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Dispute Settlement Body
25 June 2013

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 25 JUNE 2013

Chairman: Mr. Jonathan Fried (Canada)

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1.1. The Chairman said that there were nine sub-items under Agenda item 1, which referred to status reports submitted by various delegations pursuant to Article 21.6 of the DSU. He recalled that Article 21.6 of the DSU required that the issue of implementation 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. The purpose of going through those items was to enable delegations to provide informative, up-to-date progress reports about compliance and to offer fresh, constructive comments focusing on new developments, suggestions and ideas on progress towards the resolution of disputes because all had a collective interest in the proper functioning of the dispute settlement system, which was designed to achieve mutually acceptable solutions.

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.127)

1.2. The Chairman drew attention to document WT/DS176/11/Add.127, 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.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 13 June 2013, in accordance with Article 21.6 of the DSU. As noted in the US status report, at least five bills had been introduced in the current Congress in relation to the recommendations and rulings of the DSB. These included H.R. 214, H.R. 778, H.R. 872, H.R. 873, and S. 647. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

1.4. The representative of the European Union said that the EU thanked the United States for its most recent status report and statement made at the present meeting. The EU hoped that the US authorities would very soon take steps towards implementing the DSB's ruling and resolve this matter.

1.5. The representative of Cuba said that more than 11 years had passed but the United States had not implemented the DSB's recommendations and rulings in the Section 211 dispute. Members were at risk of becoming accustomed to this situation of prolonged non-compliance. In Cuba's view, it was important to recall that, on 1 February 2002, the DSB had adopted a decision regarding the US obligation to bring Section 211 into conformity with the TRIPS Agreement and the Paris Convention. The United States must respect the DSB's rulings and its WTO commitments. As set out in Article 3 of the DSU, the dispute settlement system was a central element in providing security and predictability to the multilateral trading system. When a Member deliberately failed to comply with its obligations, as was the case in this dispute, this undermined the security and predictability of the system. Cuba considered that it was unacceptable for the United States to claim, month after month, that a set of legislative proposals submitted to Congress constituted some sort of effort to comply with the DSB's recommendations. Cuba reiterated that the proposals sought by the United States were cosmetic, produced no result and had not even been discussed in the bodies to which they had been submitted. In Cuba's view, three important questions needed to be raised in this context. First, whether there was a political will on the part of the United States to comply with the DSB's recommendations. Second, had the United States decided once and for all not to comply with the DSB's recommendations and rulings on Section 211? Third, was the United States aware that its conduct was detrimental to its image and to that of the WTO? In light of these circumstances, each month, Cuba had no choice but to raise its complaint concerning the theft of the Havana Club trademark and the continued failure by the United States to meet its obligations in the Section 211 dispute. It was impossible to ignore the concerns raised, on a monthly basis, by Cuba and a significant number of other Members that such situations undermined the credibility and effectiveness of the dispute settlement system. Cuba noted that the first item on the Agenda of the present meeting contained six disputes in which the US compliance was still pending. Moreover, other items on the Agenda of the present meeting also dealt with the US non-compliance. Cuba urged the United States to act in a manner consistent with its participation in the DSB as a major and frequent user of the dispute settlement system. Cuba reminded the United States that, to date, it had used the DSB more than any other Member to settle disputes.

1.6. The Chairman noted the extensive list of speakers and, once again, urged delegations to focus on recent developments, including the five bills that were before the US Congress, as referred to by the United States, and suggestions on how to get beyond the 11 years of lack of progress in this dispute.

1.7. The representative of the Bolivarian Republic of Venezuela said that her country noted that the US status report was the same as the one that the United States had presented at previous DSB meetings. Therefore, Venezuela had no option but to reiterate its concern and urged the United States to implement the DSB's recommendations and rulings. In Venezuela's view, what was of serious concern in this dispute was not the time spent to repeat statements and calls for compliance, but the continued US failure to comply with the DSB's recommendations and rulings and the harm that this caused to a developing-country Member. The lack of compliance had lasted for more than 11 years and was due solely and exclusively to the US Administration's lack

of political will. It reflected the US intention to continue to maintain the economic, trade and financial blockade, which had been applied illegally and illegitimately against a developing country, namely Cuba. Venezuela called on the US Administration to end its non-compliance with the DSB's recommendations and rulings by repealing Section 211. Venezuela supported Cuba's statement and shared its concern that non-compliance undermined the credibility of the DSB and of the multilateral trading system.

1.8. The representative of India said that his country thanked the United States for its status report and the statement made at the present meeting. India noted with regret that there was no substantive change in the situation. India, once again, was compelled to state that the principle of prompt compliance was missing in this dispute. India reiterated its concerns about the continuation of non-compliance, since this undermined the credibility of the dispute settlement system. India urged the United States to report compliance in this dispute without any further delay.

1.9. The representative of Ecuador said that his country supported the statement made by Cuba at the present meeting. Ecuador stressed, once again, that Article 21 of the DSU specifically referred to prompt compliance with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Ecuador hoped that the United States would step up its efforts in order to promptly comply with the DSB's recommendations and rulings by repealing Section 211. In Ecuador's view, the non-compliance with the DSB's recommendations and rulings in this dispute, which had lasted for more than eight years, demonstrated that the WTO dispute settlement system had a major shortcoming.

1.10. The representative of Argentina said that his country thanked the United States for its status report and the statement made at the present meeting. Argentina regretted that, despite the Chairman's efforts to encourage Members to provide new information, nothing new had been reported in this dispute. Argentina, once again, reiterated that, as mentioned by the United States, bills had been submitted to the US Congress. The lack of progress in the US implementation was inconsistent with the principle of prompt and effective compliance, stipulated in the DSU provisions, in particular since the interests of a developing-country Member were affected. Argentina supported Cuba's statement and urged the parties to this dispute, in particular the United States, to take the necessary measures so as to finally remove this item from the DSB's Agenda.

1.11. The representative of the Plurinational State of Bolivia said that, as his country had noted over the past 11 years, the US status report did not offer any new information on progress towards solving this dispute. Thus, Bolivia, once again, reiterated its concern about the systemic implications of the US failure to comply with the DSB's recommendations and rulings. Bolivia was also concerned about the US lack of political will to take steps towards compliance. This situation of non-compliance undermined the credibility and integrity of the multilateral trading system and harmed the interests of a developing-country Member. Bolivia, once again, called on the United States to comply with the DSB's recommendations and rulings and to lift the restrictions imposed under Section 211. Bolivia supported the concerns expressed by Cuba at the present meeting.

