

Dispute Settlement Body
27 September 2011

MINUTES OF MEETING

Held in the Centre William Rappard
on 27 September 2011

Chairperson: Mrs. Elin Østebø Johansen (Norway)

Prior to the adoption of the proposed Agenda, the item concerning the Panel Reports in the case on: "Philippines – Taxes on Distilled Spirits" (DS396, DS403) was removed from the proposed Agenda following the Philippines' decision to appeal the Reports. Also prior to the adoption of the proposed Agenda, the representative of Korea informed the DSB that, with regard to item 4 of the proposed Agenda, his country did not wish to make its panel request at the present meeting in order to continue its consultations with the United States. In light of Korea's request, the Chairperson proposed that item 4 of the proposed Agenda, concerning the panel request pertaining to the dispute on: "United States – Anti-Dumping Measures on Corrosion-Resistant Carbon Steel Flat Products from Korea" (DS420), be removed from the proposed Agenda, as requested by Korea.

The Agenda was adopted as amended.

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¹ On 1 December 2009, the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (done at Lisbon, 13 December 2007) entered into force. On 29 November 2009, the WTO received a verbal note (WT/L/779) from the Council of the European Union and the Commission of the European Communities stating that, by virtue of the Treaty of Lisbon, as of 1 December 2009, the European Union replaces and succeeds the European Community.

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1. The Chairperson recalled that Article 21.6 of the DSU required that unless the DSB decided 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 and shall remain on the DSB's Agenda until the issue was resolved. She proposed that the eight sub-items under Agenda item 1 be considered separately.

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.106)

2. The Chairperson drew attention to document WT/DS176/11/Add.106, 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, in relation to the adoption of the Agenda, the United States welcomed Korea's decision to withdraw its panel request from the Agenda of the present meeting. The United States considered that Korea had withdrawn its panel request as of right, and that Korea's withdrawal of its proposed item was not subject to a consensus decision by the DSB.

4. With regard to Agenda item 1(a), the United States stated that it had provided a status report in this dispute on 15 September 2011, in accordance with Article 21.6 of the DSU. Legislative proposals had been introduced in the current 112th Congress that would implement the recommendations and rulings of the DSB. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

5. The representative of the European Union said that the EU thanked the United States for its status report and hoped that the US authorities would very soon take steps towards implementing the DSB's ruling and resolve this matter.

6. The representative of Cuba said that, since 2002, his country had voiced its concerns about the application by the United States of Section 211, which violated the DSB's decision that ruled that Section 211 was inconsistent with the TRIPS Agreement. This situation undermined the effective functioning of the dispute settlement mechanism, generated mistrust, encouraged further non-compliance and undermined the credibility of the multilateral trading system. Cuba regretted that the most recent US status report showed, once again, the US reluctance to assume its legal responsibility to implement the DSB's rulings. On previous occasions, Cuba had cautioned that US non-compliance, which went unpunished, would give rise to new violations, and now Cuba was in a position to confirm that this was the case. New and increasingly serious developments were being reported, which pointed out to further misappropriation in the United States of Cuban trademarks of great international prestige and ignored the fact that those trademarks were protected by international conventions and treaties, including under the WTO Agreements.

7. At the present meeting, Cuba wished to draw Members' attention to three judgments made by the US courts. Two of those judgments were a direct consequence of Section 211 and demonstrated the need to repeal Section 211. Cuba wished to recall that, at the April 2011 DSB meeting, it had condemned the ruling by a panel of three judges of the Federal Court of Appeals for the District of Columbia Circuit. That ruling had upheld the US Office of Foreign Assets Control's ("OFAC") unjust refusal to allow the renewal of the registration of the Havana Club trademark by the Cuban company Cubaexport, which had owned the right since 1976. Five months later, on 31 August 2011, that same panel had rejected the petition filed by Cubaexport's lawyers for a review of the ruling issued in March 2011, which disregarded the most fundamental principles of both international and intellectual property law. The panel had also denied the review of that ruling by the full Court: i.e. by all the judges on the bench, thus further restricting the company's opportunities for defence.

