Act. Bolivia was concerned that this lack of compliance with WTO rules – which had been designed to provide Members with certainty – undermined the credibility of the WTO. As her delegation had stated on previous occasions, this non-compliance, which had been going on for more than five years, led her government and the civil society to question the functioning of the multilateral trading system and the system of protecting intellectual property rights. Once again, Bolivia wished to join other delegations in urging the United States to comply with the DSB's recommendations and rulings in this dispute.

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 recommendations and rulings of the DSB were as unwarranted and unfounded at the present meeting as they had been at previous DSB meetings. For further details, he wished to refer the EC, its member States, and other delegations to the statement made by the United States on 26 October 2006. In response to the suggestion that the US compliance record was poor, the facts simply did not support that assertion. Indeed, the record showed that the United States had fully complied in the vast majority of its disputes. As for the remaining few, the United States was actively working towards compliance. The

very agenda of the present meeting should have provided a great deal of comfort to those Members expressing systemic concerns regarding the credibility of the dispute settlement system. Indeed, the United States would, in the course of the meeting, be announcing that it had implemented the DSB's recommendations and rulings in no less than four disputes.

13. 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.57)

14. The Chairman drew attention to document WT/DS184/15/Add.57, 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.

15. The representative of the United States said that his country had provided a status report in this dispute on 20 August 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 DSB's recommendations and rulings that had not already been addressed by the US authorities by 23 November 2002.

16. The representative of Japan said that his country thanked the United States for the latest status report and the statement. Japan also acknowledged that in November 2002 the United States had taken certain measures to implement the part of the DSB's recommendations, as reported by the United States. However, the fact remained that more than six years had passed since the DSB had adopted its recommendations and rulings regarding this dispute, but the United States continued to report on the status of the implementation of the DSB's recommendations and ruling. As Japan had repeatedly stated before the DSB, a full and prompt implementation of the DSB's recommendations and rulings was essential for maintaining the credibility of the WTO dispute settlement system. Japan took note of the US statement along with the latest status report in which the United States had stated that the US administration was working with the new US Congress to pass specific legislative amendments that would implement the DSB's recommendations and rulings. Japan would like 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.

17. 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.32)

18. The Chairman drew attention to document WT/DS160/24/Add.32, 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.

19. The representative of the United States said that his country had provided a status report in this dispute on 20 August 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 24 July 2007 meeting that it remained 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.

20. The representative of the European Communities said that the EC's position regarding this dispute was well known and did not require repetition. This dispute had gone on for too long without any concrete action to ensure compliance, and the EC would like to see some 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.

21. 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.6)

22. The Chairman drew attention to document WT/DS294/20/Add.6, 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.

23. The representative of the United States said that his country was pleased to announce, at the present meeting, that it had brought its measures into compliance in this dispute. The United States provided its last status report in this dispute on 24 July 2007, in accordance with Article 21.6 of the DSU. As stated in that report and previously, the Department of Commerce had been working towards completion of one last determination in an investigation. The Department of Commerce had completed that determination, and the margins had been recalculated by providing an offset for non-dumped comparisons.

24. 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. The consultations had been held on 30 July. Without prejudice to its ongoing implementation action, the EC would like to raise important points at the present meeting. First, the EC had challenged 16 administrative (or "assessment") reviews in the DS294 case. In each review, the United States' use of zeroing had been found to be in breach of its WTO obligations. The last paragraph of its status report stated: "With respect to the assessment reviews at issue in this dispute, in each case the results were superseded by subsequent reviews. Because of this, no further action is necessary for the United States to bring the challenged measures into compliance with the recommendations and rulings of the DSB." Without prejudice as to whether the alleged superseding of the challenged reviews was a relevant matter, the US statement was not correct. In at least one case, Ball bearings from the UK, an exporter, NSK UK, was still subject to the rate of dumping duty (16.87 per cent) from the review which had been challenged by the EC. Without zeroing, this duty should be 0 per cent. Yet the United States had refused to comply with its obligations and to change the duty rate. This was not merely an academic issue. By 27 September, the company would have to decide whether to live with 16.87 per cent or to spend lots of money on a new administrative review. But it should not have to request such a review. Its duty should be 0 per cent. The United States still had time to change its approach to this case, and the EC urged it to do so.