1.12. The representative of China said that, as his country had stated at previous DSB meetings, China believed that the prolonged situation of non-compliance in this dispute 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 joined other Members in urging the United States to implement the DSB's rulings and recommendations without further delay.

1.13. The representative of El Salvador said that her country thanked the United States for its status report. El Salvador noted, with concern, the lack of compliance in this dispute, which negatively affected the multilateral trading system. Ecuador urged the parties to this dispute to ensure compliance with the DSB's recommendations and rulings so as to resolve this long-standing dispute.

1.14. The representative of Brazil said that his country thanked the United States for its status report on implementation in this dispute. Brazil noted that, once again, the United States reported lack of progress. Brazil remained concerned with this situation of non-compliance with the DSB's recommendations and rulings and urged the United States to bring its measures into conformity with WTO rules.

1.15. The representative of Mexico said that his country wished to reiterate its position regarding the need for the parties to this dispute to take the necessary measures in order to comply with the DSB's recommendations and rulings to the benefit of all Members as stipulated in Article 21.1 of the DSU, which referred to prompt compliance.

1.16. The representative of Viet Nam said that his country thanked the United States for its status report. Viet Nam reiterated its concern about the US non-compliance with the DSB's recommendations and rulings. Viet Nam requested the United States to implement the DSB's recommendations and rulings without delay.

1.17. The Chairman said that there were a couple of observations that were worthy of reflection. First, what was the content of those five different bills and did they differ from each other? Second, did the US Administration have a position on any of those bills? He assumed that the US delegation would take those questions into consideration.

1.18. 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.127)

1.19. The Chairman drew attention to document WT/DS184/15/Add.127, 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.

1.20. The representative of the United States said that his country had provided a status report in this dispute on 13 June 2013, in accordance with Article 21.6 of the DSU. The United States 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 yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.21. The representative of Japan said that his country thanked the United States for its statement and the status report which was submitted on 13 June 2013. Since the content of the US report had not changed from the previous reports, Japan's position had not changed either, as expressed in the previous meetings.

1.22. 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.102)

1.23. The Chairman drew attention to document WT/DS160/24/Add.102, 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.

1.24. The representative of the United States said that his country had provided a status report in this dispute on 13 June 2013, 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.

1.25. The representative of the European Union said that the EU thanked the United States for its status report and statement made at the present meeting. The EU referred to its previous statements regarding its wish to resolve this case as soon as possible.

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

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.65)

1.27. The Chairman drew attention to document WT/DS291/37/Add.65, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

1.28. The representative of the European Union said that the EU, once again, hoped that it would continue on the constructive path of dialogue with the United States. In 2012, the Commission had authorized five new GMOs[1] and had renewed the authorization of a sixth one.[2] Three of those decisions[3] had been adopted only six months after the relevant EFSA opinions had been published, while the decision on MIR162 had been adopted less than four months after the EFSA opinion.[4] The details were set out in the EU's written statement. Regarding the concerns expressed by the United States on the back-log of approvals, the EU recalled that its approval system was not covered by the DSB's recommendations and rulings. The GMO regulatory regime was working normally as evidenced by the approval decisions just mentioned. At the meeting of 27 May 2013, the Appeal committee had voted for one GMO, where no opinion was rendered.[5] Three more decisions[6] had been presented at the standing committees of 10 June 2013 for discussion and vote, rendering no opinion. Those decisions would be presented to the Appeal committee shortly. In addition, on 20 June 2013, EFSA had published a favourable opinion on GM cotton T304-40.[7]

1.29. 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 continued to have serious concerns regarding the lack of progress in approvals of biotech products. As the United States had noted in prior meetings, the relevant EU regulatory committee has skipped some of its monthly meetings, which contributed to delay. The committee had met in June. It had considered three applications for authorizations of biotech corn. The European Food Safety Authority (EFSA) had reviewed all three varieties, and had found them to be as safe as conventionally developed corn varieties. For two of those products, the EFSA opinions had been published in September 2010, meaning that close to three years had elapsed between the opinion and the consideration of the application for authorization. Despite the favourable EFSA opinions, the regulatory committee had not been able to reach the necessary qualified majority to adopt the approvals. The United States expected that the applications would be put to an EU appeals committee, and hoped that approvals could be granted without further delay. As a result of EU delays, including those arising from the consistent failure of the regulatory committee to adopt approvals, the EU measures affecting approval of biotech products were causing serious restrictions on trade. As the United States had highlighted in the past, this situation arose in part from the EU's frequent failures to adhere to its own timelines for regulatory action under the relevant EU regulation. The United States urged the EU to take steps to address these problems with its measures affecting the approval of biotech products.

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[1] A5547-127 soybean, 356043 soybean, MON87701 soybean, MON87701 x MON89788 soybean, MIR162 maize.

[2] 40-3-2 soybean.

[3] Authorization decision for 356043 and MON87701 soybeans, MON87701 x MON89788 soybean.

[4] EFSA opinion: 21 June 2012 EFSA Journal 2012;10(6):2756. Decision on authorisation: 18 October 2012.

[5] Ms8, Rf3 and Ms8xRf3 oilseed rape.

[6] Maize stack events MON89034 x 1507 x MON88017 x 59122 and GM maize MON89034×1507×NK603 as well as GM maize MON810 pollen.

[7] Insect-resistant and herbicide-tolerant genetically modified cotton T304-40 for food and feed uses, import and processing.

1.30. The Chairman said that the timing of the appellate process was not clear to him and that it would be interesting to know.

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

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.14)

1.32. The Chairman drew attention to document WT/DS371/15/Add.14, which contained the status report by Thailand on progress in the implementation of the DSB's recommendations in the case concerning Thailand's customs and fiscal measures on cigarettes from the Philippines.

1.33. The representative of Thailand said that, as indicated in its most recent status report, Thailand and the Philippines continued to follow up on their discussions during the informal bilateral consultations held in Bangkok in May 2013. Thailand also continued to discuss with private stakeholders in Bangkok on one of the issues of concern to the Philippines. Thailand would also provide additional information on other issues to the Philippines. Given the confidential nature of some of those discussions, it was not possible to engage in a detailed discussion at the present meeting. Thailand looked forward to further progress in this dispute and hoped that those discussions would lead to an amicable resolution of the matter.

