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on 28 September 2006

Chairman: Mr. Muhamad Noor Yacob (Malaysia)

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1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.46)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.46)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.21)

1. The Chairman said that Article 21.6 of the DSU required that "unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved". He proposed that the three sub-items to which he had just referred be considered separately.

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.46)

2. The Chairman drew attention to document WT/DS176/11/Add.46, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

3. The representative of the United States said that his country had provided a status report in this dispute on 15 September 2006, in accordance with Article 21.6 of the DSU. As noted in the status report, several legislative proposals that would implement the DSB's recommendations and rulings in this dispute had been introduced in the current Congress, both in the US Senate and the US House of Representatives. The US administration continued to work with the US Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Communities said that more than four and a half years had passed since the United States had been condemned in this dispute for breaching the core principles of national and most-favoured-nation treatment embodied in the TRIPS Agreement. Since the DSB's ruling, the United States had never made any serious efforts to bring itself into compliance with its obligations. Coming from one of the promoters of the TRIPS Agreement, such an attitude was particularly damaging, and this was even more so since this dispute was not an isolated case. For an even longer period, the United States had shown equally no interest in implementing the DSB's rulings condemning Section 110 of its Copyright Act. That legislation breached other fundamental pillars of the protection of intellectual property rights, which were the exclusive right for an author to exploit his work and the entitlement to remuneration from that exploitation. In both disputes, the United States undermined the authority of the TRIPS Agreement and thus sacrificed the interests of the majority to preserve legislation that benefited the limited interests of very few companies. Indeed, recently the US administration had refused the specific licence that would have allowed the renewal of the registration of the Havana Club mark. That decision was disturbing as the renewal would not have given away or granted rights, but would only preserve the status quo and would thus allow the US courts to decide in pending proceedings who was the legitimate owner of that mark. How could the United States refuse the very possibility to defend potential rights to a mark in a court of law? What was even more disturbing was the US explanation that this decision had been made on the foreign policy grounds. This was in clear contradiction with the principle strongly promoted worldwide by the United States that ownership of intellectual property rights should be decided in courts on the basis of the law without interference of political considerations. If this US policy had

been followed, it would seriously undermine the efforts to promote rules-based protection of intellectual property rights. Therefore, the EC invited the United States to reconsider its position. Finally, the EC urged the United States, the only WTO Member that consistently did not comply with panel rulings under the TRIPS Agreement, to bring itself into compliance.

5. The representative of Cuba said that for the past four years and seven months, every single meeting of the DSB had witnessed a discussion on compliance with the recommendations in this dispute, yet the United States still limited itself to reiterating that the US administration was working with the US Congress with respect to appropriate statutory measures to resolve this matter. The status reports submitted by the United States to-date shown no sign that the US authorities would resolve this matter in the immediate future, or even in the coming months, or that any progress at all had been made towards reaching a solution. The truth of the matter was that the United States continued to ignore the DSB's recommendations and rulings in relation both to Section 211 and to other disputes that had also been on the DSB's agenda for several years. The fact was that the US authorities had not ceased working to find new ways to impair legitimate industrial property rights acquired by Cuban entities in that territory. On 3 August 2006, the US Patent and Trademark Office had rejected the application filed by the Cuban company Cubaexport to renew the Havana Club trademark in the said territory. In the wake of that decision, the Bacardi company, which had participated in the drafting of Section 211 and had not rested until it had been adopted by the US Congress in October 1998, had started marketing rum produced in Puerto Rico under the Havana Club trademark, which was a fraudulent action misleading for consumers of this famous and prestigious rum produced exclusively in the Cuban territory. All of this had been possible because the arbitrary and discriminatory Section 211, which had been declared inconsistent with the basic WTO rules and principles, was still in force. The reasons for the failure of the United States to implement the rulings and recommendations adopted by the DSB on 2 February 2002 were clear. Equally obvious was that the US government was not particularly concerned about respecting its commitments under the WTO Agreements or about the erosion of the balance, security and predictability of the Multilateral Trading System triggered by its conduct. This negative attitude of the United States was in marked contrast to the scrupulous respect shown by the Cuban Government for the over 4,930 US trademarks registered in Cuban territory (15 of which were owned by the Bacardi company), as befitted Cuba's traditional observance of the rules of international law and its confidence that these and no other practices would prevail. Cuba would not cease in its efforts; it reiterated its call for prompt and effective action to be taken to enforce the terms of the WTO Agreements and decisions and demanded that the United States comply immediately and unconditionally with the DSB's rulings and recommendations, in particular those pertaining to this dispute, by repealing the unfair and discriminatory Section 211.

6. The representative of Brazil said that his country wished to thank the United States for its status report and the statement made at the present meeting. At the same time, Brazil wished to reiterate its systemic concerns about the lack of implementation in the case under consideration. Brazil was conscious of the difficulties involved in the process of implementation of the DSB's recommendations. It was clear, however, that the credibility of the WTO dispute settlement system as a tool to protect rights and enforce obligations was a key element for maintaining the relevance and strength of the system. That credibility was seriously undermined when Members – in particular, the major players – did not to comply with the DSB's recommendations within a reasonable time period. Moreover, Brazil believed that the lack of compliance in an unrelated dispute could not serve as an excuse for a respondent not to explain the reasons for its own debts to the system. In light of these considerations, Brazil invited the United States to take the necessary and urgent steps to bring itself into conformity with the relevant DSB's rulings and recommendations.