8. The US courts were continuing to uphold the OFAC's interpretation of Section 211, as OFAC had consistently refused to grant Cubaexport a licence to renew the registration of the Havana Club trademark with the US Patent and Trademark Office. Moreover, on 4 August 2011, the Federal Court of Appeals for the Third Circuit, based in Philadelphia, had rejected the appeal lodged by the French company Pernod Ricard on the grounds of misuse by the Bacardi company of the Havana Club trademark stamped on bottles of rum that was not of Cuban origin. Thus, a ruling by the Delaware

Federal District Court had been confirmed and continued to shield the unlawful act of misappropriation of the trademark by Bacardi, thus affecting the prestige of one of Cuba's leading products. These decisions were part of the US Government's policy of hostility towards Cuba, disregarding the US international obligations and exacerbating the illegitimate and unilateral measures applied under the economic, commercial and financial embargo against Cuba, which had been systematically rejected by almost all of the international community in a succession of UN General Assembly resolutions. In the past few days, the Cuban Foreign Ministry had, once again, publicly denounced this unjust embargo and, in October 2011, the United Nations was due to vote on the 2011 report on the General Assembly resolution A/RES/65/6 ("Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba"). That report stated that, as of December 2010, the direct economic damage to the Cuban people as a result of the embargo had amounted, at current prices, to over US\$104 billion. The enactment and enforcement of Section 211 was intended to cause further damage to Cuba and to affect one of its most renowned trademarks worldwide. Therefore, WTO Members must ensure that any situations with no compliance for a long time be avoided and that any such situations should not prevent the DSB from enforcing its rulings. This was particularly important in light of the upcoming Eighth Ministerial Conference, in the context of which it was still not certain as to what could be achieved, in particular with regard to a positive outcome for countries' development. Cuba, once again, urged the United States to repeal Section 211 and to comply with the DSB's rulings so as to preserve the credibility and existence of the multilateral trading system.

9. The representative of China said that her country thanked the United States for its status report and its statement made at the present meeting. China regretted that the United States had, once again, reported non-compliance. This prolonged situation of non-compliance was highly incompatible with the prompt and effective implementation required under the DSU provisions, in particular since the interests of a developing-country Member were affected. China, therefore, supported Cuba and urged the United States to implement the DSB's rulings and recommendations without any further delay.

10. The representative of Zimbabwe said that his country thanked the United States for its status report and wished to be associated with the statements made by previous speakers. Zimbabwe called upon the United States to comply with the DSB's rulings and recommendations by bringing the inconsistent measures into conformity with its obligations under the TRIPS Agreement. In that regard, Zimbabwe urged the United States to take effective measures immediately and to repeal Section 211.

11. The representative of the Bolivarian Republic of Venezuela said that her country supported Cuba regarding the dispute on Section 211. Venezuela noted that the US status report was a repetition of the previous reports submitted by the United States. In Venezuela's view, this amounted to "action without results". The United States had been saying the same thing for more than nine years. Not only was Section 211 contrary to the TRIPS Agreement and inconsistent with the principles of national and most-favoured-nation-treatment but, worse yet, it harmed Cuba and undermined the credibility and effectiveness of the DSB. Venezuela continued to await some positive signals from the United States that it would comply with the Appellate Body's ruling, as non-compliance only weakened the multilateral trading system. As it had already done on previous occasions, Venezuela urged the United States to put an end to the economic, commercial and financial embargo policy against Cuba and to comply with the DSB's recommendations.

12. The representative of Ecuador said that his country supported Cuba's statement and underlined, once again, that Article 21 of the DSU referred specifically to prompt compliance with the DSB's recommendations and rulings, in particular with regard to matters affecting the interests of developing-country Members. Ecuador regretted that the United States continued to be in violation of

that provision. Ecuador, therefore, urged the United States to bring its legislation into compliance with the DSB's rulings by fully repealing Section 211 as soon as possible.

13. The representative of Viet Nam said that her country thanked the United States for its status report and called upon the United States to fully and promptly implement the DSB's recommendations and rulings in order to ensure that the credibility of the system was preserved.

14. The representative of the Dominican Republic said that his country thanked the United States for its status report on its implementation of the DSB's recommendations and rulings of February 2003, regarding the non-compatibility of Section 211 with Article 42 of the TRIPS Agreement. The Dominican Republic recognized that, due to the separation of powers in the US system, the United States needed time to repeal Section 211. The Dominican Republic, once again, urged the United States to step up its domestic process in order to fully comply with the DSB's recommendations, in particular since this long-term non-compliance undermined the credibility of the dispute settlement system.