1.34. The representative of the Philippines said that his country thanked Thailand for its status report and its statement made at the present meeting. In its previous statement at the 24 May 2013 DSB meeting, the Philippines had referred to the fact that certain technical issues, as discussed at the parties' bilateral meeting in Bangkok in early May 2013, had required follow-up action by Thailand. At the May 2013 DSB meeting, the Philippines had also referred to concerns that related to the actions of certain governmental agencies that appeared to make findings on customs valuation issues without operating under the WTO Customs Valuation Agreement. Those concerns remained. In particular, the Philippines was concerned about ongoing investigations by Thai authorities against a Thai importer of cigarettes from the Philippines, Philip Morris Thailand Limited, Thailand Branch, regarding alleged under-declaration of customs values. Those investigations, which potentially carried criminal fines and imprisonment, appeared to the Philippines to be based on grounds not supported by WTO customs valuation rules, and to be inconsistent with several decisions that had already been taken by Thai Customs and other Thai governmental agencies. Thailand's failure to adhere to WTO disciplines concerning customs valuation was of considerable systemic importance. The Philippines continued to consider the next steps in this dispute.

1.35. The representative of Thailand said that her country wished to respond to the statement made by the Philippines. Thailand was aware of the Philippines concerns regarding the investigations referred to by the Philippines. However, Thailand considered it premature to discuss, in the DSB, ongoing confidential investigations, the outcome of which was not yet known. Thailand and the Philippines had discussed the matter bilaterally and Thailand looked forward to further negotiations, as appropriate.

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

F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.13)

1.37. The Chairman drew attention to document WT/DS404/11/Add.13, 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 shrimp from Viet Nam.

1.38. The representative of the United States said that his country had provided a status report in this dispute on 13 June 2013, in accordance with Article 21.6 of the DSU. In February 2012, the US Department of Commerce had published a modification to its procedures in order to implement the DSB's recommendations and rulings regarding the use of "zeroing" in anti-dumping reviews.

That modification addressed certain findings in this dispute. In June 2012, the USTR had requested, pursuant to Section 129 of the Uruguay Round Agreements Act, that the Department of Commerce take action necessary to implement the DSB's recommendations and rulings in this dispute. The United States would continue to consult with interested parties as it worked to address the recommendations and rulings of the DSB.

1.39. The representative of Viet Nam said that his country thanked the United States for its status report and its statement made at the present meeting. Viet Nam noted that the reasonable period of time mutually agreed by the parties had expired 11 months ago. However, the US Administration had not taken any action to recalculate the anti-dumping duty for the second and third periods of review. This was inconsistent with the DSB's recommendation. Once again, Viet Nam requested the United States to fully comply without any further delay for the benefit of Viet Nam, a developing-country Member.

1.40. The representative of Cuba said that, since September 2011, the DSB had adopted the rulings and recommendations in this dispute, but progress in implementation in this dispute was slow. Cuba noted that continued failure to comply in this dispute affected the interests of Viet Nam, a developing-country Member, and had a negative impact on the production of goods that were central to its development. Cuba urged the United States to comply with the DSB's recommendations and rulings in this dispute.

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

G. United States – Measures affecting the production and sale of clove cigarettes: Status report by the United States (WT/DS406/11/Add.6)

1.42. The Chairman drew attention to document WT/DS406/11/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 the US measures affecting the production and sale of clove cigarettes.

1.43. The representative of the United States said that his country had provided a status report in this dispute on 13 June 2013, in accordance with Article 21.6 of the DSU. As noted in its status report, US authorities were conferring with interested parties and working to implement the recommendations and rulings of the DSB in a manner that was appropriate from the perspective of the public health. As the end of the reasonable period of time was approaching, the United States was accelerating its implementation efforts and expected to be in communication with Indonesia.

1.44. The representative of Indonesia said that his country welcomed the status report by the United States. However, Indonesia remained concerned that the status report did not contain any information on significant progress by the United States regarding the necessary measures to comply with the DSB's ruling of 2012.

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

H. United States – Measures concerning the importation, marketing and sale of tuna and tuna products: Status report by the United States (WT/DS381/18/Add.2)

1.46. The Chairman drew attention to document WT/DS381/18/Add.2 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case regarding the US measures concerning the importation, marketing and sale of tuna and tuna products.

1.47. The representative of the United States said that his country had provided a status report in this dispute on 13 June 2013, in accordance with Article 21.6 of the DSU. As noted in its status report, on 5 April 2013, the United States had published in the Federal Register a proposed rule related to the US dolphin-safe labelling standards.[8] The proposed changes would help ensure that

[8] Enhanced Document Requirements to Support Use of the Dolphin Safe Label on Tuna Products, 78 Fed. Reg. 20604 (proposed 5 April 2013) (to be codified at 50 CFR pt. 216).

consumers received accurate information concerning whether the tuna in a product labelled "dolphin safe" was caught in a manner that had caused harm to dolphins. The period for comment on the proposed rule had closed on 6 May 2013. The United States continued to evaluate the comments received concerning the proposed rule, and would work to implement the recommendations and rulings of the DSB by the end of the reasonable period of time on 13 July 2013.

1.48. The representative of Mexico said that his country thanked the United States for its status report. However, the US status report was identical to that submitted at the previous DSB meeting held on 24 May 2013. Mexico recalled that Article 21.6 of the DSU provided Members with an obligation to report on progress in the implementation of the recommendations or rulings of the DSB. However, at the present meeting, no significant progress had been reported. Mexico wished to reiterate the point it had made previously that, unfortunately, the proposed US regulations did not remove the discrimination against Mexican tuna, or address the damage caused to the environment and dolphins by fishing fleets from other countries in other oceans. Mexico hoped that the United States would duly comply with the DSB's recommendations and recalled that the reasonable period of time for compliance would expire on 13 July 2013.

1.49. The representative of the United States said that his country thanked Mexico for its comments. The United States would work toward compliance by the end of the reasonable period of time on 13 July 2013. As had been noted, the United States had published a proposal to amend aspects of the US dolphin-safe labelling regulations. The proposed rule would enhance documentary requirements for certifying that no dolphins had been killed or seriously injured in the sets or other gear deployments in which the tuna were caught. The United States took note of Mexico's statement and was willing to engage in further bilateral discussions. In the US view, the proposed changes would bring the dolphin-safe labelling requirements into compliance with the DSB's recommendations and rulings.

1.50. The representative of Mexico said that his country was open to continue bilateral consultations with the United States. Mexico wished to ensure that discrimination against Mexican tuna would end, as well as the discrimination concerning dolphin-safe labelling. He added that this matter had been raised by Mexico for a long period of time.

