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Dispute Settlement Body
24 June 2003

MINUTES OF MEETING

Held in the Centre William Rappard
on 24 June 2003

Chairman: Mr. Shotaro Oshima (Japan)

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/18/Add.16)

(b) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.16 – WT/DS162/17/Add.16)

(c) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.9)

(d) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.9)

(e) Egypt – Definitive anti-dumping measures on steel rebar from Turkey: Status report by Egypt (WT/DS211/7/Add.1)

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 five sub-items to which he had just referred be considered separately.

(a) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/18/Add.16)

2. The Chairman drew attention to document WT/DS160/18/Add.16 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.

3. The representative of the United States said that her delegation was very pleased to report that the United States and the EC had concluded a mutually satisfactory temporary arrangement with respect to this dispute. The arrangement covered a three-year period, beginning 21 December 2001. The United States would make a payment of US$3.3 million to the EC, to a fund to be established for the promotion of authors' rights and provision of general assistance to members of the EC performing rights societies. These funds had recently been appropriated by the US Congress. The parties had notified the arrangements to the DSB and expected the Secretariat to circulate the notification to Members shortly.[1] The United States was pleased that the parties had been able to work constructively and cooperatively to find a way forward on this matter.

4. The representative of the European Communities said that the EC was satisfied with the arrangement reached with the United States. Nonetheless, the EC expected that the United States would continue working towards compliance with the DSB's ruling.

5. The representative of Australia said that her country's views on this issue were well-known and had been expressed at previous DSB meetings. Australia continued to have significant concerns about the apparent discriminatory nature of the compensation arrangements agreed between the United States and the EC in this dispute. Australia wished to reiterate these concerns in the light of the US statement made at the present meeting with regard to this arrangement.

6. The representative of the United States said that, in response to the comments made by Australia, the arrangement in this dispute had been reached by the United States and the EC, which

[1] Subsequently circulated in document WT/DS160/23.

were the only parties to the dispute. Moreover, the substance of the arrangement was consistent with WTO rules. Indeed the DSU encouraged parties to resolve disagreements in lieu of imposing trade restrictive measures.

7. The DSB took note of the statements.

(b) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.16 – WT/DS162/17/Add.16)

8. The Chairman drew attention to document WT/DS136/14/Add.16 – WT/DS162/17/Add.16 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US Anti-Dumping Act of 1916.

9. The representative of the United States said that her country had provided an additional status report in this dispute on 12 June 2003, in accordance with Article 21.6 of the DSU. As noted in the report, legislation repealing the 1916 Anti-Dumping Act and terminating all pending cases had been introduced in the US Senate on 19 May 2003. Other bills repealing the 1916 Anti-Dumping Act had been introduced in the House of Representatives on 4 March 2003, and in the Senate on 23 May 2003. The US administration would continue to work with the US Congress to achieve further progress in resolving this dispute with the EC and Japan.

10. The representative of the European Communities said that the EC welcomed the recent introduction of repealing bills in the Senate. The EC noted also with satisfaction that one of these bills would repeal the 1916 Anti-Dumping Act and terminate the pending litigation. The EC considered that this was the appropriate course of action. He recalled that the EC had accepted to extend the implementation deadline and to suspend the arbitration on its request for retaliation on the express understanding that the repealing Act would also terminate the pending litigation. As a result of the US failure to meet the implementation deadlines, three cases now involved EC companies, which bore substantial litigation costs and the threat of a treble damage condemnation. These positive signs should not hide the fact that the situation was identical one year ago: i.e. three repealing bills had been introduced in Congress and were waiting for further action. The EC strongly hoped that the implementation process would not stall at this stage as it did in the last Congress otherwise the EC would have no other option than to exercise its WTO rights.