7. The representative of the Bolivarian Republic of Venezuela said that his country wished to thank the United States for its status report and Cuba for the statement made at the present meeting. His country fully agreed with Cuba's statement that Section 211 was incompatible with the WTO principles and rules. As his delegation had stated on previous occasions, the lack of compliance with

the WTO rules was regrettable and might create a precedent with negative implications for other Members, which would not be desirable. For that reason, his country called for a prompt resolution of this dispute, which would be satisfactory to the parties concerned, and urged the United States to find an appropriate solution in accordance with the WTO rules.

8. The representative of China said that, due to systemic interests, his country, once again, wished to express its continued concern about this dispute. China thanked the United States for its status report and the statement made at the present meeting. However, it was very regrettable that although more than four years had passed since the adoption by the DSB of the Panel and the Appellate Body Reports pertaining to this dispute, there was no clear indication as to when this matter would be resolved to the satisfaction of the parties and other Members. Such a delay caused systemic concerns about the efficient functioning of the dispute settlement system. China firmly believed that prompt and full implementation of the DSB's rulings and recommendations was one of the major cornerstones of the WTO dispute settlement system. Therefore, China urged the United States to implement the decision of the DSB in this dispute as soon as possible.

9. The representative of India said that his country thanked the United States for its status report, but had to stress the importance of the principle of prompt compliance with rulings and recommendations of the DSB for ensuring effective resolution of disputes to the benefit of all Members. India continued to have systemic concern that due consideration of this vital principle appeared to be missing in this dispute. Although a solution mutually acceptable to the parties was preferred, parties should keep the DSB informed of progress being made towards such a solution in a meaningful manner. Unfortunately, this was not apparent from the statements made by the parties, even though four years had elapsed since the adoption of the DSB's recommendations and rulings. India again urged the parties to this dispute to respond to these systemic concerns and to inform the DSB how they intended to fulfill the objective of prompt settlement.

10. The representative of Argentina said that his delegation also wished to thank to the United States for its status report regarding Section 211 the Omnibus Appropriations Act 1998. Argentina wished to reiterate its concern about the delays in implementing the rulings and recommendations adopted by the DSB more than four years ago. Prompt compliance with the DSB's rulings and recommendations was an essential element of the WTO dispute settlement system. The lack of progress in implementation affected the credibility of the system and had a negative impact on all Members, especially developing countries, for which the system represented an instrument of particular importance. Argentina, therefore, urged the United States to make renewed efforts to comply with the DSB's rulings and recommendations in this dispute.

11. The representative of the United States said that his country regretted that the EC was again making unfounded comments on the US intellectual property rights record. As his delegation had stated at previous DSB meetings, the United States was second to none in providing strong protection for intellectual property rights. The United States also regretted that the EC was again suggesting that US actions in this dispute had somehow undermined the authority of the TRIPS Agreement. The United States failed to understand how its commitment to implement the DSB's recommendations and rulings in this dispute and its efforts to comply could undermine the "authority" of the TRIPS Agreement. To the contrary, these affirmed Members' commitments to the TRIPS Agreement. None of the recommendations or rulings of the DSB in this proceeding related to the renewal of specific trademarks, so this was not an issue related to the implementation of the DSB's recommendations and rulings.

12. 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.46)

13. The Chairman drew attention to document WT/DS184/15/Add.46, 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.

14. The representative of the United States said that his country had provided a status report in this dispute on 15 September 2006, in accordance with Article 21.6 of the DSU. As of 23 November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. Details were provided in document WT/DS184/15/Add.3. The US administration continued to support legislative amendments that would implement the DSB's recommendations and rulings with respect to the US anti-dumping duty statute, and was working with the US Congress to pass such amendments.

15. The representative of Japan said that his country noted the statement made by the United States along with its latest status report. Japan appreciated that the US administration would continue to work with the US Congress to enact legislation H.R. 2473. However, it was regrettable that Japan had not seen any progress in the situation since that legislation had been introduced in the US Congress in May 2005. As his delegation had repeatedly stated at previous DSB meetings, Japan believed that a full and prompt implementation of the recommendations and rulings of the DSB was a principal factor for the credibility of the WTO dispute settlement system. Japan understood that the target adjournment of the 109th US Congress was 6 October 2006. Under these circumstances, Japan wished to renew its strong hope that the United States would intensify its efforts to pass the legislation at the earliest possible date.

16. 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.21)

17. The Chairman drew attention to document WT/DS160/24/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 Section 110(5) of the US Copyright Act.

18. The representative of the United States said that his country had provided a status report in this dispute on 15 September 2006, in accordance with Article 21.6 of the DSU. As noted in the report, the US administration was working closely with the US Congress, and conferring with the EC, to reach a mutually satisfactory resolution of this matter.

19. The representative of the European Communities said that, once again, the United States had submitted to the DSB a status report which was empty of any meaningful content. From that report, it seemed clear that there was a total lack of progress in solving this long-standing dispute. This situation had now lasted for more than five years. If one were to judge the commitment of the United States to its obligations under the TRIPS Agreement on the basis of this dispute, the appraisal would be all, but positive. The United States had failed to take any steps to amend a piece of legislation that violated intellectual property rights and hurt the interests of music creators. The United States was failing to comply at home with the rules that it actively sought to enforce abroad. This situation of double standards created damage that went beyond the boundaries of this specific dispute. Therefore, the EC urged, once again, the United States to provide information on the specific steps that it had taken or intended to take to solve this dispute. This situation of non-compliance had already lasted too

long. Finally, the EC wished to recall that it had reserved its right to reactivate, at any point in time, the arbitration proceedings on the level of retaliation.