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

I. China – Certain measures affecting electronic payment services: Status report by China (WT/DS413/9)

1.52. The Chairman drew attention to document WT/DS413/9 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 electronic payment services.

1.53. The representative of China said that his country had provided a status report in this dispute on 13 June 2013, in accordance with Article 21.6 of the DSU. After the DSB's adoption of the Panel Report, the relevant Chinese government agencies had begun to actively study various possible ways of implementation. Since this dispute concerned a number of Chinese administrative measures on financial services and was embodied with more complexity and sensitivity than other disputes, China was working towards amending the relevant measures at issue. China would accelerate the process and implement the DSB's recommendations and rulings.

1.54. The representative of the United States said that his country thanked China for its status report and its statement made at the present meeting. China's measures affecting electronic payment services had been and continued to be of significant concern to the United States. Electronic payment services (EPS) allowed consumers to purchase goods and services without cash. EPS enabled, facilitated and managed the flow of information and the transfer of funds from cardholders' banks to merchants' banks. These services were vital to facilitating global commerce and essential to the operation of any modern economy. In this dispute, the DSB had found that China had instituted measures that discriminated against foreign EPS suppliers at every stage of a card-based electronic payment that took place in China in China's domestic currency. China's discriminatory measures had ensured the market dominance of a Chinese entity, China UnionPay,

Ltd. (CUP) and had prevented foreign suppliers from providing this important service. In China, each year well over US$1 trillion worth of electronic payment card transactions were processed. The United States looked forward to China fully implementing the DSB's recommendations and rulings by the expiration of the reasonable period of time on 31 July 2013. In the meantime, the United States welcomed the opportunity to confer with China regarding actions it was taking in connection with this dispute.

1.55. The Chairman noted that the next DSB meeting coincided closely with the expiration of the reasonable period of time and, therefore, he looked forward to further progress at that time.

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

2 CANADA – CERTAIN MEASURES AFFECTING THE RENEWABLE ENERGY GENERATION SECTOR/CANADA – MEASURES RELATING TO THE FEED-IN TARIFF PROGRAM

A. Implementation of the recommendations of the DSB

2.1. 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 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. He recalled that at its meeting on 24 May 2013, the DSB had adopted the Appellate Body Reports and the Panel Reports, as modified by the Appellate Body Reports, pertaining to the disputes on: "Canada – Certain Measures Affecting the Renewable Energy Generation Sector/Canada – Measures Relating to the Feed-In Tariff Program". The 30-day time period in this case had expired on 23 June 2013. In order to comply with the requirements of Article 21.3 of the DSU, on 20 June 2013, Canada had informed the DSB in writing of its intentions in respect of implementation of the DSB's recommendations. The relevant communication was contained in document WT/DS412/15 – WT/DS426/14. He invited Canada to inform the DSB of its intentions in respect of implementation of the DSB's recommendations and rulings.

2.2. The representative of Canada said that, at its meeting on 24 May 2013, the DSB had adopted the Reports of the Panel and the Appellate Body in the disputes on: "Canada – Certain Measures Affecting the Renewable Energy Generation Sector/Canada – Measures Relating to the Feed-In Tariff Program" "FIT" disputes (DS412 and DS426). On 20 June 2013, Canada had informed the DSB by letter that it intended to implement the DSB's recommendations and rulings in a manner that respected its WTO obligations. The letter had also indicated that the Government of Ontario had advised Canada that it was developing options to implement the appropriate compliance measures, including the necessary legislative steps, to ensure that its FIT program was brought into compliance with those rulings. That letter was circulated to the DSB in documents WT/DS412/15 and WT/DS426/14. Japan and the EU had agreed with Canada that it was appropriate for Canada to inform the DSB of its intentions by letter, rather than at a special meeting, in light of the fact that the 30-day period specified in Article 21.3 of the DSU was to expire shortly before the regularly scheduled DSB meeting in June. As also noted in the letter, those compliance measures would need a reasonable period of time in which to implement the DSB's recommendations and rulings, and Canada had already begun discussions with Japan and the EU on this matter. Canada hoped to reach agreement shortly, in accordance with Article 21.3(b) of the DSU, and would notify that agreement to the DSB once it was achieved.

2.3. The representative of the European Union said that the EU thanked Canada for its written communication and its statement made at the present meeting that Canada would bring the measures that had been examined by the Panel and the Appellate Body into compliance with the WTO Agreement. To do so, Canada had stated that it needed a reasonable period of time. The EU was ready to engage with Canada with a view to determining a period of time that was satisfactory to both parties.

2.4. The representative of Japan said that his country thanked Canada for informing the DSB of its intention to implement the DSB's recommendations and rulings as stated in its letter dated 20 June 2013 and in its statement made at the present meeting. In order to ensure clear and

prompt settlement of this dispute, Japan expected Canada to take the necessary actions to promptly implement the DSB's recommendations and rulings. Japan was ready to discuss this matter with Canada, together with the EU, in good faith.

2.5. The DSB took note of the statements and of the information provided by Canada regarding its intentions in respect of implementation of the DSB's recommendations and rulings.

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

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

3.2. The representative of the European Union said that, once again, the EU requested that the United States stop transferring anti-dumping and countervailing duties to the US industry. 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 to submit status reports in this dispute.

3.3. The representative of Japan said that, since the distributions under the CDSOA had been continuing, Japan, once again, urged the United States to stop the illegal distributions so as to resolve this dispute. As it had stated in previous DSB meetings, Japan was of the view that the United States was under obligation to provide the DSB with a status report in this dispute in accordance with Article 21.6 of the DSU.

3.4. The representative of India said that his country thanked the EU and Japan for their statements. India shared their concerns and agreed that this item should continue to remain under the surveillance of the DSB until full compliance was achieved.

3.5. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. As it had stated at previous DSB meetings, Brazil was of the view that the United States was under obligation to submit status reports in this dispute until such time that no more disbursements were made pursuant to the Byrd Amendment. Only then would the issue be resolved within the meaning of the DSU and the United States would be released from its obligation to provide status reports in this dispute.

3.6. The representative of Canada said that his country wished to refer to its statements made under this Agenda item at previous DSB meetings. He said that Canada's position on this matter had not changed.

3.7. The representative of Thailand said that, like Canada, her country's position on this matter had not changed.

3.8. The representative of the United States said that, as his country had 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. The United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that Members had acknowledged during previous DSB meetings that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007. 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 the progress the United States had made in the implementation of the DSB's recommendations and rulings.