11. The representative of Japan said that the United States was yet to implement the DSB's recommendations and rulings even after two years and nine months since the adoption of the Panel and the Appellate Body Reports in these proceedings. The United States had to fulfill its obligation as early as possible, by having the bills repealing the 1916 Act passed before the summer recess of the current session of the 108th Congress. This was imperative not only for solving this dispute, but also for preserving the credibility of the WTO dispute settlement system. Two of the three repealing bills referred to by the United States, namely, the one introduced to the House of Representatives on 4 March 2003 and the other introduced to the Senate on 23 May, would not have the effect of terminating the pending cases. Japan reiterated its position that the repealing bills with proper retroactive effect had to be passed in the House and the Senate. Termination of the pending cases through the retroactive effect was critical in view of the substantial damages, including significant legal costs, which the respondent Japanese companies had to suffer. Japan expected the United States to report to the DSB on the status of the three bills, and to describe in more detail how the United States planed to ensure the earliest passage of the repealing bills with the proper retroactive effect. Japan reminded the United States of Japan's right to suspend concessions or other obligations.

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

(c) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.9)

13. The Chairman drew attention to document WT/DS176/11/Add.9 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.

14. The representative of the United States said that her country had provided a status report in this dispute on 12 June 2003, in accordance with Article 21.6 of the DSU. The US administration was working closely with the US Congress to resolve this dispute.

15. The representative of the European Communities said that the time for implementation was running out. He noted that the reasonable period of time for compliance would expire in a few days. There was, however, a positive move in this case which the status report could not reflect. A week ago, a bill had been introduced in the US Congress. This bill would provide a whole scheme of measures that would ensure an effective protection of intellectual property rights both in Cuba and the United States. In connection with this objective, it would, *inter alia*, repeal Section 211. This bill reaffirmed the US attachment to ensure adequate protection of intellectual property rights, which should not be affected by a special interest legislation. The EC hoped that this initiative would provide the basis for resolving this dispute to the benefit of all.

16. The representative of Cuba said that, once again, her delegation had to condemn the lack of progress by the United States in carrying out the implementation of the DSB's recommendations and rulings with regard to Section 211 of the Omnibus Appropriations Act of 1998. It was now more than one year that Members had been waiting for the United States to meet and respect its obligations. This showed a lack of political will and interest in resolving this matter, which was to be condemned, especially in view of the fact that it was that same country which had set itself up as the greatest defender of intellectual property issues, calling on repeated occasions for the strict fulfilment of the rules of the TRIPS Agreement. As Cuba had already stated several times, the United States had to be strict with itself and to comply with the DSB's recommendations and rulings. In Cuba's view, the United States was in breach of its commitments since it had failed to observe the first time-period for implementation, which had expired in January 2003. Cuba requested that the United States finally observe the second period of time, which had been agreed in this connection. As far as this matter was concerned, from the legal point of view, the solution would be the repeal of the 1998 Act.

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

(d) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.9)

18. The Chairman drew attention to document WT/DS184/15/Add.9 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.

19. The representative of the United States said that her country had provided a status report in this dispute on 12 June 2003, in accordance with Article 21.6 of the DSU. The US administration continued to work with the US Congress to address the DSB's recommendations and rulings that had not been addressed in the 22 November 2002 anti-dumping duty determination of the US Department of Commerce. Specifically, the US administration was supporting the passage of specific amendments to the US anti-dumping duty law that would implement these recommendations and rulings.

20. The representative of Japan said that Members needed to endeavour, to maintain and enhance not to undermine the confidence in the WTO, of which one of the central pillars was the effectiveness of the dispute settlement system. It was truly sad that the United States was doing what it should not be doing by failing to implement yet another DSB's recommendations and ruling for an extended period of time. The letter by Ambassador Zoellick and Secretary Evans had been sent to the US Congress more than two months ago. Japan noted with great concern that no amendments of the relevant US statute had thus far been introduced to the Congress. Japan strongly urged the United States to strengthen its efforts to implement the DSB's recommendations and rulings as early as possible, including working more extensively with the US Congress to secure the introduction and passage of the relevant legislation before the summer recess of the current session of the 108th Congress. The United States also had to consult closely with Japan on the status and contents of the implementation.

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

(e) Egypt – Definitive anti-dumping measures on steel rebar from Turkey: Status report by Egypt (WT/DS211/7/Add.1)

22. The Chairman drew attention to document WT/DS211/7/Add.1, which contained the status report by Egypt on progress in the implementation of the DSB's recommendations in the case concerning definitive anti-dumping measures on steel rebar from Turkey.