20. The representative of the United States said that, in response to the suggestion just made that the US compliance record was poor, the facts simply did not support that assertion. Indeed, the record showed that the United States had fully complied in the vast majority of its disputes. As for the remaining few, the United States was actively working towards compliance.

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

2. Implementation by the European Communities of the recommendations and rulings of the DSB in relation to "European Communities – Regime for the Importation, Sale and Distribution of Bananas"[1] and related subsequent WTO proceedings

(a) Statements by Honduras, Nicaragua and Panama

22. The Chairman said that this item was on the agenda of the present meeting at the request of Honduras, Nicaragua and Panama. He then invited the representatives of the respective countries to speak.

23. The representative of Honduras said that his delegation wished to refer again to prior statements made by Honduras in which it had explained why this dispute – which had become a WTO symbol of non-compliance – ought to be considered pursuant to the provisions of Article 21.5 of the DSU. It was possible that, at the present meeting, the EC would make the same statement like the one made at the 1 September DSB meeting, namely that the data available to-date showed "increases" in MFN and ACP volumes, and, therefore, "give no reason to believe that [MFN] access is not [being] maintained." If it was true that MFN access was being "maintained", then why after only seven months following the entry into force of this new arrangement, had there been an increase of almost 10 per cent in the market share of ACP suppliers, and why had the market share of traditional Latin American suppliers decreased by 3 per cent ? Why were ACP volumes up 20 per cent while the volumes of Honduras were down by more than 50 per cent ? Why had MFN prices in the EC market fallen by 20 per cent ? Why, when the high tariff was excluded from the MFN price, did African bananas end up with an EC wholesale price that was so much higher than the MFN price? Why did the media and the capital-market analysts repeatedly confirm that all investments in bananas were being transferred out of Latin America and into Africa for the sole purpose of gaining better access to the EC market?

24. Far from confirming the EC's claims, these new marketplace developments gave every reason "to believe that MFN access is not being maintained" suggesting that there were much greater losses to come for MFN countries. Judging from current investment transfer and displacement trends, by the time the EC brought its new free trade agreements with the ACP countries in 2008, Latin America would never be able to recover the market position it once had. Indeed, without some means of ensuring compliance, countries like Honduras, constantly combating against poverty, would be left with even a more modest market share than they had had in 1996, when this dispute had originally been brought before the DSB. In other words, as far as Honduras was concerned, the dispute settlement system, far from being remedial, had been punitive, betraying the DSU's objectives of prompt compliance and particular attention to the trade interests of developing countries. His delegation appealed to the Members of the DSB to help Honduras to avoid that outcome.

[1] WT/DS27.

25. The representative of Panama said that, for the past several months, Panama and other countries had been expressing concern over the new EC banana regime. During that period of time, the EC had announced one, and only one, proposed "modification" to this regime. That one change graphically captured what this dispute was all about and why a US$4.22/box tariff was so unfair to developing countries. The new modification, announced in the past week by the Commission, was a commitment to increase its banana subsidy payments to approximately US$360 million a year for the next few years. This new amount was substantially higher than the EC's annual average banana subsidy payments over the past five years. It equated to about US$10 for every box of bananas produced in France, Spain and elsewhere in the EC. On a per-box basis, it covered more than Panama's tropical costs, ocean freight and EC unloading and handling expenses. The EC Commission called these increased payments "subsidy reforms" because the new "envelope" of money was being transferred to its "producer organizations" for administration. However, once those monies were received by the producer groups, they could still be granted as direct, price-contingent domestic support, exactly as they had been for the past 13 years. The truth was that, were it not for this entrenched and expanding subsidy programme, the producer countries of Latin America would not be facing a new, more-than-doubled tariff. The Commission reasons that by substantially inflating its external tariff rate and refusing to lower it, it could protect uncompetitive French and Spanish producers from global competition, while collecting the tariff revenues needed to fund its increasingly extravagant subsidy expenditures. Thus, the developing countries were being forced to pay a punitive, discriminatory tariff of US$4.22 per box so that French and Spanish producers could receive US$10 per box in domestic support. They were losing volume and market share so that the EC's growing amber-box "subsidy envelope" was not compromised. Panama was sharing this background with the DSB Members to help them to understand why it had taken great issue when the EC asserted to the DSB that it "is well aware of the importance of the banana industry for Latin America". If the EC were truly aware of the importance of bananas for Latin America, it would not have taken the decision to increase their discriminatory tariff burden by over US$2.50 per box – in breach of its Article 21 compliance obligations – in order to underwrite massive subsidy payments for French and Spanish producers.