3.9. The DSB took note of the statements.

4 UNITED STATES – MEASURES AFFECTING THE CROSS-BORDER SUPPLY OF GAMBLING AND BETTING SERVICES

A. Statement by Antigua and Barbuda regarding the implementation of the recommendations and rulings adopted by the DSB

4.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Antigua and Barbuda. He said that it was his understanding that the representative of St. Lucia would make a statement on behalf of Antigua and Barbuda.

4.2. The representative of St. Lucia, speaking on behalf of Antigua and Barbuda, read out the following statement: "As our colleague from Dominica has done in recent months, we are today speaking on behalf of the delegation of Antigua and Barbuda, which has requested that this item be placed on the Agenda for today's meeting of the DSB. At the risk of stating the obvious, and being repetitive as well, Antigua and Barbuda once again observes, first, that the United States has failed to comply with its obligation under the DSU to provide a monthly status report to the DSB on its progress, or in this case, lack thereof, on its compliance with the recommendations and rulings of the DSB in DS285. The apparent United States belief that it is excused from its obligations under the DSU by simply reciting every month its opinion that Antigua and Barbuda is preventing the United States from complying with the recommendations and rulings by withholding consent to a modification of the treaty that would deny Antigua and Barbuda any benefit from its lengthy and expensive journey through the dispute resolution process is disingenuous in the extreme. As we have pointed out many times in the past, while the Americans may have their own opinion on the issue, Antigua and Barbuda does not believe that a Member can wriggle its way out of a long-standing – and, in this case, extremely deleterious – violation of its international treaty obligations by re-writing the rules retroactively. Second, and with apologies to the Chair and the DSB for having to again state the obvious, the United States has failed to comply with the recommendations and rulings in DS285, has put forth no sincere settlement proposal and since the beginning of this year, has made no offers whatsoever, expended no efforts, in short, has done nothing to bring this dispute to a fair and reasonable conclusion. We would further observe that during this long period of non-compliance, and up to the very present day, the United States continues to prosecute Antiguan operators under the very laws ruled in violation of the GATS; the Antiguan remote gaming industry has been virtually destroyed without any compensation from or indeed offer by the United States to in any meaningful way compensate Antigua and Barbuda for what has happened to this tiny country by virtue of the United States' GATS violations; and in the United States, domestic-only remote gaming is expanding virtually unabated. Mr Chairman, Antigua and Barbuda very much hopes that it will have something positive, or even different to report to this Body next month, and offers its apologies in advance if it is unable to do so."

4.3. The representative of the United States said that his country remained committed to constructive dialogue with Antigua to resolve this matter. While Members were aware that the United States had invoked the GATS process to withdraw the gambling concession at issue, the United States remained of the view that a negotiated resolution was the best outcome here and would continue with those efforts. It was US policy not to comment publicly on ongoing negotiations, and consistent with that practice, the United States would not address the specific remarks about the status of negotiations. The United States noted, however, that it was committed to working with Antigua and its focus on this effort continued unabated.

4.4. The representative of Brazil said that his country thanked Antigua and Barbuda and St. Lucia for including this item on the DSB's Agenda. As it had previously expressed, the WTO dispute settlement system had proved to be a remarkable tool in resolving trade disputes among WTO Members through a rules-based mechanism. However, the credibility and effectiveness of the system depended on the assumption that the mechanism was capable of protecting the rights of all Members, regardless of their size or level of development. In that regard, Brazil, once again, encouraged both parties to the dispute to engage in effective negotiations with a view to reaching a mutually satisfactory solution to this long-standing dispute, in line with the DSB's rulings on this matter.

4.5. The representative of Jamaica said that her country supported the statement made by St. Lucia on behalf of Antigua and Barbuda. Jamaica noted with concern the long period of time that had elapsed without resolution in this dispute despite the clear and unambiguous DSB ruling in favour of Antigua and Barbuda. Jamaica reaffirmed its previous statements made on this issue

noting, in particular, that the protracted failure to bring closure to this dispute could have systemic and other implications for the WTO dispute settlement system. In Jamaica's view, it was incumbent on Members to ensure that all Members, irrespective of their size or level of development, were able to benefit from the just, equitable and transparent operation of the WTO dispute settlement system. Jamaica, therefore, emphasized the need for redoubled efforts to achieve a just and lasting conclusion to this dispute.

4.6. The representative of the Bolivarian Republic of Venezuela said that her country noted that this was another case of prolonged non-compliance which affected a developing-country Member. Venezuela supported the statement made by St Lucia, on behalf of Antigua and Barbuda. In Venezuela's view, the repeated refusal by the United States in this dispute and in many other disputes, to implement the DSB's recommendations and rulings, violated the most fundamental rules of the multilateral trading system, and had serious systemic repercussions on the credibility and effectiveness of the DSB as the appropriate platform for settling trade disputes among Members. Moreover, failure to comply had a direct impact on the supply of services by a developing-country Member whose economy was based primarily on services. Thus, any restriction on the supply of a service seriously affected Antigua and Barbuda's economy and income. Venezuela considered it necessary to remind the United States that, in 2007, the compliance Panel had found that the United States had not implemented the DSB's recommendations and rulings in this dispute. Six years had passed and the US Administration had not indicated any real and effective intention of settling this dispute fairly. Therefore, Venezuela supported Antigua and Barbuda, vigorously condemned the US conduct, and urged the United States to comply with the DSB's recommendations and rulings. Venezuela also requested that the United States submit a status report in this dispute without delay.

4.7. The representative of Argentina said that his country thanked Antigua and Barbuda for inscribing this item on the Agenda of the present meeting. Argentina, once again, expressed its concern about the systemic implications of the US failure to comply with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Article 21.1 of the DSU was clear in this regard by stating that "prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members". Argentina, therefore, joined previous speakers who had urged the parties to this dispute to redouble their efforts towards reaching a fair and equitable solution to this long-standing dispute, in accordance with the DSB's recommendations and rulings.

4.8. The representative of Cuba said that her country supported the statement made by St. Lucia, on behalf of Antigua and Barbuda. Cuba, once again, urged the United States to take stock of the pending compliance issues before the DSB. In Cuba's view, failure to comply with the DSB's recommendations and rulings undermined the credibility and the efficiency of the dispute settlement system. Cuba was concerned that lack of compliance in this dispute affected the interests of a small-economy country. Cuba was also concerned that the United States was indifferent towards compliance in this dispute. Cuba, therefore, urged the United States to adopt the necessary measures so as to end this dispute.