23. The representative of Egypt said that on 19 May 2003 his country had submitted its first status report on the implementation of the DSB's recommendations and rulings with respect to anti-dumping measures on steel rebar from Turkey. The investigating authorities had re-examined the dumping calculation of the two Turkish companies and the general injury assessment in light of the Panel's recommendations. Egypt had submitted its revised injury assessment and the revised dumping assessment to the interested parties. Egypt would continue to work with the Turkish authority to implement the DSB's recommendation and rulings in a mutually satisfactory manner.

24. The representative of Turkey noted the statement made by Egypt with regard to the implementation of the DSB's recommendations on this matter. His government and the concerned companies had received the revised disclosure of findings from the Egyptian authorities. After careful review of the revised calculation of dumping measures for the two companies in question, Turkey had raised questions about the methodology and had made comments about the details of the calculations of the Egyptian authorities. Turkey expected that the Egyptian authorities would take these concerns into serious consideration and implement the Panel's recommendations in good faith and in a timely manner.

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

2. Korea – Measures affecting trade in commercial vessels

(a) Request for the establishment of a panel by the European Communities (WT/DS273/2)

26. The Chairman drew attention to the communication from the European Communities contained in document WT/DS273/2.

27. The representative of the European Communities said that the dispute on the Korean subsidies and their impact on the shipbuilding market was a long-standing one. This issue had been discussed almost exhaustively between the EC and Korea in the past three years. The EC was disappointed at the failure of the bilateral negotiations with Korea, in particular that Korea did not wish to honour its

commitments under the Agreed Minutes. Moreover, in the absence of any progress during the consultations under the DSU, the EC had now decided to request a panel under Articles 4.4 and 7.4 of the SCM Agreement. He then referred to key elements of the case. Korea had granted since 1997 and continued to grant substantial amounts of export and actionable subsidies, through export schemes by the state owned Korean Export-Import Bank (KEXIM), and through debt forgiveness and debt-to-equity swaps by government-owned or government-controlled financial institutions. These subsidies were both prohibited (because they were export contingent) and actionable because they had caused and were still causing adverse effects in several key commercial vessels sectors. It was these subsidies which were at the heart of the request at the present meeting. To sum up, with the help of government or financial institutions not operating under market conditions, Korean yards had been completely shielded from the consequences of both their debt-financed expansion and their drive to win market share through very low pricing practices. These practices were threatening the very existence of competitive European yards even in market sectors where Europe had traditionally been in a leadership position. In the light of the above, the EC sought a condemnation of these practices by the WTO.

28. The EC considered that, in accordance with Articles 4.4 and 7.4 of the SCM Agreement, a panel had to be established at the time the matter was referred to the DSB, unless the DSB decided by consensus not to establish a panel. This meant that a panel would normally have to be established at the present meeting unless there was consensus against it. Furthermore, the EC, as already indicated in its panel request, had requested the DSB: (i) in accordance with paragraph 2 of Annex V to the SCM Agreement, to initiate the procedure to obtain information on serious prejudice from Korea; and (ii) in accordance with paragraph 4 of Annex V to the SCM Agreement, to appoint a representative to serve the function of facilitating the information-gathering process. However, in order to facilitate the resolution of this procedural imbroglio, and to allow for sufficient preparation of the appointment of the representative of the DSB and on other matters of an organisational nature, the EC could exceptionally (and without prejudice of its WTO rights in the future) agree to consider putting the issue on the agenda of the next regular DSB meeting to be held on 21 July, provided, however, that, at that meeting, in parallel to the establishment of a panel, Korea would agree to the initiation of the Annex V procedure and to the appointment of the facilitator. In the meantime, the EC was prepared to further consult with Korea so as to agree on a facilitator. The EC was also prepared to propose further names to the DSB and expected that, should the parties fail to agree, the Chairman of the DSB would, on his own initiative, propose names, if necessary, so as to ensure the effective starting of the Annex V procedure together with the establishment of a panel at the next DSB meeting.