26. The representative of Nicaragua said that his delegation wished to refer to three aspects of the EC banana regime that were particularly objectionable. First, these measures formed part of the drawn out pattern of non-compliance by the EC. These were not isolated violations. The EC had ignored Bananas I as well as Bananas II cases, and now, with its recent "single tariff" regime, it had twice ignored the recommendations and rulings in the Bananas III case. Second, the main objective of these new restrictive measures, like all of the banana-related breaches that had preceded them, was the protection of French and Spanish banana producers and of the generous subsidies that they received. Under the most recent arrangement, developing countries were paying €176 per metric tonne in order to finance the payment of a subsidy amounting to US$10 per crate for each farmer producing bananas in the EC. Third, these restrictions and the subsidies that financed them were extremely costly to the developing countries of Latin America. Members had just heard the statistics. The ACP was already enjoying a 9 per cent increase in its market share at the expense of Latin America. Nicaragua was totally out of the EC market, and others would soon follow. Owing mainly to the increase in ACP volumes, prices in the EC had fallen, according to some by as much as 25 per cent. As profitability and access declined, investments were leaving Latin America for Africa. In a few months, when Romania and Bulgaria joined the EC, the erosion would be even greater. While the tariffs were low in those countries, as soon as they joined the EC, the totality of the 200,000 tons of MFN access those markets would be subject to a much higher tariff rate of €176 per metric tonne. The erosion was set to worsen yet again at the end of 2007, when the EC began granting enormous additional advantages to the ACP countries in the framework of the new regulations included in the free trade agreements. This alarming combination of concerns – repeated non-compliance, increased border protection to back up the escalation in the domestic support granted, and an obvious indifference to the interests of the developing countries – was producing a result that was contrary to what the system had set out to achieve. If the DSB could do nothing to correct such obvious failures,

what did the dispute settlement system have to offer to an impoverished country like Nicaragua in need of a solution? In the interest of all developing countries, Nicaragua once again appealed to the DSB for its support in ensuring prompt compliance on the part of the EC.

27. The representative of the European Communities said that the EC had listened to the statements made by some WTO Members on this matter. The EC wished to refer to its prior statements on why this matter was not an "implementation issue" covered by Article 21 of the DSU. The EC remained open to addressing the concerns of Latin American suppliers in relation to its import regime in the appropriate fora. The EC was well aware of the importance of the banana industry for Latin American countries, as well as the ACP countries, and had always taken these interests into consideration. The EC was in regular contact with the WTO Members involved to discuss this issue, including the rebinding of the MFN tariff. The EC remained committed to maintaining access to the EC market for all banana supplying countries. Contrary to the statements made by Honduras, Nicaragua and Panama at the previous DSB meeting, data on overall MFN imports available to date gave no reason to believe that such access was not maintained. The new EC tariff had thus far resulted in the increase in imports from both MFN and ACP suppliers as compared to 2005.

28. The representative of the United States said that, once again, his country had heard Members express serious concerns about the EC's bananas regime, but no report that the EC had taken any steps to address those concerns. The concerns were become increasingly urgent as market access conditions deteriorated for many interested Members. This continued to be deeply troubling, especially given the great social and economic importance of this issue to these Members. The US was continuing to hold informal discussions with interested Members to determine the most appropriate way to address the concerns with the EC's regime. At the same time, the United States strongly urged the EC to work with interested Members to resolve this dispute as expeditiously as possible. As the United States had noted at the previous DSB meeting, Members asserting a systemic interest in prompt implementation under item 1 of the DSB's agenda must now be fully aware that this item involved a dispute that had left several Members waiting for full compliance nearly a decade, following the adoption of the DSB's recommendations and rulings. The United States, therefore, again looked forward to hearing these delegations express their systemic interest under this agenda item.

29. The DSB took note of the statements.

3. United States – Continued Dumping and Subsidy Offset Act of 2000: Implementation of the recommendations adopted by the DSB

(a) Statements by Canada, the European Communities and Japan

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

31. The representative of Canada said that his country had repeatedly expressed its appreciation with the steps the United States had taken towards implementing the DSB's rulings and recommendations in this dispute. However, the United States had only prospectively repealed the Byrd Amendment. Anti-dumping and countervailing duties collected up to 30 September 2007 could still be disbursed to US producers under the terms of this legislation. As such, Canada believed that the US claim – made in its last status report from over seven months ago – that it had "taken the actions necessary to implement the rulings and recommendations" in this dispute was not accurate. Canada, therefore, called on the United States to resume the submission of status reports and to immediately repeal the Byrd Amendment.

32. The representatives of the European Communities said that, in a few days, the fiscal year would end in the United States and a new round of distribution of the anti-dumping and countervailing duties to the US complaining industry would start. According to provisional estimates made available by the US Customs and Border Protection in June, this distribution would exceed the amount reached in the previous year's distribution. The US Congressional Budget Office had also foreseen that the distribution of the anti-dumping and countervailing duties would continue until at least the fiscal year 2010 starting on 1 October 2009. In January 2003, the DSB had adopted the Reports finding that those distributions breached Article 18.1 of the Anti-Dumping Agreement and Article 32.1 of the SCM Agreement. The United States had until 27 December 2003 to comply with its WTO obligations. As long as those transfers continued, the United States would be in breach of its WTO obligations and full implementation would still have to be delivered. And, yet, at the previous DSB meeting, the United States had again asserted that it did not see the purpose of reporting on its progress to implementation as it had taken all steps to bring itself into compliance with its WTO obligations. In fact, by denying its obligation to take further steps so as stop immediately the distributions under the CDSOA, the United States had granted itself the right to comply with the DSB's rulings at some undetermined date in the future, regardless of Members' duty to comply promptly with the DSB's rulings. The FSC dispute where US Congress had finally put an end to WTO-illegal grandfathering clauses periods showed that the United States could revisit the delayed termination of the Byrd Amendment if the political will was there. The EC wished to ask again the United States if and what steps it intended to take to stop the transfer of anti-dumping and countervailing duties without further delay. The EC also renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit status reports on implementation in this dispute.