25. Second, the EC had noted that, on 21 August 2007, the United States had finally published the results of its Section 129 determination in the investigation concerning "Certain Stainless Steel Sheet and Strip in Coils from Italy". The United States had found that the exporter concerned, AST, was dumping at 2.11 per cent. The EC had assumed that, after removing zeroing, the duty would be *de minimis* and the measure revoked. The EC now realised that the United States, while removing zeroing, had kept the duty above 2 per cent by failing to correct a blatant arithmetic error committed during its original investigation. Without being too technical, it involved getting the numerator and

denominator of a fraction the wrong way round. The EC urged the United States to do the sensible thing and revisit this calculation immediately. As the EC had stated more than once in the DSB, it was unhappy about many other aspects of the alleged implementation by the United States in this case.

26. The representative of the United States said that his delegation wished to provide some comments with respect to the EC's comments regarding an alleged clerical error. The US work to comply with the DSB's recommendations and rulings concerned not providing offsets for non-dumped comparisons, or "zeroing". The alleged clerical error did not concern zeroing – it pertained to a different aspect of the original investigation that had been completed over eight years ago and was not in any way connected to the recommendations and rulings of the DSB. Therefore, the Department of Commerce had concluded that the issue was not appropriate for consideration as part of a proceeding whose sole purpose under US law was to implement the recommendations and rulings of the DSB. When a Member undertook to comply with the DSB's recommendations and rulings, it did not mean that any interested party was able to re-argue every aspect of an initial proceeding. As his delegation had stated, the United States considered that it had brought its measures into compliance with the DSB's recommendations and rulings in this dispute.

27. The representative of the European Communities said that the United States was only keeping the duty above 2 per cent, and thereby avoiding the revocation of the measure, by turning a blind eye to an obvious calculation mistake, the existence of which it did not deny itself.

28. The DSB took note of the statements.

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

(a) Implementation of the recommendations of the DSB

29. The Chairman recalled that, in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 24 July, the DSB had adopted the Panel Report in the case on "Mexico – Anti-Dumping Duties on Steel Pipes and Tubes from Guatemala". The 30-day period in this case had expired on 23 August and on that date Mexico had informed the DSB in writing of its intentions in respect of implementation. The relevant communication was contained in document WT/DS331/6. He invited the representative of Mexico to make a statement.

30. The representative of Mexico said that, at the present meeting, his delegation wished to reiterate what Mexico had already indicated in its communication, which had been circulated in document WT/DS331/6. In that communication, Mexico had informed the DSB of its intentions to implement the recommendations in this dispute in conformity with its WTO obligations. Mexico was looking at possible ways of doing that within a reasonable period of time. To that end, Mexico had initiated consultations with Guatemala in order to reach an agreement pursuant to Article 21.3 (b) of the DSU. Mexico recognized Guatemala's position and believed that it would soon be able to inform the DSB of a satisfactory conclusion of this matter.

31. The representative of Guatemala said that his country was awaiting with interest Mexico's proposal for compliance with the recommendations of the Panel within a reasonable period of time and reiterated that Guatemala was ready to continue the negotiations in order to reach a speedy and satisfactory conclusion to both parties.

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

3. 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

33. 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.

34. The representative of Canada said that her 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.

35. 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 last year on 30 April. 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 wanted 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 United States' 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 Article 18.1 of the Anti-Dumping Agreement and Article 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.

