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Dispute Settlement Body
25 January 2011

MINUTES OF MEETING

Held in the Centre William Rappard
on 25 January 2011

Chairman: Mr. Yonov Frederick Agah (Nigeria)

Subjects discussed: Page

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

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.98)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.98)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.73)

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.36)

(e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.16)

(f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.13)

(g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/38/Add.7)

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

1. The Chairman recalled that Article 21.6 of the DSU required that unless the DSB decided otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and shall remain on the DSB's Agenda until the issue was resolved. He proposed that the eight sub-items under Agenda item 1 be considered separately.

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.98)

2. The Chairman drew attention to document WT/DS176/11/Add.98, 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 13 January 2011, in accordance with Article 21.6 of the DSU. As had been noted, a number of legislative proposals that would implement the DSB's recommendations and rulings in this dispute had been introduced in the 111th Congress. The US administration would continue to work with Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Union said that the EU thanked the United States for its status report but noted that, at the present meeting, the United States was presenting yet another status report in this dispute. The EU hoped that the US authorities would very soon take steps towards implementing the DSB's ruling and resolve this matter.

5. The representative of Cuba said that twelve years had passed since the Appellate Body found that Section 211 was inconsistent with the principles of national treatment and most-favoured-nation treatment. Since then, every month, Cuba had continued to denounce the US practice of blocking the registration of intangible assets, such as the Havana Club trademark, on the grounds that it was prohibited under Section 211. This famous Cuban trademark, which was recognized as such worldwide except in the United States, had been registered in the United States since 1976 by the company CUBA EXPORT. Havana Club was made by Cuban master rum makers using techniques that dated back more than half a century. This proved how old the trademark was. Section 211 undermined the rights of holders of Cuban trademarks and enabled Bacardi to engage in the fraudulent sale of its products as the Havana Club rum. She noted that Cuba had demonstrated its commitment to, and respect for, international intellectual property treaties, agreements and arrangements to which it was party. On the contrary, the United States had failed to bring its legislation into compliance with its WTO obligations. As Cuba had already stated and would continue to do so for as long as necessary, the US conduct was not only unlawful and brazen, it was totally absurd in terms of intellectual property rights. Moreover, the US lack of compliance and its inaction in the Section 211 dispute encouraged US citizens who benefitted from politicized, spurious, arbitrary and biased rulings by their courts against Cuba to push their claims at the cost of the intellectual property rights of Cuban owners, which were duly registered and recognized in the United States under international legal instruments and US legislation. Should this misappropriation be allowed to continue, it would create another negative precedent with global trade implications. Furthermore, one would witness another serious violation by the United States of its legally binding obligations under international intellectual property treaties, which required it to grant protection to the trademarks and patents of companies and institutions of all countries, including Cuba. The United States, therefore, had full authority under its own laws to intervene in judicial proceedings that affected its national interests. All Cuba wanted was justice.

6. The representative of the Dominican Republic said that his country thanked the United States for its status report on compliance with the DSB's recommendations and rulings regarding Section 211, which was inconsistent with Article 42 of the TRIPS Agreement. In that respect, the Dominican Republic, once again, urged the United States to accelerate its internal procedures in order to comply with the DSB's recommendations and rulings. In particular, the Dominican Republic was concerned that the US lack of implementation over a long period of time undermined the credibility of WTO and its decisions.

7. The representative of the Bolivarian Republic of Venezuela said that, despite the DSB's recommendations made almost nine years ago, the United States continued to apply legislation that was inconsistent with the TRIPS Agreement and the Paris Convention for the Protection of Industrial Property. Venezuela thanked the United States for its status report, but regretted that, once again, that report was merely a repetition of its previous reports with different date and document symbol. In Venezuela's view, this constituted "action without results". This situation not only continued to undermine Cuba, but it also showed the US lack of commitment towards the DSB, WTO Members and the multilateral trading system. She said that her country continued to support Cuba and called

upon the United States to comply with the DSB's recommendations and to put an end to the economic, commercial and financial embargo policy which Venezuela condemned.