15. The representative of the Plurinational State of Bolivia said that her country had, once again, noted that the US status report was a repetition of previous reports submitted by the United States, and that there was no political will to resolve this long-standing dispute. As it had done on previous occasions, Bolivia wished to reiterate its call upon the United States to fully resolve this dispute. As Bolivia had repeatedly stated, this non-compliance undermined the credibility and integrity of the multilateral trading system and, due to its systemic implications, caused injury to one WTO Member. Bolivia, once again, urged the United States to comply with the DSB's rulings and to take steps to remove the restrictions imposed under Section 211. Finally, she said that Bolivia supported Cuba's concerns regarding this matter.

16. The representative of Paraguay said that his country supported the concerns raised by Cuba and other speakers about the continued delay in implementing the DSB's recommendations and rulings. In Paraguay's view, such a situation of non-compliance raised systemic concerns. Paraguay, therefore, considered that this matter should be taken up in the context of the ongoing DSU negotiations. Paraguay urged the United States to comply with the DSB's ruling by repealing Section 211.

17. The representative of Mexico said that his country thanked the United States for its status report. Mexico urged the parties to solve this dispute through the legal remedies provided under the DSU provisions. Mexico noted that, if a dispute was not resolved, any Member could initiate its own dispute if it considered that it was affected by the failure of another Member to resolve a dispute or to comply with the DSB's recommendations. Mexico also noted that the discussion under this Agenda item could provide useful input for the ongoing discussions carried out in the context of the DSU negotiations, in particular with regard to effective compliance.

18. The representative of Argentina said that his country thanked the United States for its status report and noted that this report was similar to the previous status reports submitted the United States. Argentina, once again, supported the statements made by previous speakers who had expressed concern about systemic implications resulting from the non-compliance in this dispute. In Argentina's view, both parties to the dispute had the responsibility to seek a solution to this dispute.

19. The representative of Brazil said that his country thanked the United States for its status report and wished to express its concern about the non-compliance with the DSB's recommendations. Brazil hoped that the United States would soon implement the DSB's recommendations.

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

- (b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.106)

21. The Chairperson drew attention to document WT/DS184/15/Add.106, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

22. The representative of the United States said that his country had provided a status report in this dispute on 15 September 2011, in accordance with Article 21.6 of the DSU. As of 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. With respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

23. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan took note of the US report that the United States had taken certain measures to implement part of the DSB's recommendations in November 2002. Japan hoped that the United States would soon be in a position to report to the DSB on more tangible progress with respect to the implementation of the remaining part of the DSB's recommendations. Full and prompt implementation of the DSB's recommendations and rulings was "essential to the effective functioning of the WTO and the maintenance of a proper balance of the rights and obligations of Members".² Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

24. 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.81)

25. The Chairperson drew attention to document WT/DS160/24/Add.81, 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.

26. The representative of the United States said that his country had provided a status report in this dispute on 15 September 2011, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the EU, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

27. The representative of the European Union said that the EU had taken note of, and thanked the United States for, its status report. The EU remained keen to work with the US authorities towards the complete resolution of this case.

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

² Article 3.3 of the DSU.

- (d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.44)

29. The Chairperson drew attention to document WT/DS291/37/Add.44, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning its measures affecting the approval and marketing of biotech products.

30. The representative of the European Union said that, as had been mentioned at the previous DSB meeting, the EU welcomed the continuation of the technical dialogue with the United States. The dialogue gave both parties an opportunity to discuss directly issues of their concern regarding biotechnology. The EU hoped that this constructive approach, based on dialogue, would allow the parties to leave litigation aside. He said that EU and US officials were scheduled to meet on 27 September in Brussels for further discussions. Once again, the EU noted that its regulatory procedures on biotech products continued to work as foreseen in the legislation. The number of GMOs authorized since the date of establishment of the Panel was thirty-four. Only in 2010, 11 applications had been authorized, more than double the number of authorizations in 2009, including one authorization for cultivation. On 17 June 2011, the Commission had adopted two more authorization decisions³, together with the decision on the renewal of the authorization of maize 1507. Progress had also been made on other applications for authorization. Four more draft applications had been voted in the Standing Committee in February 2011.⁴ The Council would examine those applications in the coming weeks. In April and July 2011, EFSA had adopted other scientific opinions on three GM soybean.⁵ On 7 September 2011, EFSA had adopted a scientific opinion on the renewal of an authorization (MON531).

31. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. The United States remained concerned with delays in the EU's approval system for biotech products, and the resulting effects on trade. The United States was likewise concerned with bans adopted by EU member States on biotech products that had been approved at the EU level. As noted by the EU, the US delegation would shortly meet with EU officials in Brussels to discuss these matters and related issues. The United States looked forward to a constructive discussion with the EU.

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

- (e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.24)

33. The Chairperson drew attention to document WT/DS322/36/Add.24, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US measures relating to zeroing and sunset reviews.

34. The representative of the United States said that his country had provided a status report in this dispute on 15 September 2011, in accordance with Article 21.6 of the DSU. In December 2010, the Arbitrator in the proceeding under Article 22.6 of the DSU in this dispute had issued a communication stating that it had accepted a joint request by the parties to the dispute to suspend its work. On 13 September 2011, in response to a joint request of the United States and Japan, the

³ Maize MON89034xMON88017 and cotton GHB614.

⁴ MIR604xGA21 maize, BT11xMIR604 maize, Bt11xMIR604xGA21 maize, 281-24-236/3006-210-23 cotton.

⁵ A5547-127, 356043 and MON87701.

Arbitrator had issued a communication stating that it had decided to continue the suspension. The communication of the Arbitrator had been circulated to the DSB in document WT/DS322/39. As the United States had explained in its status report, in December 2010 the US Department of Commerce had announced a proposal to change the calculation of weighted-average dumping margins and assessment rates in certain anti-dumping proceedings. At the present time, the US Department of Commerce was continuing with its ongoing work on the December proposal.

35. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan took note of the report that "the United States is continuing its ongoing work on the December proposal" by the US Department of Commerce. As had been stated at previous DSB meetings, while Japan took the US implementation efforts as a positive step forward, it continued to seek prompt and full compliance by the United States with respect to all of the measures at issue that were subject to the DSB's recommendations in this dispute. As the United States had explained, upon request by the parties, the Article 22.6 arbitrator "decided to continue the suspension of its work"⁶ until 8 November 2011. Japan called on the United States to fully comply by this date. Japan looked forward to a continued dialogue with the United States and would closely monitor any developments on this matter. Japan reserved its right under the DSU to take appropriate action, if necessary.

36. The representative of China said that her country thanked the United States for its status report and its statement. China welcomed the steps taken by the United States towards the implementation of the DSB's rulings and recommendations on "zeroing" matters. However, China's concerns about how the United States would implement the DSB's decision on "zeroing" matters remained high. China would follow the US implementation steps closely and urged the United States to take actions to fully comply with the DSB's rulings and recommendations without further delay.

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

(f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.21)

38. The Chairperson drew attention to document WT/DS350/18/Add.21, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the existence and application of zeroing methodology by the United States.

39. The representative of the United States said that his country had addressed the issue of compliance with the findings in this dispute in the status report provided on 15 September 2011, and earlier in the discussion under Agenda item 1(e) of the present meeting. The United States referred Members to that report and that statement for further details.

40. The representative of the European Union said that the EU thanked the United States for its most recent status report. Since the United States had not reported on any steps taken to address the concerns raised by the EU in the DSB, the EU referred Members to its statements made at the DSB meetings in January and February 2011. The EU remained ready to engage with the United States in discussions, under the WTO and bilaterally, in order to ensure that its concerns raised in the DSB were addressed by the United States. The EU looked forward to further information from the United States on its intentions.

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

⁶ WT/DS322/39.

- (g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/38/Add.15)

42. The Chairperson drew attention to document WT/DS294/38/Add.15, 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.

43. The representative of the United States said that his country had addressed the issue of compliance with the findings in this dispute in the status report provided on 15 September 2011, and earlier in the discussion under Agenda item 1(e) of the present meeting. The United States referred Members to that report and that statement for further details. In September 2010, the Arbitrator in the proceeding under Article 22.6 of the DSU in this dispute had issued a communication stating that it had accepted a joint request by the parties to the dispute to suspend the work. On 16 September 2011, in response to a joint request of the United States and the EU, the Arbitrator had issued a communication stating that it had decided to continue the suspension. The communication of the Arbitrator had been circulated to the DSB in document WT/DS294/40.

44. The representative of the European Union said that the EU thanked the United States for its status report and referred Members to its statement under Agenda item 1(f).