33. The representative of Japan said that his country had to reiterate its disappointment that the United States had not, once again, submitted a status report this month despite its statements in the previous DSB meetings. In spite of the enactment by the United States of the Deficit Reduction Act of 2005, duties collected on imports prior to 1 October 2007 would continue to be distributed to the US domestic industries under the transitional clause. Therefore, the United States had not fully implemented the DSB's recommendations and rulings. This was also what Japan had repeatedly stated in the previous DSB meetings. In fact, Japan understood that the United States was currently preparing the distribution for 2006. Japan regretted very much the above situation, and again, it strongly called on the United States to make further efforts towards a prompt and full implementation of the DSB's recommendations and rulings.

34. The representative of Mexico said that, on 13 September 2006, Mexico had published a decree in which it had announced the suspension of benefits to the United States, pursuant to the authorization granted to Mexico by the DSB in November 2004 due to the US failure to comply with the recommendations in the DS234 (Byrd Amendment) dispute in an amount of US$6.1 million. This suspension was carried out in accordance with the methodology established in the Decision by the Arbitrator contained in document WT/DS234/ARB/MEX. Under the above-mentioned decree, Mexico had raised the import duty on dairy products for tariff item 1901.90.05 to 110 per cent *ad valorem*. Mexico acknowledged the efforts made by the US administration, which had led to the signing of the Deficit Reduction Act repealing the "Byrd Amendment". However, in spite of the repeal, the United States would continue to allocate the quotas extending up to 30 September 2007, to the detriment of Mexican exporters, compelling Mexico, once again, to suspend concessions to the United States in the goods sector.

35. The representative of Brazil said that his country wished to thank Canada, the EC and Japan for drawing the DSB's attention to this important issue. Needless to repeat, Brazil judged that the prospective repeal of the Byrd Amendment was not sufficient to sustain the claim by the United States that all necessary implementing actions had been put into place. Brazil recalled that a new and significant disbursement round was expected to occur in October 2006, showing that the WTO-

inconsistency found to exist by the DSB remained in force. Brazil did not want to downplay the relevance of the legislative action by the United States on this matter, but Members should obtain, at a minimum, an explanation from the United States on how this fact could be reconciled with US statements on compliance and the relevant DSB's recommendations. Unfortunately, no answer had been offered thus far. Brazil remained of the opinion – solidly grounded in the DSB's recommendations in this dispute – that full compliance on the part of the United States would only come through the complete elimination of all disbursements under the Byrd Amendment. Given that this was not the case, the co-complainants could not be deprived of any right conferred by the DSU with respect to this situation of non-compliance.

36. The representative of Thailand said that his country wished to thank Canada, the EC, and Japan for bringing this item before the DSB again. Thailand again wished to express its ongoing disappointment at the US continued illegal disbursement of funds under the CDSOA, and at its continued refusal to submit any status report on its outstanding implementation in the "US – Continued Dumping and Subsidy Offset Act of 2000". Thailand, therefore, repeated its call for the United States to cease these illegal disbursements, to immediately repeal the Byrd Amendment, and to resume providing status reports for this dispute until such actions were taken and this matter had been fully resolved.

37. The representative of India said that his country wished to thank Canada, the EC and Japan for raising this issue at the DSB again. Unfortunately, there had not been any response from the United States to the question put by India at previous DSB meetings as to how continued disbursements of duties collected on imports entering the United States squared up with its compliance obligations. The United States needed to do more than reiterate a clearly indefensible position on compliance, in the face of new administration action based on the very CDSOA that it admitted had been found inconsistent with WTO rules and asserted had been withdrawn. Such unilateral action undermined the WTO dispute settlement system. India urged the United States again to inform the DSB of the steps it proposed to take to ensure full compliance. India reiterated its request, that the United States should resume submitting status reports in this dispute.

38. The representative of Hong Kong, China said that her delegation wished to thank Canada, the EC and Japan for once again bringing this item before the DSB. In respect of this dispute, Hong Kong, China had long disagreed with the United States that it had fully implemented the DSB's rulings and recommendations through the prospective repeal of the Byrd Amendment. Under the repeal, the Byrd Amendment would remain in operation until the end of September 2007 and the duties collected would continue to be distributed several years after that date. As long as the illegal disbursements were not terminated, the United States still fell short of full compliance with the DSB's rulings and recommendations. Until full compliance was achieved, the United States should continue to submit status reports on implementation. Most important of all, Hong Kong, China had systemic concerns regarding the US prolonged delay in implementing the rulings and recommendations adopted by the DSB. This would undermine the credibility of the WTO dispute settlement system. Hong Kong, China called on the United States to address these concerns by fully repealing the Byrd Amendment as soon as possible.

39. The representative of China said that his delegation fully agreed with previous speakers and strongly urged the United States to implement the DSB's rulings and to fully comply with their commitments. China strongly urged the United States to ensure that the DSB's rulings were implemented and to submit their status reports on progress in implementation and to resolve the Byrd Amendment dispute as soon as possible.