36. The representative of Japan said that, as stated previously, his country recognized that the enactment of the Deficit Reduction Act of 2005 that included provisions to repeal the CDSOA was an important step forward in the right direction. However, contrary to what the United States had been claiming thus far, the implementation of the DSB's recommendations and ruling had not been completed, because those provisions also included the transitional clause that specifically mandated that duties collected on imports entered prior to 1 October 2007 must be distributed to the US domestic industries under the CDSOA "as if [the CDSOA] had not been repealed". In fact, the US Customs and Border Protection had published the fiscal year 2007 preliminary amounts available as of 30 April 2007 for disbursements in the amount of some US$279 million. On 29 May 2007, the US authority had issued the "Notice of intent to distribute offset for Fiscal Year 2007" pursuant to the CDSOA. This notice set forth the detailed instructions and guidance for US domestic producers to claim distributions for fiscal year 2007 in accordance with the regulations implementing the CDSOA. Although a duty collected on an entry filed after 1 October 2007 would not be subject to the distribution procedures, according to previous statements made by US Customs and Border Protection, "the distribution process will continue until all entries made before 1 October 2007, are liquidated and the duties are collected" and "[b]ecause of the statutory constraints in the assessment of

anti-dumping and countervailing duties, the distribution process will be continued for an undetermined period". These announcement and notices demonstrated that the CDSOA had been repealed only in form, but in effect it would be operational "for an undetermined period". In fact, the US authority's preparatory work for the next round of disbursement supported the view that the United States still failed to fully implement the DSB's recommendations and rulings in this dispute.

37. Under these circumstances, Japan decided to continue, as from 1 September 2007, its suspension of concessions and related obligations under the GATT 1994 on imports of certain products originating in the United States for another one year to induce full compliance by the United States. As explained in Japan's communication, dated 23 August 2007, the products subject to an additional duty of 15 per cent under this suspension were unchanged. Finally, Japan called for the United States to make further efforts to terminate the illegal distribution under the CDSOA and fully implement the DSB's recommendations and rulings. Until the CDSOA was repealed, not just in form but in substance, Japan considered that the issue of implementation must be under surveillance by the DSB and 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.

38. The representative of China said that his country thanked Canada, the EC and Japan for once again raising this matter at the DSB meeting. China shared the view expressed by previous speakers that, despite the efforts of the United States up to this moment, the implementation issue had not been resolved in this dispute within the framework of Article 21 of the DSU. Therefore, China wished to join them in urging the United States to comply fully with the DSB's rulings.

39. The representative of Brazil said that his country thanked Canada, the EC and Japan for bringing this matter to the attention of the DSB once more. In sharing their views that the United States had no basis to claim full compliance, Brazil still expected the United States to present a reasoned explanation as to why the mere passing into law of a prospective, delayed repeal of the WTO-illegal measure would bring the United States into conformity with its obligations under the multilateral rules. Meanwhile, WTO Members, and in particular the co-complainants, should not be deprived of any rights under the DSU.

40. The representative of Thailand said that her country wished to join previous speakers in thanking Canada, the EC, and Japan for continuing to bring this item before the DSB. As noted in previous 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 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.

41. 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. India also supported their request that the United States explain how full compliance had been achieved in this case. As mentioned previously, India remained concerned about the United States' 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.

42. 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. Those Members who had inscribed this matter 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.

43. With respect to various assertions concerning CDSOA disbursements, his country continued to be surprised by the assertion 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. Finally, the United States regretted that Japan had decided to continue to suspend concessions and was perplexed at this decision. Indeed, in the course of this dispute, Japan had made clear that its purpose in suspending concessions was to "induce compliance", a statement that had been repeated again at the present meeting. Now that the United States had taken all steps necessary to comply with the DSB's rulings and recommendations, his country failed to see how the continued suspension of concessions would further that purpose. In any event, the United States would be carefully reviewing the measures taken by Japan. As Members would recall, the DSB had only authorized the suspension of concessions or other obligations as provided in the Award of the Arbitrator.

44. The DSB took note of the statements.

4. United States – Anti-dumping measure on shrimp from Ecuador

(a) Statement by the United States

45. The Chairman said that this item was on the agenda of the present meeting at the request of the United States, and invited the representative of the United States to speak.