29. The representative of Korea said that, on 22 November and 13 December 2002 as well as on 7 May 2003, his country had held consultations with the EC to discuss the EC's concerns regarding the measures affecting trade in commercial vessels under Article 4 of the DSU, Article XXIII:1 of GATT 1994 as well as Articles 4, 7 and 30 of the SCM Agreement. It was regrettable that the EC had decided to request the establishment of a panel in this regard. It was Korea's firm position that it had not provided any subsidies, which were inconsistent with the SCM Agreement. The main issue of this case was the nature of the activities of the financial institutions into which the government had been forced to inject public funds due to a financial crisis. In the wake of the Asian financial crisis, which had begun in 1997, the IMF and the World Bank had provided Korea with emergency bailout loans, and the Korean government had pursued these policies as part of IMF conditionality, that had been designed to overcome its economic problems. The Korean government, in line with the recommendations of the IMF, had restructured its financial sector in order to consolidate the banking institutions and to enhance their financial soundness. In the initial stage of financial restructuring, a large amount of public funds were injected by the Korean government into the financial sector in order to clean up non-performing loans and to replenish capital. This inevitably resulted in a temporary increase in the government's stake in the financial institutions. Such an increase was, however, temporary in nature as plans had been prepared for reprivatization of the commercial banks. Furthermore, the Korean government had faithfully abided by the principle that even under government ownership, the financial institutions shall operate on a fully commercial basis without

government intervention in the day-to-day business. Nonetheless, the implementation of financial reform by the Korean government, as recommended by the IMF, had become the basis for a legal challenge.

30. The EC claimed that the measures taken by Korea during the financial crisis constituted prohibited and actionable subsidies under the SCM Agreement stemmed from a lack of understanding of the joint efforts made by the IMF and the Korean government, aimed at corporate restructuring. In accordance with the understanding reached with the IMF, the Korean government had set up a mechanism, through which debtors and creditors could make use of the out-of-court workout debt restructuring programme whereby they could agree on the condition for the rescue of ailing companies. These restructuring measures were taken strictly on a commercial basis. More importantly, the corporate restructuring programme did not specifically target any individual company or industrial sector. Under the workout programme, debt forgiveness, equity infusion and interest relief had been provided on commercial grounds by the financial institutions concerned, which acted in accordance with market principles. The strong performance of Korean shipyards was due to their competitive edge based on efficiency and the devaluation of the Korean currency. Korean shipbuilders should not be blamed for the comparative advantage they had over their European counterparts. Besides, Korea had not caused injury or prejudice to the European shipyards as European and Korean yards largely operated in different market segments. European yards were focused on the market for ships that were smaller in yard size and higher in value, whereas Korean shipyards produce larger vessels, a market segment in which European shipyards had not recently been involved. Since Korea believed that it had not provided any WTO-inconsistent subsidies to its shipbuilding industry, the Korean government was not in a position to agree to the establishment of a panel at the present meeting.

31. With regard to procedural matters, Korea noted that the EC had requested the panel to examine Korea's measures in light of, *inter alia*, Articles 5(a) and 5(c) of the SCM Agreement. This related to serious prejudice as defined in Article 6. Korea was concerned that in its request, the EC had not specified the third-country markets where the serious prejudice had supposedly arisen. This was important because the EC was also resorting to the Annex V procedures. In the last paragraph of the panel request, the EC stated that it would reveal some information at a later date, but that was an unsupportable position. As this ambiguity affected its fundamental rights in its ability to defend itself, Korea urged the EC to indicate the third-country markets concerned.

32. With regard to the timing of the establishment of a panel, Korea did not believe the EC had the right to the immediate establishment of a panel. The EC had asked the panel to examine complaints under both Part II and Part III of the SCM Agreement. Articles 4.4 and 7.4 of the SCM Agreement were not identical. The word "immediate" was conspicuously missing from Article 7.4 and by a contrario argument, establishment was not immediate. It was well established that mixed cases, which involved prohibited subsidies and other claims were subject to the normal procedures under Article 6.1 of the DSU. Otherwise, complainants would automatically get accelerated procedures by merely including claims of prohibited subsidies in their complaint.