4.9. The Chairman noted that the statements had shown contrasting descriptions of negotiations and their status. He hoped that both sides would redouble efforts to reach a mutually acceptable solution.

4.10. The DSB took note of the statements.

5 UNITED STATES – CERTAIN COUNTRY OF ORIGIN LABELLING (COOL) REQUIREMENTS

A. Statements by Canada and Mexico

5.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Canada and Mexico. He then invited the respective representatives to speak.

5.2. The representative of Canada said that, on 23 May 2013, the United States had implemented regulatory changes to its country of origin labelling (or COOL) regime in an effort to comply with the DSB's recommendations and rulings in the "US-COOL" dispute (DS384). As it had indicated at the previous DSB meeting, Canada was extremely disappointed with those changes. In proceeding

the way it had, the United States had increased the discriminatory effect on the conditions of competition for Canadian cattle and hogs in the US market. In the Reports adopted by the DSB, both the Panel and the Appellate Body had found that the previous COOL measure violated the TBT Agreement. The new COOL rule of 23 May 2013 would increase the discrimination against Canadian and Mexican cattle and hogs in the United States, and in so doing, it remained contrary to the WTO obligations of the United States. A legislative change that eliminated the discriminatory aspect of COOL was required, as the legislation was the source of the discrimination. Legislative extension or renewal of the US Farm Bill, which would expire in 2013, provided an excellent opportunity to resolve this dispute, although other mechanisms also existed. Canada strongly encouraged the United States to implement a legislative solution to comply with its WTO obligations so as to avoid both the need for continued WTO proceedings and the possibility of Canada being forced to institute trade retaliation in order to effect a change. More importantly, a legislative change to remove the discriminatory aspect of COOL would avoid any further harm and job losses to Canadian, US and Mexican industries and would restore the integrated North American market for cattle and hogs that created jobs, allowed for economic efficiencies, and increased choice and value to consumers. In the meantime, Canada was preparing to initiate compliance proceedings under Article 21.5 of the DSU to challenge the consistency of this new COOL rule. On 7 June 2013, Canada had also released a list of US products that may be targeted and it was consulting with the Canadian public on what actions would follow. Canada would, therefore, be in a position to impose retaliation as soon as it was authorized to do so by the DSB. Canada reiterated its hope that the intransigence of the United States did not force Canada to take that step. Canada remained committed to taking whatever steps may be necessary to achieve the removal of that discriminatory trade barrier.

5.3. The representative of Mexico said that, on 13 June 2013, Mexico and the United States had notified the DSB of the agreed procedures under Articles 21 and 22 of the DSU. However, the measure taken by the United States to implement the DSB's rulings and recommendations, as published in the Federal Register, was even stricter than the original measure. The new measure would cause even greater harm to Mexican cattle exports as well as greater and more serious trade distortions, as it unnecessarily increased costs for the livestock sector. Pursuant to Article 21.6 of the DSU, Mexico considered that this dispute had not yet been resolved and, therefore, requested that this matter be included on the DSB's Agenda. Mexico would take the appropriate legal measures under the WTO, so as to proceed, if necessary, with the corresponding suspension of concessions against the United States. This dispute had begun in 2008 and, in spite of the fact that Mexico had obtained a favourable ruling, exports of Mexican cattle continued to be subject to measures that affected conditions of competition on the US market. Mexico encouraged the United States to implement measures that complied with, and were not more restrictive than, the DSB's recommendations.

5.4. The representative of the United States said that, as noted at the last meeting of the DSB, the US Department of Agriculture had issued a final rule on 23 May 2013 that made certain changes to the country-of-origin (COOL) labelling requirements found by the DSB to be inconsistent with Article 2.1 of the TBT Agreement. Under the final rule, country of origin labels must include information about where each of the production steps (i.e., born, raised, slaughtered) had occurred for covered muscle cut commodities derived from animals slaughtered in the United States. The final rule ensured that US customers were provided with more detailed and accurate origin information for muscle cut meats to allow them to make informed purchasing decisions. That final rule brought the United States into compliance with the DSB's recommendations and rulings in this dispute.

5.5. The United States had studied the DSB's recommendations and rulings closely and believed that the final rule brought it into compliance. If necessary, the United States was fully prepared to defend the final rule in further WTO proceedings. At the same time, the United States remained open to further discussions with Canada or Mexico in relation to any concerns that they may have.

5.6. The Chairman noted the statements made and said that this matter may be back on the DSB's Agenda in a slightly different form.

5.7. The DSB took note of the statements.

6 EUROPEAN UNION – ANTI-DUMPING MEASURES ON IMPORTS OF CERTAIN FATTY ALCOHOLS FROM INDONESIA

A. Request for the establishment of a panel by Indonesia (WT/DS442/2)

6.1. The Chairman recalled that the DSB had considered this matter at its meeting on 24 May 2013 and had agreed to revert to it. He drew attention to the communication from Indonesia contained in document WT/DS442/2, and invited the representative of Indonesia to speak.

6.2. The representative of Indonesia said that his country was, for the second time, requesting the establishment of a panel to examine this dispute. At the DSB meeting in May 2013, the EU had stated that it was unable to accept Indonesia's request, as it believed that Indonesia's request was premature. The EU had also reaffirmed its commitment to dialogue with the Indonesian authorities to find an amicable solution to this dispute. Indonesia noted that the EU continued to review aspects of its injury determination, since consultations had first taken place almost nine months ago. However, to date, Indonesia had no assurance that this process would address Indonesia's main concerns. Although the EU had undertaken some efforts to find a mutually agreed solution, Indonesia wanted a solution that directly addressed its concerns, in particular with regard to the current injury review. While Indonesia was open to the continued dialogue with the EU authorities, there had not been sufficient time to pursue those discussions. In the meantime, the contested anti-dumping duties were continuously affecting Indonesia's exports in an important sector on a daily basis. Under the circumstances, even though it would prefer to resolve this dispute without resorting to panel proceedings, Indonesia nevertheless felt compelled to take further procedural steps, so as to preserve its right to obtain a legal solution to this matter. As it had stated before, Indonesia maintained an open and cooperative attitude. At the same time, Indonesia also needed to ensure that its rights under the Anti-Dumping Agreement were properly secured by the system. Indonesia, therefore, once again requested the DSB to establish a panel with standard terms of reference to address the matters set out in its panel request contained in document WT/DS442/2.