40. The representative of the United States said that his country had already explained at previous DSB meetings that the US President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy

Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the recommendations and rulings in these disputes. With regard to the EC's criticism concerning future actions that might be taken under the CDSOA, the United States, once again, noted with interest the EC's statement made at the 19 June DSB meeting in connection with the Sugar dispute. In claiming that it had already come into compliance, the EC had described that – on an annualized basis – its revised measure would place it in a position to maintain its subsidized exports within its commitments only from the marketing year 2006/2007. Nevertheless, the EC had asserted that it was already in compliance. The United States reiterated that it had taken all steps necessary to implement the recommendations and rulings in the CDSOA dispute.

41. The United States also noted that the CDSOA did not apply to imports from Canada so the United States could not understand why Canada had put this item on the agenda of the present meeting. Given Canada's silence under the previous agenda item, the United States noted that what Canada characterized as its "systemic" interest in compliance appeared to be somewhat selective, and the United States would welcome Canada's intervention in a manner that truly reflected a systemic approach. His delegation was surprised by the assertions made that the United States would not have implemented the DSB's recommendations and rulings until the last CDSOA distribution was made. Of course, such questions were for panels to decide. Mexico had not yet notified the DSB of its latest suspension of concessions in this dispute. The United States had become aware of this recent action and intended to review it further. At this time, the United States was not able to share Mexico's view on the consistency of its suspension of concessions with the authorization granted by the DSB.

42. The representative of European Communities said that there was clearly no possible comparison between what the United States was doing in the present dispute and what the EC had done in the Sugar dispute. In the Sugar dispute, the EC had not granted any new subsidies in breach of the WTO rules after the expiry of the implementation period and had, therefore, fully implemented the DSB's ruling and recommendations within the reasonable period of time. In the CDSOA dispute, more than two and a half years after the expiry of the implementation period, the United States was still granting new subsidies and under the current state of the law would continue for an undetermined number of years.

43. The representative of Canada said that Canada's retaliatory measures had expired on 30 April 2006 and that Canada was currently considering its retaliatory options.

44. The representative of Mexico said that his delegation wished to briefly reply to the statement just made by the United States. He noted that, in its previous statement, Mexico had referred to the suspension of concessions. He, therefore, could not understand why the United States claimed that it had not been formally notified.

45. The DSB took note of the statements.

4. United States – Subsidies on upland cotton

(a) Recourse to Article 21.5 of the DSU by Brazil: Request for the establishment of a panel (WT/DS267/30)

46. The Chairman recalled that the DSB had considered this matter at its meeting on 1 September 2006 and had agreed to revert to it. He drew attention to the communication from Brazil contained in document WT/DS267/30, and invited the representative of Brazil to speak.

47. The representative of Brazil said that on 1 September 2006 the DSB had examined, for the first time, Brazil's request for the establishment of a panel, pursuant to Article 21.5 of the DSU in the case: "United States – Subsidies on Upland Cotton". Brazil's request had been circulated as

document WT/DS267/30, and was before the DSB again at the present meeting. Brazil reiterated that, with respect to some of the DSB's recommendations and rulings (adopted on 21 March 2005), the United States had adopted no implementation measures at all, and the implementation measures it had adopted fell far short of compliance with the covered agreements and the DSB's recommendations and rulings. The United States had a different view, as expressed for example in its statement at the previous DSB meeting. Given the disagreement as to the existence and consistency with the covered agreements of measures taken to comply with the DSB's recommendations and rulings, Brazil sought recourse to the dispute settlement mechanism under Article 21.5 of the DSU. Brazil also requested that the DSB refer the matter to the original Panel.

48. The representative of the United States said that his country was fully in compliance with its WTO obligations. Indeed, the United States had gone to extraordinary lengths to implement the DSB's recommendations and rulings. As of 1 August 2006, the United States had terminated the Step 2 program, eliminating hundreds of millions of dollars of annual payments to domestic users and exporters of US cotton. Brazil had challenged the Step 2 program as a prohibited subsidy, but payments under that program were also part of the measure found to be causing serious prejudice to Brazil's interests. The United States had also ceased operating the GSM-103 and SCGP programs, two of three export credit guarantee programs that Brazil had challenged as being prohibited export subsidies. There were no exports under those programs at present. The sole remaining guarantee program (GSM-102) had been substantially modified. The United States had eliminated countries presenting the highest risk of non-payment from the program altogether, and the United States had applied a new "risk-based" fee structure to all guarantees under the program. Thus, the revised program no longer constituted an export subsidy. Given all these changes, there was no basis for Brazil's request for a compliance panel. While Brazil's request was disappointing, the United States looked forward to the Panel's confirming that the United States was complying with its WTO obligations. All knew from experience that this dispute was one of the most complex disputes to come before the WTO. If a panel was established, the United States intended to make every effort to cooperate on procedural matters so that the panel could focus on the substantive issues at hand. The United States hoped that Brazil shared this interest in cooperating so that the panel could produce the highest quality report possible.

49. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by Brazil in document WT/DS267/30. The Panel would have standard terms of reference.

50. The representatives of Argentina, Australia, Canada, China, the European Communities, India, Japan and New Zealand reserved their third-party rights to participate in the Panel's proceedings.

51. The representative of Benin said that his delegation wished to indicate that the four countries of the Cotton Initiative were now consulting regarding the matter at hand, but unfortunately the Ministers had had several meetings this month and had not been able to meet. He believed that in the coming ten days, one of the four countries would be indicating their interest in reserving third-party rights to participate in the Panel's proceedings.