33. With regard to the interpretation of paragraphs 4 and 5 of Annex V of the SCM Agreement: i.e. the timing for the designation of the facilitator and the triggering point of the 60-day time-frame, Korea believed that these two issues were logically linked to the establishment of a panel. The sole purpose of referring the matter to the DSB under Article 7.4 of the SCM Agreement was to establish a panel. Accordingly, the phrase in Annex V paragraph 2, "matters are referred to the DSB under paragraph 4 of Article 7," should be read in conjunction with the first sentence of Article 7.4, with emphasis on the phrase "for the establishment of a panel". This interpretation was particularly justified when looked at from the perspective of due process. Paragraph 2 of Annex V provided for the right of parties to the dispute to present questions to each other. If the facilitator was designated upon referral of the matter to the DSB under Article 7.4 of the SCM Agreement, the rights of the responding party would be seriously prejudiced because it would not have enough time to formulate

questions to be presented to the complaining party, as the time-frame for the facilitator was limited to 60 days and the parties were required to provide the facilitator with questions for circulation to one another within days of the designation of the facilitator. Besides, it was only logical to designate the facilitator as the panel was established, and not before, because the function of the facilitator was to help the panel develop information and evidence concerning serious prejudice. Otherwise, it would be like putting the cart before the horse. Korea also believed that the 60-day time-frame should come into effect upon designation of the facilitator. If the time-frame was triggered prior to the designation, the facilitator would be left with insufficient time to carry out his function. Finally, Korea would continue to work with the EC with regard to the selection of the Annex V facilitator with a view to reaching an agreement before the next regular meeting of the DSB.

34. The representative of Japan said that her country intended to participate in this proceeding as a third party once a panel was established, given its substantial interest in the matter before the panel. With regard to the procedures for developing information concerning serious prejudice under Annex V of the SCM Agreement invoked by the EC, Japan requested that any information gathered under these procedures be provided to third parties to this dispute. Availability of such information was essential for third parties to develop their arguments properly and to have their interests fully taken into account.

35. The representative of the European Communities said that he wished to react to what had been stated by Korea with respect to the involvement of third-country markets for the purpose of the Annex V procedure. At the present meeting, he was in a position to indicate formally to Korea that the EC considered addressing questions to Japan, which was the other most important producer of commercial vessels which competed with Korea and the EC. The EC was still reflecting on the need to address questions to other WTO Members. For the rest and referring to the procedure, the EC could agree putting again the issue on the agenda of the next regular DSB meeting scheduled for 21 July and, in the meantime, it would pursue consultations with Korea in order to find a pragmatic solution and to start the initiation of Annex V as well as the appointment of the facilitator. It was the EC's understanding that the parties could rely on the Chairman's assistance.

36. The representative of Brazil said that his country had systemic and specific interest in the proper functioning of the Annex V procedures. While Brazil was not aware of the details of the discussions held between the EC and Korea, it was of the view that full cooperation, according to paragraph 1 of Annex V was required. In the absence of this cooperation, adverse inferences might be drawn by the panel, according to paragraph 7. With regard to practical steps required to initiate the procedures and to designate the DSB representative, Brazil was satisfied that the EC was at least endeavouring to avoid the real and fictitious traps that could be set along the way. Brazil hoped that the EC and Korea would cooperate and make progress in making the most of Annex V. This could show to the rest of the Membership, that if Members cooperated, Annex V could be used in these proceedings.

37. The representative of Korea said that he wished to briefly respond to the comments made by Japan and the EC. In Korea's view, the right of third parties to have access to information developed by the facilitator was the subject to discussions between the parties to the dispute. Korea welcomed the statement made by the EC identifying Japan as a third market. Korea was also very encouraged by Brazil's statement that both the EC and Korea should closely cooperate to work this out in a very amicable way. Korea was looking forward to that possibility.

38. The representative of the United States said that the failure of the EC to identify all the third-country markets, if any, relevant to the Annex V process created several problems. First, it prevented any "third-country Member concerned" from fulfilling its obligation under Annex V, paragraph 1, to notify to the DSB, "as soon as the provisions of paragraph 4 of Article 7 have been invoked," the authorities and procedures relevant to any requests for information under the Annex V process. Second, the EC's omission made it difficult for Korea to form a judgment on which

Member's representative would be appropriate to serve as the DSB representative. To the extent that Korea and the EC had reached an agreement on a representative, it certainly was not the intent of the United States to create an obstacle to the implementation of that agreement. However, to the extent that they had not reached an agreement, the United States could understand how, from Korea's standpoint, the EC's omission had complicated things. Finally, the United States added that the failure of the EC to specify the precise type of serious prejudice it was alleging and the market or markets in which such serious prejudice occurred raised concerns under Article 6.2 of the DSU.