46. The representative of the United States said that his country was pleased to report that it had implemented the recommendations and rulings of the DSB in the dispute: "United States – Anti-Dumping Measure on Shrimp from Ecuador". The United States and Ecuador had reached an agreement in this proceeding, under which the United States had agreed not to contest Ecuador's claim that the calculation in this particular investigation was inconsistent with Article 2.4.2 of the Anti-dumping Agreement. The United States and Ecuador had further agreed to a reasonable period of time of six months from the adoption of the Panel Report. The reasonable period of time had expired on 20 August 2007. The US Department of Commerce had recalculated the margins for the respondents, providing offsets for non-dumped comparisons. The margins for the respondents were below *de minimis* levels. In addition, the Department had recalculated the all-others rate, which was also below *de minimis.* Therefore, the Department of Commerce had revoked the order. That revocation was effective 15 August 2007, prior to the expiry of the reasonable period of time in this dispute.

47. The representative of Ecuador said that his country wished to comment on the statement made by the United States in which it had informed the DSB of the actions taken in order to comply with the DSB's recommendations and rulings in the case under consideration. Ecuador thanked the US delegation in Geneva and the US authorities in Washington (DC) for their collaboration on this issue that had led to the revocation of the anti-dumping duty order against the importations of shrimp from Ecuador, within the period of time mutually agreed by the parties to the dispute. This case constituted an important precedent of collaboration between the parties and of prompt compliance with the DSB's recommendations and rulings.

48. The DSB took note of the statements.

5. United States – Sunset reviews of anti-dumping measures on oil country tubular goods from Argentina

(a) Statement by the United States

49. The Chairman said that this item was on the agenda of the present meeting at the request of the United States, and invited the representative of the United States to speak.

50. The representative of the United States said that his country was pleased to report that it had implemented the DSB's recommendations and rulings in the dispute: "United States – Sunset Reviews of Anti-dumping Measures on Oil Country Tubular Goods from Argentina". Even before the conclusion of the Panel and the Appellate Body proceedings in this dispute, a separate sunset review had been taking place. In that review, the US International Trade Commission had made a negative determination with respect to the likelihood of recurrence or continuation of injury in connection with the second sunset review of OCTG from Argentina and from several other countries. As a result, on 22 June 2007, the Department of Commerce had published a notice revoking the anti-dumping duty order. The effective date of the revocation was 25 July 2006.

51. The representative of Argentina said that his country appreciated the information provided by the United States, and thanked the United States for the update before the DSB. Argentina had received with satisfaction the news regarding the revocation of the order by the US Department of Commerce (USDOC) in June 2007. This was evident from the agreement signed by Argentina and the United States, in which both parties had agreed on the suspension of the proceedings initiated under Article 22.6 of the DSU. However, Argentina had taken due note that just a couple of weeks ago, the US domestic industry had decided to appeal before the Court of International Trade (CIT), the decision by the US International Trade Commission (USITC) that had led to the revocation of the order. Argentina had not arrived neither effortlessly nor by chance at the present situation. This had been – and still was – a very important case for Argentina, and hence, Argentina was closely following these new circumstances, with the expectation that the USITC decision – and the revocation of the order – would be sustained by the US Court.

52. The DSB took note of the statements.

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

(a) Statement by the United States

53. The Chairman said that this item was on the agenda of the present meeting at the request of the United States, and invited the representative of the United States to speak.

54. The representative of the United States said that, similar to the discussion the DSB had just had under item 5 of the agenda of the present meeting, his country was pleased to report that it had also implemented the DSB's recommendations and rulings in the dispute: "United States – Anti-dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico". He wished to reiterate some of that information for the benefit of all Members. Even before the conclusion of the panel and the Appellate Body proceedings in this dispute, a separate sunset review had been taking place. In that review, the US International Trade Commission had made a negative determination with respect to the likelihood of recurrence or continuation of injury in connection with the second sunset review of OCTG from Mexico and from several other countries. As a result, on 22 June 2007, the Department of Commerce had published a notice revoking the anti-dumping duty order. The effective date of the revocation was 25 July 2006.

55. The representative of Mexico said that his delegation had noted the statement made by the United States and welcomed the news announced by the United States regarding the revocation of the order which was prejudicial to Mexico. His country wished to express its satisfaction and hoped that this decision would remain firmly in place. His country understood that the US industry had not appealed against the ITC decision in this case and hoped that this put an end to the dispute between Mexico and the United States on oil tubular goods from Mexico.