52. The DSB took note of the statements.

5. China – Measures affecting imports of automobile parts

(a) Request for the establishment of a panel by the European Communities (WT/DS339/8)

(b) Request for the establishment of a panel by the United States (WT/DS340/8)

(c) Request for the establishment of a panel by Canada (WT/DS342/8)

53. The Chairman proposed that the three sub-items to which he had just referred be considered together since they pertained to the same matter. First, he drew attention to the communication from the European Communities contained in document WT/DS339/8 and invited the representative of the European Communities to speak.

54. The representative of the European Communities said that on its accession to the WTO, China had committed itself to limit the rate of the custom duty applied on most automobile parts to 10 per cent. The measures challenged by the EC provided instead that the 25 per cent duty rate for a complete vehicle would apply when the imported parts, once they were produced and assembled into complete vehicles, fulfilled the "characteristics of a whole vehicle". To be characterized as a whole vehicle, it was just enough that a few specific automobile components assembled in that vehicle were imported. And, it was clear that those specific combinations of imported automobile parts were far from constituting a whole vehicle. These measures also resulted in applying on imported products charges and administrative requirements, which had not been imposed on domestic like products, thus discriminating against imported products. By enacting and maintaining these measures, China breached a long list of its WTO obligations. He would not repeat the specific claims raised by the EC since all details were contained in the EC's request for the establishment of a Panel. He would just highlight the fact that this dispute went to the fundamental principles of the WTO, which were the national treatment obligation, the binding of customs duties or the prohibition *per se* of a certain form of subsidies. This dispute raised issues of systemic importance for the whole WTO as evidenced by the panel requests made at the present meeting in respect of the same measures by Canada and the United States, and by the number of Members that had reserved their third-party rights already at the consultation stage. The EC had discussed this matter with China on several occasions and at all levels, but regrettably it had not received any concrete solution from China. The EC regretted the situation. While the EC always remained open to a negotiated solution, at the present meeting, the EC had no other option than to pursue this dispute further and to request the establishment of a panel to review the WTO compatibility of China's measures on the import of automotive parts.

55. The Chairman drew attention to the communication from the United States contained in document WT/DS340/8 and invited the representative of the United States to speak.

56. The representative of the United States said that his country was concerned about Chinese measures distorting trade in the auto sector. As outlined in the US panel request, China assessed a charge on imported auto parts that was equal to the tariff on complete motor vehicles, rather than assessing the lower tariff on auto parts. This charge was paid by the auto manufacturer and was assessed whenever a complete vehicle did not contain an arbitrarily set minimum quantity or value of Chinese auto parts. China had also imposed additional, burdensome administrative obligations such as record keeping and security requirements on manufacturers which produced vehicles that did not meet the specified local content requirements. Needless to say, China's measures discouraged auto manufacturers in China from using parts imported from the United States and other foreign countries in the assembly of new vehicles. China's measures appeared to be inconsistent with several provisions of the WTO Agreement, including Articles II and III of the GATT 1994, Article 2 of the TRIMs Agreement, and several provisions of China's own Protocol of Accession. The broad, systemic concerns raised by these regulations was underscored by the fact that the DSB was also considering the panel requests of the EC and Canada at the present meeting. The United States had

consulted extensively with China, both formally and informally. Regrettably, those consultations had not resolved this dispute. The United States, therefore, requested that the DSB establish a panel at the present meeting. The United States further requested that a single panel be established to examine the US, EC, and the Canadian complaints in accordance with Article 9.1 of the DSU.

57. The Chairman drew attention to the communication from Canada contained in document WT/DS342/8 and invited the representative of Canada to speak.

58. The representative of Canada said that China was a major, growing market in both import and export trade for this key sector of the Canadian economy, and clearly had a significant stake in the further development of global trade in automobiles and automobile parts. It was in their mutual interest that China had a thriving automotive sector. However, China had imposed various measures on the import of automobile parts, including on those from Canada, which Canada believed were inconsistent with China's WTO obligations. These measures, outlined in Canada's panel request, dated 15 September 2006, included local content requirements and charged on imported parts equal to the higher tariff on complete motor vehicles. On 13 April 2006, Canada had requested consultations with China with respect to these measures. Consultations had been held jointly between China and Canada, the United States and the EC in Geneva on 11 and 12 May 2006. Canada had made several efforts since then to arrive at a mutually satisfactory solution. Unfortunately, these consultations had only reinforced Canada's view that the Chinese measures in question were inconsistent with a number of Chinese commitments in the GATT, the TRIMs Agreement, the SCM Agreement and China's Protocol of Accession to the WTO. On that basis, Canada requested that a panel be established to examine this matter.

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

60. The representative of China said that it was regrettable for China to see that the EC, the United States and Canada had chosen to request the establishment of panels at the present meeting in spite of China's efforts to settle the dispute through consultations. China had shown great sincerity in the process of consultations. China had always been willing to pursue further consultations in order to settle disputes in a mutually satisfactory manner. China had taken its commitments very seriously since its accession to the WTO, including its commitments on automobiles and auto parts. According to its schedules, China had significantly reduced its tariff on automobiles and auto parts. The tariffs had been reduced from 80 per cent in 2001 to 25 per cent for automobiles and from 30 per cent in 2001 to 10 per cent for auto parts. The liberalization process had been completed by 1 July 2006, which provided unprecedented market access opportunities on automobiles and auto parts for all trading partners. Turning to the measures in relation to current disputes, China strongly believed that those measures were consistent with WTO rules. In particular, those measures served to prevent tariff evasion and circumvention by companies which aimed at importing complete automobiles as auto parts to avoid higher tariff rates. These measures did not create any discrimination to imported products. For the reasons mentioned above, China was not in a position to agree to the establishment of panels requested by the EC, the US and Canada.