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

- (h) China – Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products: Status report by China (WT/DS363/17/Add.8)

46. The Chairperson drew attention to document WT/DS363/17/Add.8, which contained the status report by China on progress in the implementation of the DSB's recommendations in the case concerning China's measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products.

47. The representative of China said that her country had provided its status report in this dispute on 14 September 2011, in accordance with Article 21.6 of the DSU. China had made tremendous efforts to implement the DSB's rulings and recommendations and had, thus far, completed amendments to most measures at issue. China believed that this matter would be properly resolved through joint efforts and mutual cooperation by relevant parties.

48. The representative of the United States said that his country thanked China for its status report and its statement made at the present meeting. As it had previously noted, the United States remained concerned by the lack of progress by China in bringing its measures relating to films for theatrical release into compliance with the DSB's recommendations and rulings. The United States also had significant concerns about the incomplete progress relative to China's measures relating to audiovisual home entertainment products, reading materials, and sound recordings. The United States was conferring with China on these matters and hoped that China would take steps to resolve this matter soon.

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

2. United States – Anti-dumping measures on certain shrimp from Viet Nam

(a) Implementation of the recommendations of the DSB

50. The Chairperson 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 that 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. She recalled that, at its meeting on 2 September 2011, the DSB had adopted the Panel Report pertaining to the dispute on: "United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam". She invited the United States to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

51. The representative of the United States said that, as had been noted by the Chair, on 2 September 2011, the DSB had adopted the Panel Report in the dispute: "United States – Anti-Dumping Measures on Certain Products from Viet Nam" (WT/DS404/R). At the present meeting, as provided in the first sentence of Article 21.3 of the DSU, the United States wished to state that it intended to implement the recommendations and rulings of the DSB in a manner that respected its WTO obligations. The United States would need a reasonable period of time in which to implement.

52. The representative of Viet Nam said that her country thanked the United States for its statement regarding its intentions to implement the DSB's recommendations and rulings in this dispute. Viet Nam understood that the United States would need a reasonable period of time for implementation. Viet Nam was ready to discuss with the United States a reasonable period of time for implementation of the DSB's rulings and recommendations in this dispute.

53. The DSB took note of the statements, and of the information provided by the United States 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 the European Union and Japan

54. The Chairperson said that this item was on the Agenda of the present meeting at the request of the European Union and Japan. She then invited the respective representatives to speak.

55. The representative of Japan said that FY 2011 distributions appeared to be well underway⁷, which showed that the CDSOA remained operational. As US Customs and Border Protection had explained, "the distribution process will continue for an undetermined period".⁸ Japan urged the United States to stop the illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report in this dispute.

56. The representative of the European Union said that the EU had already informed the DSB of the annual adjustment in the level of duties applied by the EU in this case in a document circulated on 12 April 2011. At the present meeting, and as it had done many times before, the EU wished to ask

⁷ See US Customs and Border Protection's website at:
http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cdsoa_11/

⁸ See US Customs and Border Protection's website at:
http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cont_dump_faq.xml

the United States when it would effectively stop the transfer of anti-dumping and countervailing duties to the US industry and, hence, put an end to the condemned measure. The fact that the United States had stopped disbursing duties collected after a certain point in time did not achieve full compliance. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations and rulings. The EU 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.

57. The representative of India said that his country thanked Japan and the EU for regularly bringing this issue before the DSB. India shared the concerns of previous speakers and agreed that this issue should continue to remain under the surveillance of the DSB until full compliance was achieved.

58. The representative of Canada said that his country thanked Japan and the EU for bringing this issue before the DSB. Canada agreed with Japan and the EU that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

59. The representative of Thailand said that her country thanked Japan and the EU for continuing to bring this matter before the DSB and supported the statements made by previous speakers. Thailand continued to urge the United States to cease the disbursements and fully implement the DSB's rulings and recommendations on this matter.

60. The representative of the United States said that, as his country had already explained at previous DSB meetings, the 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. The United States welcomed Members' recognition that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, some four years ago. The United States, therefore, did not understand the purpose for which the EU and Japan had inscribed this item at the present meeting. With respect to comments regarding further status reports in this matter, as it had already explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports repeating, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes.

61. The DSB took note of the statements.

4. United States – Measures affecting the production and sale of clove cigarettes

(a) Joint request by Indonesia and the United States for a decision by the DSB (WT/DS406/5)

62. The Chairperson drew attention to the joint communication from Indonesia and the United States contained in document WT/DS406/5 and invited the representative of Indonesia to speak.