56. The DSB took note of the statements.

7. 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)

57. The Chairman proposed that the two sub-items to which he had just referred be considered together. He recalled that the DSB had considered these matters at its meeting on 24 July 2007 and had agreed to revert to them. 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.

58. The representative of the United States said that, as discussed at the previous regularly scheduled DSB meeting, his country was concerned about a series of measures maintained by China that appeared to constitute subsidies prohibited under WTO rules. China offered tax refunds, reductions, and exemptions that appeared to be contingent on a firm's use of domestic over imported products, or on a firm's export performance. Although the United States continued to prefer to reach a mutually agreed solution to this dispute, unfortunately to-date it had not been able to do so. The United States, therefore, renewed its request that the DSB establish a panel to resolve this dispute. 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.

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

60. The representative of Mexico said that his country, once again, agreed with the comments made by the United States regarding the subsidies granted by China and, like the United States, Mexico regretted the need to have to, once again, request the establishment of a panel. Furthermore, Mexico reiterated the request made by the United States that a single panel be established, pursuant to Article 9.1 of the DSU, to examine both complaints. Finally, as Mexico had already stated at the previous DSB meeting, despite its request for the establishment of a panel, Mexico would seek the way to work together with China to find a negotiated solution to solve this dispute.

61. The representative of China said that his country had fully elaborated its position regarding this matter at the 24 July DSB meeting and would not repeat each point at the present meeting. Briefly, it was very disappointing and deeply regrettable that the United States and Mexico had pursued this matter further by requesting the establishment of the panel for a second time despite the progress that had been achieved through the consultations. China had shown good faith to find a positive solution to this dispute throughout such consultations and was still ready to do so in a reciprocal way with the complainants. China took note of the statements of the complaints, and noted the willingness of the parties to the disputes to continue with their consultations. In the panel proceedings, China would defend its position and interests and remained confident that relevant measures of China were consistent with its WTO obligations. China remained open to the decision

that the DSB establish a single panel to examine the two complaints, in accordance with Article 9.1 of the DSU.

62. The DSB took note of the statements and agreed to establish a single panel, pursuant to Article 9.1 of the DSU, with standard terms of reference, to examine the complaint by the United States contained in WT/DS358/13 and the complaint by Mexico contained in WT/DS359/13.

63. The representatives of Australia, Canada, Chile, Chinese Taipei, the European Communities, Japan and Turkey reserved their third-party rights to participate in the Panel's proceedings.

8. China – Measures affecting the protection and enforcement of intellectual property rights

(a) Request for the establishment of a panel by the United States (WT/DS362/7)

64. The Chairman drew attention to the communication from the United States contained in document WT/DS362/7, and invited the representative of the United States to speak.

65. The representative of the United States said that his country was concerned that levels of intellectual property piracy in China remained unacceptably high, and that the protection and enforcement of intellectual property rights in China remained insufficient. The United States and China had been discussing these matters bilaterally for quite some time. The United States recognized that China had made the protection of intellectual property rights a priority, and that it had taken active steps to improve IPR protection and enforcement. However, the United States was concerned that several aspects of the Chinese legal regime actually hindered IPR protection and enforcement and raised WTO concerns. Three of those concerns were before the DSB at the present meeting.

66. First, China's criminal law contained thresholds that must be met in order to start a criminal prosecution or obtain a criminal conviction for copyright piracy or trademark counterfeiting. Because of these thresholds, many acts of trademark counterfeiting and copyright piracy on a commercial scale appeared not to be subject to criminal procedures and penalties in China. For example, China had set one of its thresholds for prosecution of criminal copyright infringement at 500 infringing copies. The United States found it difficult to understand, however, why China had chosen to tie the hands of its prosecutors and prevent its authorities from prosecuting a copyright pirate who was caught with only 499 copies of an infringing product.

67. Second, China's customs rules described how the Chinese customs authorities were to handle IPR-infringing goods that they had confiscated at the border. If the infringing features could be removed, the authorities appeared to be required to release such goods into the regular channels of commerce. It was difficult to see, however, how such rules created an effective deterrent to infringement or to trade in counterfeit merchandise.