39. The representative of Japan noted the statement made by the EC regarding its intention to identify Japan as a relevant country market. Japan looked forward to an official written communication from the EC to that effect so that it could start the procedure under Annex V. Japan also reiterated its request that all the information gathered under Annex V be provided to it as it would participate as a third party in this case.

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

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

(a) Request for the establishment of a panel by Antigua and Barbuda (WT/DS285/2)

41. The Chairman drew attention to the communication from Antigua and Barbuda contained in document WT/DS285/2.

42. The representative of Antigua and Barbuda said that first he wished to thank for the opportunity to appear before the DSB to make a request for the establishment of a panel pursuant to Article 6 of the DSU. By way of background, he wished to explain that his country, Antigua and Barbuda, was a small twin island state in the Caribbean. It was highly dependent upon tourism for its economic survival, and it was also subject to violent hurricanes. Consequently, its tourism industry was held hostage to the vagaries of terrible tempests. At some occasions, they could be less harsh than at others, but they were always destructive. In the five years between 1995 and 2000, his country had endured the ravages of six hurricanes, two of them in one year. With the passing of each one, the islands had been ravaged, hotels destroyed, and infrastructure uprooted. The effect on its tourism industry was disastrous. In an effort to diversify its economy, his country had developed electronic commerce. To do so, his country had invested in the development of the telecommunication infrastructure and had introduced computer training in its schools, and in special school for adult education. In doing so, it was mindful that it was acting in pursuance of the urgings of the international community in several fora and public documents, not least of which was paragraph 34 of the Doha Declaration.

43. Amongst the industries that his country had attracted was Internet Gaming. The industry provided much needed employment to thousands of bright and computer literate young people. It had provided them with a means of livelihood without which they might have been forced to turn to unlawful activity, such as the vibrant drug trafficking trade that now plagues the Caribbean region, which, unfortunately, was the transit area between the supplier countries and the markets in Europe and North America. Additionally, the Internet Gaming industry provided the government with revenues that were critical for the continued provision of the basic goods and services that inhabitants of any country had a right to expect from its government. Importantly, these revenues were not affected by the ravages of the tempestuous storms that made unwelcome visits to his country. They were, therefore, vital to its economic survival and political stability.

44. He said that, the United States had taken the view that its laws prohibited all supply of gambling and betting services from outside the United States to consumers in the United States. The enforcement of this position by the US authorities effectively prevented operators within Antigua and

Barbuda from lawfully offering gambling and betting services in the United States under conditions of competition compatible with the United States own obligations under WTO arrangements. He referred to a recent communication from the United States to the WTO entitled "An Assessment of Services Trade and Liberalization in the United States and Developing Economies". In that communication the United States explained that further liberalisation of trade in services, and in particular the cross-border supply of services, would be of great benefit to developing countries. Antigua and Barbuda fully agreed with that. In any event, the effect of the US enforcement of its laws was to hurt the small economy of Antigua and Barbuda which was struggling to survive in a world of intense competition in the trade of goods and services. Antigua and Barbuda had always respected its international law obligations and had always cooperated with other countries even when it was strictly speaking not under a legal obligation to do so. For instance, Antigua and Barbuda had fully cooperated with the Financial Action Task Force of the OECD countries on money laundering and counter terrorism issues. It had been found by the FATF to be a fully cooperative jurisdiction in the fight against money laundering. His country had not only amended existing legislation and introduce stringent new laws to meet the standards set by the FATF, it had also spent scare financial resources and devoted its best human resources to the effective regulation and supervision of its financial services, including Internet Gaming. This industry in Antigua and Barbuda was arguably the most tightly regulated and supervised industry of its kind anywhere in the world.