63. The representative of Indonesia said that his country appreciated the work that had been done thus far regarding the dispute: "United States – Measures Affecting the Production and Sale of Clove Cigarettes". While Indonesia was interested in concluding this dispute as swiftly as possible, it was also sympathetic to the workload of the Appellate Body. In that regard, at the request of the Appellate Body and in consultation with the United States, Indonesia believed that the most reasonable approach was to seek an extension of the deadline for the DSB to adopt the Panel Report. Consequently, Indonesia requested that the DSB adopt the draft decision proposed jointly by the United States and Indonesia extending the deadline for the DSB to adopt the Panel Report in this dispute until 20 January 2012.

64. The representative of the United States said that his country was joining Indonesia in asking that the DSB agree to provide additional time for adoption or appeal of the Panel Report in this dispute by adopting the draft decision set forth in document WT/DS406/5. The Appellate Body had informally requested the parties to delay any appeal in this dispute until January 2012. After discussions with Indonesia, the United States agreed to join Indonesia in making this request. The draft decision would provide for DSB adoption of the Panel Report by negative consensus until 20 January 2012, upon request by a party to the dispute. The United States also expected that the greater flexibility in scheduling any appeal would enable the Appellate Body to complete its work within the time periods set out in Article 17.5 of the DSU. The United States would appreciate the DSB's support for the draft decision.

65. The representative of Japan said that his country wished to refer to its statement made at the 21 April 2011 DSB meeting where the DSB had taken a similar decision with respect to the dispute: "United States – Anti-Dumping Administrative Reviews and Other Measures Relating to Imports of Certain Orange Juice from Brazil".⁹ Japan wished to emphasize that: (i) the decision would give greater transparency and legal certainty as to the adoption and appeal of the panel reports subject to the decision; and that (ii) the circumstances that the DSB would address by the decision at the present meeting were exceptional in nature and a decision of this kind must remain as an exception.

66. The DSB took note of the statements.

67. The Chairperson proposed that: " the DSB agree that, upon a request by Indonesia or the United States, the DSB shall, no later than 20 January 2012, adopt the Report of the Panel in the dispute: *United States – Measures Affecting the Production and Sale of Clove Cigarettes*, contained in document WT/DS406/R, unless (i) the DSB decides by consensus not to do so or (ii) either party to the dispute notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU".

68. The DSB so agreed.

5. Proposed nomination for the indicative list of governmental and non-governmental panelists (WT/DSB/W/461)

69. The Chairperson drew attention to document WT/DSB/W/461, which contained an additional name proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. She proposed that the DSB approve the name contained in document WT/DSB/W/461.

70. The DSB so agreed.

6. Statement by the Chairperson regarding the process for selecting new members of the Appellate Body

71. The Chairperson, speaking under "Other Business", said that, as announced at the outset of the present meeting, she wished to make a statement concerning the process for the appointment of Appellate Body members. In that regard, she referred to a fax, dated 14 September 2011, which had been sent out to delegations outlining the arrangements concerning this matter. She recalled that, as had been foreshadowed, the Selection Committee was in the process of interviewing the candidates proposed for the Appellate Body. Two interviews had taken place the previous day and two more would take place that afternoon. Since the candidates were currently in town, she reminded delegations that, in accordance with past practice, delegations wishing to meet with candidates were invited to contact directly the respective missions of India, Pakistan and the United States. With

⁹ WT/DSB/M/295, paras.81-83.

regard to the process for consultations with interested delegations who would wish to express their views on the candidates to the Selection Committee, she said that the arrangements had been announced by fax. She recalled that those consultations would take place on 31 October, 1 and 2 November 2011 in Room X. She said that some delegations had already contacted the Secretariat to make appointments. Those delegations who still wished to do so were invited to contact the Council and TNC Division. Alternatively, delegations could send their comments in writing addressed to her, in her capacity as Chair of the DSB, in care of the Council and TNC Division, no later than 31 October 2011. After completing its consultation process with delegations, the Selection Committee would meet for final deliberations in order to arrive at a consensus decision regarding its recommendations to fill the two positions in the Appellate Body. As had been agreed by the DSB in May 2011, recommendations should be made no later than 10 November 2011, so that a decision on this matter could be taken by the DSB at its meeting on 21 November 2011.

72. The DSB took note of the statement.