68. Third, China appeared to deny the protection of its copyright law to works that had not been authorized for publication or distribution in China. A right holder who did not yet have authorization to publish or distribute appeared to lack the ability to complain about copyright infringement while he was waiting. In other words, during that period, copyright holders were unable to use either civil or criminal remedies under China's intellectual property laws to protect their valuable new works from a flood of pirated copies that might find their way onto the Chinese market. The United States found it difficult to reconcile making legitimate right holders wait for legal protection under China's intellectual property laws with China's commitments under the WTO.

69. With respect to all three of these issues, China's measures appeared to be inconsistent with various provisions of the TRIPS Agreement. The US panel request described these matters in greater detail. And, as his delegation had mentioned a few moments ago, the United States had discussed these issues extensively with China, including in the consultations that had been held in June. While those consultations had provided some helpful clarifications, regrettably, they had not resolved this dispute. The United States, therefore, requested that the DSB establish a panel at the present meeting to examine the matters set forth in the US panel request.

70. The representative of China said that it was regrettable for his country to see that the United States had chosen to request the establishment of a panel in spite of China's efforts to settle this dispute through consultations. China had shown great sincerity in the past rounds of consultation and was willing to settle this dispute through further consultations in a mutually satisfactory manner. China always took its commitments very seriously, including those on IPR. During the past 20 years, China had set up a comprehensive legal system of IPR protection while joining almost each different IPR-related international convention or treaty. And China consistently spared no efforts to enforce its IPR legislation with great success acknowledged by the international community. It was particularly worth mentioning that, in order to build up an innovative country, recently China incorporated IPR protection as an integral part into its National Strategy of Development. Having said that, China strongly believed that those measures pertinent to this dispute were consistent with WTO rules. And China was opposed to the attempt of any Member to impose on developing Members through dispute settlement any extra obligation that would go beyond what had been provided by the TRIPS Agreement. Therefore, China was not in a position to agree to the establishment of a panel, as requested by the United States.

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

9. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/357)

72. The Chairman drew attention to document WT/DSB/W/357, which contained additional names proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. Unless there was any objection, he wished to propose that the DSB approve the names contained in document WT/DSB/W/357.

73. The DSB so agreed.

74. The Chairman said that, in connection with this agenda item, he wished to thank those delegations who had complied with his announcement of 24 April regarding the need to update the indicative list of governmental and non-governmental panelists, pursuant to the proposals for the administration of the indicative list of panelists, approved by the DSB on 31 May 1995. It was his understanding that the Secretariat would be soon issuing a new updated and consolidated list based on the information provided by delegations thus far.

75. The DSB took note of the statement.

10. Appointment of Appellate Body members

(a) Statement by the Chairman

76. The Chairman, speaking under "Other Business", said that as he had announced at the outset of the meeting, he wished to say a few words about the selection process for Appellate Body members to give delegations an update of the situation thus far in light of the 31 August deadline for nominations of candidates, which had been agreed by the DSB at its meeting on 20 June 2007. He

further stated that currently nominations of candidates had been received from the following countries: Pakistan (nomination circulated as job no. 5318); China (nomination circulated as job. no. 6047), the Philippines (nomination circulated as job no. 6080), Japan (nomination circulated as job no. 6093), Korea (nomination circulated as job no. 6116) and Benin (nomination circulated as job no. 6132.) He wished to take the opportunity to thank those delegations who had submitted their candidates thus far. Of course, the deadline was not over yet and it was his understanding that more nominations of candidates were still expected to come. In accordance with the agreed procedures, the Selection Committee would shortly begin its work. To this effect, the first meeting of the Selection Committee would take place on 3 September in order to discuss, *inter alia*, organizational matters, including a time-table for interviewing of candidates and for hearing views of delegations. Once all the details were finalized by the Selection Committee, he would duly inform delegations about the agreed time-table for the Committee's work and would ask the Secretariat to assist him in making the necessary arrangements in this regard. Finally, he recalled that the aim was to come up with a recommendation regarding the four upcoming positions in the Appellate Body by no later than 5 November so that the final decision could be made by the DSB at its regular meeting on 19 November.

77. The DSB took note of the statement.