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

6. United States – Measures relating to shrimp from Thailand

(a) Request for the establishment of a panel by Thailand (WT/DS343/7)

62. The Chairman drew attention to the communication from Thailand contained in document WT/DS343/7, and invited the representative of Thailand to speak.

63. The representative of Thailand said that his country requested that the DSB establish a panel to examine the matter described by Thailand in its request for the establishment of a panel, dated 18 September 2006, contained in document WT/DS343/7. While Thailand regretted that consultations with the United States had thus far failed to resolve this dispute, in view of the ongoing and escalating harm to its industry, Thailand considered it necessary to request the establishment of a panel to resolve this matter as rapidly as possible. There were two main aspects of Thailand's request. First, Thailand challenged the requirement imposed by the United States on importers of shrimp from Thailand subject to anti-dumping duties to maintain a continuous bond in addition to paying cash deposits of anti-dumping duties at the time of importation of the merchandise. The continuous bond was calculated as the amount of the applicable anti-dumping duty margin multiplied by the value of imports of shrimp imported by the importer in the preceding year. In order to obtain this bond, Thai exporters and their importers had had to post collateral of the full value of the amount of the anti-dumping duty. As a result, they must pay not only a cash deposit of estimated anti-dumping duties equal to the margin of dumping determined by the United States, but must also incur significant additional costs to obtain and maintain a continuous bond in the amount described for each year's imports until the final assessment of anti-dumping duties on that year's imports – which could take up to five years.

64. The US measures that Thailand was challenging at the present meeting threatened the livelihood and sustainability of its shrimp industry, whose exports to the US, its largest market, accounted for 50 per cent of its total exports. Moreover, Thailand's shrimp industry employed about 1 million people, of which a significant portion were shrimp farmers whose only source of income derived from shrimp exports. Many of these farmers were still repaying massive debt incurred to repair the catastrophic damage from the December 2004 tsunami, which had wiped out approximately US$500 million of their property, hatcheries, and equipment. While the United States claimed the continuous bond requirement was necessary to secure payment of anti-dumping duties, it had imposed the requirement on only one anti-dumping order – that against shrimp from Thailand and certain other countries. In Thailand's view, the continuous bond requirement constituted an attempt by the United States to increase the burden and effect of its anti-dumping measures beyond what was contemplated or permitted under Article VI of the GATT 1994 and the Anti-Dumping Agreement. These Agreements were intended to place limits on the manner and circumstances in which Members could impose anti-dumping measures. Therefore, they must be read to restrict Members from developing and applying new and creative ways – such as this continuous bond requirement – of increasing the severity and trade-restrictive impact of their anti-dumping measures.

65. In addition, Thailand considered that the continuous bond requirement constituted a restriction on importation prohibited under Article XI of the GATT 1994 and was inconsistent with the United States' obligations under Articles I and II of the GATT 1994. Furthermore, by applying the continuous bond requirement only to shrimp from Thailand and five other countries, the United States had failed to administer its customs laws, regulations and administrative rulings in an uniform, impartial or reasonable manner as required under Article X of the GATT 1994. Finally, the continuous bond requirement was not justified by paragraph (d) of Article XX of the GATT 1994 and in any case was not applied consistently with the requirements set out in the chapeau of Article XX. Thailand's request for the establishment of a panel also challenged the use by the United States in its anti-dumping determinations with respect to shrimp from Thailand of the practice known as "zeroing". The Appellate Body had already found the use of this practice in circumstances such as

were present in this dispute to be inconsistent with the US obligations under the Anti-Dumping Agreement. Thailand, therefore, hoped that this aspect of the dispute could be resolved quickly and satisfactorily. Accordingly, Thailand requested the establishment of a panel to examine these matters.

66. The representative of the United States said that his country was disappointed that Thailand had requested a panel on this matter. As previously noted, the US Department of Commerce had already announced its intention to abandon the use of "zeroing" with average-to-average comparisons in anti-dumping investigations. Furthermore, Members had the right to ensure that importers paid duties owed. Nevertheless, the United States had been working with Thailand in an effort to understand its concerns and to address them. In light of these efforts, the United States believed that this panel request was premature, and the United States was unable to agree to the establishment of a panel at this time.

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

7. Swearing-in ceremony of the newly appointed Appellate Body member

(a) Statement by the Chairman

68. The Chairman, speaking under "Other Business", said that, as he had announced at the outset of the present meeting, he wished to remind delegations that the swearing-in ceremony of the newly appointed Appellate Body member, Mr. David Unterhalter, would be held on 28 September 2006 at 6 p.m. in the Salle des Pas Perdus at the WTO. The ceremony would be followed by a cocktail reception hosted by the Director-General, the Chairman of the DSB, Deputy Director-General Jara, and the Permanent Mission of South Africa. All delegations were cordially invited to attend the ceremony.

69. The DSB took note of the statement.