6.3. The representative of the European Union said that the EU regretted Indonesia's decision to request a panel. Even at that late stage, the EU remained open to dialogue with the Indonesian authorities to find an amicable solution. In any case, the EU was convinced that its measures were in conformity with the WTO Agreements and would defend them vigorously.

6.4. The Chairman said that Indonesia had indicated that dialogue would continue in parallel. However, at the present meeting, the DSB had no discretion but to agree to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference, as mentioned by Indonesia.

6.5. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

6.6. The representatives of India, Korea and United States reserved their third-party rights to participate in the Panel's proceedings.

7 ARGENTINA – MEASURES RELATING TO TRADE IN GOODS AND SERVICES

A. Request for the establishment of a panel by Panama (WT/DS453/4)

7.1. The Chairman recalled that the DSB had considered this matter at its meeting on 24 May 2013 and had agreed to revert to it. He drew attention to the communication from Panama contained in document WT/DS453/4, and invited the representative of Panama to speak.

7.2. The representative of Panama said that his country's request for the establishment of a panel was self-explanatory and that Panama had already commented on this matter at the 24 May 2013 DSB meeting. Panama's complaint concerned a set of measures imposed by Argentina which were contrary to Argentina's WTO commitments and violated basic WTO principles. Panama hoped that the panel that would address this matter would be categorical in its findings and rulings and grant a remedy befitting the circumstances, which in this case should be for Argentina to eliminate all forms of discrimination and barriers to market access. Panama thanked Argentina for its positive

approach during the consultations and in the weeks following the 24 May DSB meeting, a period in which the parties to this dispute had continued to exchange views. However, those efforts had not enabled the parties to resolve this dispute. Panama was still of the view that the measures imposed by Argentina violated various provisions of the WTO Agreements. Panama, therefore, was submitting its panel request for the second time and hoped that the DSB would establish a panel with standard terms of reference.

7.3. The representative of Argentina said that discussions had been held at the highest diplomatic level with a view to settling this dispute. Argentina expressed disappointment that Panama had requested the DSB to establish a panel and Argentina was deeply disappointed by that decision. It had been and remained Argentina's desire to resolve this dispute through negotiation, as it was convinced that this was the most suitable option for both parties. This was borne out by the fact that Argentina had repeated its offer to Panama to negotiate a tax cooperation agreement to ensure transparency in this area in accordance with the OECD standards. Furthermore, Argentina considered that the claims made by Panama concerned measures that were in conformity with WTO rules. Panama was challenging rules relating to tax and capital – market matters that were similar to those adopted by other countries. Panama was also challenging Argentina's implementation of international standards on anti-abuse rules to avoid tax fraud, which had been adopted by the OECD Global Forum and the G-20. The absence of fiscal transparency made it impossible to know the identity of the author of a transaction. This supported the assumption that individuals resorted to such fraudulent practices to avoid paying taxes, hence the need for measures to prevent abuse that may potentially damage the financial and tax system. These were the measures that Panama was challenging and which Argentina believed to be in line with international legislation. It had been estimated that the developing world had lost around a billion dollars annually in illegal flows, which included tax evasion.

7.4. Argentina considered that Panama's request for the establishment of a panel did not meet the requirements of Article 6.2 of the DSU because it failed to identify the specific measures at issue in precise terms. In fact, the main rule upon which Panama had based its panel request, Decree No. 1037/00 (Regulations to the Income/Profit Tax Law), had been amended by Decree No. 589/2013, which had been published in the Official Journal of the Republic of Argentina on 30 May 2013. That tax rule contained an Article, which had now been replaced and which had identified a list of "countries with low or no taxes" that included Panama. That rule constituted the measure upon which Panama had based its complaint during the consultations and in its panel request (WT/DS453/4). The new Decree removed all reference to "countries with low or no taxes" and, therefore, it also removed the list of countries under that heading, including Panama. In short, Argentina had eliminated the list of countries with low or no taxes and was following guidelines on cooperation towards fiscal transparency, in full compliance with OECD standards. For the aforementioned reasons, Argentina considered that the claims relating to the replaced Article lacked substance and that the legal requirements set out in Article 6.2 of the DSU for the DSB to consider Panama's request for the establishment of a panel had, therefore, not been fulfilled. This lack of substance would affect Argentina's right of defence. If a panel was established, Argentina would raise this issue before the panel. Nevertheless, Argentina remained at the complainant's disposal to find a satisfactory solution to this dispute.

7.5. The representative of Panama said that his country took note of Argentina's views that the request made by Panama did not comply with the provisions of Article 6.2 of the DSU, as Argentina had changed its legislation following the consultations. In Panama's view, that was a tactic that Argentina had used in other cases, which had recently been filed against Argentina. Panama was aware of the fact that, on 30 May 2013, Argentina had published Decree No. 589/2013, which had replaced an Article in the Argentine legislation that was the subject of the current dispute. As stated by Panama, this Decree had recently been discussed with Argentina. He said that, in Argentina's view, that Decree would address Panama's concerns. However, in Panama's view, that decree simply provided for cosmetic changes to the rules at issue and did not substantially modify the measure that had given rise to this dispute. The key aspect to this dispute had not, in any way, been altered and Panama would receive, with interest, any clarification or proposal that Argentina may wish to submit, following the establishment of the panel at the present meeting.

7.6. The Chairman said that the point raised by Argentina regarding compliance with Article 6.2 of the DSU was not a matter for the DSB to decide. Article 6 of the DSU, as a whole, in effect, left the DSB with no discretion but to establish a panel at the second meeting upon a second request. The

Chairman took note of the fact that a number of recent panels had, as a matter of preliminary rulings, considered whether one or another party had petitioned in compliance with Article 6.2 of the DSU. Having listened closely to Argentina, he understood that this may be a point of early litigation in the panel proceedings. Thus, if his reading was correct, the DSB was obliged to take note of the statements and agree to the establishment of a panel, in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

7.7. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

7.8. The representatives of Australia, China, Ecuador, the European Union, Guatemala, Honduras, India and the United States reserved their third-party rights to participate in the Panel's proceedings.

8 PERU – ADDITIONAL DUTY ON IMPORTS OF CERTAIN AGRICULTURAL PRODUCTS

A. Request for the establishment of a panel by Guatemala (WT/DS457/2)

8.1. The Chairman drew attention to the communication from Guatemala contained in document WT/DS457/2, and invited the representative of Guatemala to speak.