45. In 2002 the United States had complained to Antigua and Barbuda that its reluctance to grant a licence for cellular telecommunications to the US company AT&T violated WTO law. His country looked into the matter and, although the participation of AT&T in its small economy effectively eroded the economic viability of an indigenous company creating unemployment and a loss of revenue to the Government, it agreed to allow AT&T to operate a system in Antigua although it produced less jobs than it had displaced, and had resulted in a flow of foreign exchange from the country even though its earnings were in local currency. Many small, developing countries had made similar informal settlements that were beneficial to United States economic interests after being told their laws were in violation of WTO law. While Antigua and Barbuda respected and upheld international law, his government also had a duty of care to its population to defend their rights and the rights of the State under international law. The United States was the centre of the world's gambling business. Many of the largest gaming companies in the world were of US origin, and a great number of them had international operations. According to a trade association of American gaming companies, total consumer spending in commercial casinos in the United States had reached almost US$26 billion in 2001. That was US$3 billion more than total consumer spending on sound recordings and movie box office sales combined. The figure of US$26 billion related to commercial casinos only, which was just one aspect of legalised gambling in the United States, and was not even the biggest.

46. Simultaneously, the United States prohibited all cross-border supply of gaming services from Antigua and Barbuda and there was no possibility for its operators to obtain an authorisation. This was despite the fact that the United States GATS schedule, when properly interpreted in the light of the WTO classification "W/120" and the CPC classification, implied a full commitment on the cross border supply of gambling and betting services. Over the past three months Antigua and Barbuda had consulted in good faith with the United States and had fully disclosed its legal position. The consultations had been frank and cordial as befitted two countries, which despite the great difference in their size and resources, had enjoyed cooperative relations on a wide range of matters. But, in the end, his country did net feel that that US response addressed its legal position. In the circumstances, to protect the jobs of its young people, to safeguard government revenues, and to ensure that its legal rights in the international community and under WTO rules were respected and upheld, his country had no other choice than to request that the DSB establish a panel to adjudicate this matter.

47. The representative of the United States said that her country was disappointed and concerned that the GATS Article XXIII consultations held with Antigua and Barbuda on the matters raised in its panel request had failed to put this dispute to rest. The United States had made it very clear in those

consultations that cross-border gambling and betting services were not within the scope of US specific market access commitments under the GATS. Just as importantly, the United States had made it clear that cross-border gambling and betting services were prohibited under US law. They were prohibited from domestic and foreign service suppliers alike because of the social, psychological dangers and law enforcement problems that they created, particularly with respect to internet gambling and betting. The United States had grave concerns over the financial and social risks posed by such activities to its citizens, particularly but not exclusively children. It was surprised that another WTO Member had chosen to challenge measures taken to address these concerns, particularly in an area in which the United States had made no market access commitment. The United States also noted with concern that Antigua and Barbuda had appended to its panel request an Annex which contained a number of items that did not constitute "measures" that could properly be included within the scope of a panel request. In addition, the Annex to the panel request included several measures which appeared not to have been included in the 1 April 2003 consultation request. Further, the United States believed that not all of the measures cited in the Annex were related to cross-border gambling and betting. For these reasons, the United States could not accept the establishment of a panel, and continued to urge Antigua and Barbuda to reconsider its decision to move forward with the request.

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

4. Proposed nomination for the indicative list of governmental and non-governmental panelists (WT/DSB/W/231)

49. The Chairman drew attention to document WT/DSB/W/231 which contained an additional name proposed for inclusion on the indicative list in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the name contained in document WT/DSB/W/231.

50. The DSB so agreed.

5. Update to the Annual Report (2002) to the General Council

51. The Chairman recalled that at its meeting on 10 February 2003, the General Council had taken up the question of the preparation of the Annual Report for submission to the Cancún Ministerial Conference. At that meeting it had been agreed that the General Council would submit to the Ministerial Conference a brief update to its Annual Report for 2002 which would describe developments since December 2002. The Ministerial Conference would, therefore, have before it, as the Annual Report of the General Council, a compilation of the 2002 Annual Reports of all the WTO bodies, together with update reports concerning developments in 2003. This referred, of course, to the annual reports of a factual nature similar to those that all WTO bodies were required to make under existing procedures.

52. Pursuant to this, he proposed that the Secretariat could prepare an update to the DSB's Annual Report for 2002 that would cover its work since December 2002 up to the present meeting. He also suggested that the DSB adopt the report *ad referendum*, namely that Members would have one week to comment on the draft report once the Secretariat had made it available to them. Subsequently, the report would be forwarded to the General Council at its meeting scheduled for 24 July, taking into account, as appropriate, comments from delegations. He would of course be in contact with the Secretariat regarding the final issuance of this report.

53. The DSB so agreed.