8.2. The representative of Guatemala said that the measure at issue consisted of an import levy that was imposed in addition to the ordinary customs duty and varied constantly in response to changes in the international prices of the affected products. This measure was determined by using a mechanism known as the price-band system, which sought to neutralize the effects of fluctuations in the international prices of certain products. The aim of offsetting fluctuations in international prices and insulating the domestic market from such fluctuations was explicitly established in the Peruvian legislative text. The measure violated Article 4.2 of the Agreement on Agriculture, which prohibited variable import levies and minimum import prices for agricultural products. Furthermore, the measure at issue was inconsistent with Article II:1(b) of the GATT 1994. Clearly this was not an ordinary customs duty and it should, therefore, have been recorded in Peru's schedule of concessions, which had never been done. As indicated in Guatemala's request for the establishment of a panel, the challenged measure was also inconsistent with other provisions of the GATT 1994 and the Agreement on Customs Valuation. The measure at issue was seriously affecting the Guatemalan sugar industry, which had witnessed a sharp decline in its exports to Peru and an indirect impact on supply and prices offered to other markets. Unfortunately, the informal and formal consultations with Peru had not resolved this dispute. Guatemala hoped that the panel, once established, would quickly find this measure to be WTO-inconsistent and suggest appropriate remedies, so as to resolve this dispute. In that regard, such remedies should involve the removal of the additional variable levy determined by using the price-band system. Guatemala wished to make it clear that it remained open to dialogue and that it was prepared to continue to explore a mutually agreed solution with Peru on this matter.

8.3. The representative of Peru said that compliance with international agreements was a key part of Peru's foreign policy and Peru honoured its international trade commitments. With regard to the measure challenged by Guatemala, Peru reiterated that the Peruvian price-band system, established by Supreme Decree No. 115-2001-EF and other relevant legislation, was fully consistent with its WTO commitments and in particular with the GATT 1994, the Agreement on Agriculture and the Agreement on Customs Valuation. Peru was, therefore, surprised and concerned that Guatemala had decided to submit a panel request since it believed that dialogue between the two countries remained open. Notably, during the consultations held in Lima on 14 and 15 May 2013, both parties had engaged in constructive discussions that had clarified a number of questions raised by Guatemala relating to the nature and functioning of the Peruvian price-band system. Moreover, Peru regretted that Guatemala had lodged this request, given that the price-band system had been negotiated and accepted under the Free Trade Agreement signed by both Members and was currently being negotiated within the ambit of the Pacific Alliance, of which Peru was a member and Guatemala an observer. On a bilateral level, on 6 December 2011 Guatemala had signed a Free Trade Agreement with Peru and, pursuant to paragraph 9 of Annex 2.3 ("Tariff Elimination Schedule") thereto, had explicitly accepted that "Peru may maintain its price-band system, established by Supreme Decree No. 115-2001-EF and amendments thereto, with respect to the products subject to the system that are marked with an asterisk (*) in

column 4 of Peru's schedule, as set out in this Annex". However, on a multilateral level, Guatemala sought to disregard that clause. In light of the above, Peru did not agree to the establishment of a panel, requested by Guatemala.

8.4. The representative of Guatemala said that his country wished to make it clear that it did not intend to discuss the substantive issues in this dispute at the present meeting. Guatemala would evidently have the opportunity to do so before the Panel and possibly also before the Appellate Body. However, it was important for Guatemala to place on record that it disagreed with Peru's arguments on the content of the Bilateral Agreement. Both parties interpreted the provisions of that agreement differently. Furthermore, Guatemala believed that the bilateral agreement was irrelevant to resolving this dispute and considered that Peru was wrongly interpreting its provisions. Guatemala was prepared to support those assertions, if necessary.

8.5. The representative of Peru said that there was more than one point in common for Guatemala and Peru. Both parties wished to maintain the dialogue as indicated in the initial statement made by Guatemala and agreed not to discuss the substantive positions at the present meeting. Following Guatemala's last statement, Peru felt obliged to make some clarifications, in particular with respect to the status of the bilateral agreement between the two countries. It was an agreement which, while it may not yet be in force, had been signed by both countries and as Members were aware, once an agreement had been signed, the parties took on the commitment not to frustrate the objectives of that agreement. Peru wished to reaffirm the fact that, like Guatemala, it wished to continue discussion until a satisfactory solution was reached.

8.6. The Chairman said that he was sure that Members shared the view expressed by both parties that dialogue should continue. The statements revealed extensive exchange of views that had uncovered continuing differences, including on whether a panel should be established. He noted that the DSB could only take note of the statements and agree to revert to this matter at its next meeting with hopes for a resolution in the meantime.

8.7. 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/505)

9.1. The Chairman drew attention to document WT/DSB/W/505, 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. He proposed that the DSB approve the names contained in document WT/DSB/W/505.

9.2. The DSB so agreed.

10 STATEMENT BY THE CHAIRMAN REGARDING SOME MATTERS RELATED TO THE APPELLATE BODY

10.1. The Chairman, speaking under "Other Business", said that he wished to make a brief update on three matters relating to the Appellate Body. First, he recalled that the DSB had decided to set in motion the selection process to fill one vacancy in the Appellate Body. In this regard, he drew attention to the fact that one nomination had been received and had been circulated to Members. He said that Members were invited to submit nominations until 30 August 2013. However, the DSB decision encouraged all delegations to submit nominations at the earliest possible time. The Appellate Body positions were important and, the more time Members had to review and assess the quality of the nominations, the better it would be for all Members. The first nomination had been submitted by Kenya and had been circulated in document JOB/DSB/CV13/1. Second, and also pursuant to the DSB decision on Appellate Body matters (WT/DSB/60), he, as the DSB Chair, had been directed to begin consultations regarding the possible reappointment of Mr. Peter Van den Bossche who had indicated his willingness to be reappointed for a second four-year term in the Appellate Body. He said that he had begun those consultations and he would welcome any views any Member may have if that Member had not yet been contacted for the Chair's consultations. Third, he wished to refer to the Annual Report of the Appellate Body for 2012 (WT/AB/18) as well as to the communication from the Appellate Body entitled: "The Workload of the Appellate Body" circulated in document JOB/AB/1. A number of delegations had

conveyed to him directly views on what implications may be drawn from the Appellate Body Annual Report and the Appellate Body's workload study. This had inspired him to undertake further consultations and he again invited any Member who had any reflections to share on these matters, to convey them to him in any appropriate form, orally or in writing, privately or publicly, however they deemed fit. He would, in the spirit of inclusiveness and transparency, report back on this matter to the DSB at a future meeting.

10.2. The DSB took note of the statement.

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