8. The representative of Nicaragua said that her country thanked the United States for its most recent status report on implementation of the DSB's recommendations in this dispute. Nicaragua, once again, regretted that the US status report reflected no progress on compliance. Nicaragua supported the statement made by Cuba and, once again, urged the United States to implement the DSB's recommendations and rulings as soon as possible.

9. The representative of Zimbabwe said that her country thanked the United States for its status report and wished to join previous speakers on this matter. Zimbabwe was concerned about the continued failure by the United States to implement the DSB's recommendations and rulings in this dispute and supported the statement made by Cuba. The US failure to comply in this long-standing dispute undermined the credibility of the dispute settlement system. The measures imposed by the United States on Cuba were illegal and served no purpose other than to hurt the most vulnerable groups, in particular women and children. This had a negative impact on Cuba's development and well-being. Zimbabwe urged the United States to undertake the necessary steps that would yield a speedy and constructive resolution of the matter and comply with the DSB's recommendations and rulings.

10. The representative of Brazil said that his country thanked the United States for its status report. Brazil reiterated its concerns about the lack of progress repeatedly reported by the United States with regard to the implementation of the DSB's recommendations and rulings in this dispute. Thus, Brazil wished to join previous speakers in urging the United States to bring its measures into conformity with its multilateral obligations without further delay.

11. The representative of the Plurinational State of Bolivia said that his country wished to reiterate its concerns about the status of this dispute and the US failure to comply with its WTO obligations. The US failure to comply had a negative impact on the credibility of the multilateral trading system and the DSB, as it affected the balance of Members' rights and obligations. Bolivia, once again, urged the United States to comply with the DSB's rulings and recommendations and to lift the restrictions imposed under Section 211.

12. The representative of Mexico said that his country thanked the United States for its status report. Mexico urged the parties to resolve this dispute through the legal remedies provided for under the DSU and to comply with the recommendations. Mexico noted that any Member was free to initiate its own dispute if it considered that it was affected by the failure of another Member to resolve a dispute or to comply with rulings. Mexico noted that the discussion under Agenda item 1 of the present meeting could provide useful input towards the discussions currently carried out in the context of the DSU negotiations.

13. The representative of China said that his country thanked the United States for its ninety-eighth status report in this dispute and for its statement made at the present meeting. However, China regretted that the United States had, once again, reported non-compliance. Almost nine years had passed since the adoption of the DSB's rulings and recommendations pertaining to the dispute. This situation was not in line with the principle of prompt implementation stipulated in the DSU and caused systematic concerns. China considered that it was also highly inappropriate for a developed-country Member to maintain a WTO-inconsistent measure for a long period of time, in particular if the interests of a developing-country Member were involved. China, therefore, strongly supported Cuba and urged the United States to implement the DSB's rulings without any further delay.

14. The representative of Viet Nam said that her country thanked the United States for its status report and wished to express its concern regarding the lack of progress in this dispute. Viet Nam

wished to join other speakers in urging the United States to take concrete measures to promptly implement the DSB's recommendations and rulings.

15. The representative of Ecuador said that his country supported Cuba's statement and recalled, once again, that Article 21 of the DSU made specific reference to prompt compliance with DSB's recommendations and rulings. Ecuador hoped that the United States would intensify its efforts to ensure immediate compliance with the DSB's recommendations and rulings.

16. 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.98)

17. The Chairman drew attention to document WT/DS184/15/Add.98, 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.

18. The representative of the United States said that his country had provided a status report in this dispute on 13 January 2011, in accordance with Article 21.6 of the DSU. As of November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. Details were provided in document WT/DS184/15/Add.3. With respect to the DSB's recommendations and rulings that had not already been addressed by the US authorities, the US administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

19. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan took note of the US report that the United States had taken certain measures to implement part of the DSB's recommendations in November 2002. With respect to the remaining part of the DSB's recommendations, Japan hoped that the United States would soon be in a position to report to the DSB on more tangible progress. Full and prompt implementation of the DSB's recommendations and rulings was "essential to the effective functioning of the WTO and the maintenance of a proper balance of the rights and obligations of Members" (Article 3.3 of the DSU). Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

20. 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.73)

21. The Chairman drew attention to document WT/DS160/24/Add.73, 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.

22. The representative of the United States said that his country had provided a status report in this dispute on 13 January 2011, in accordance with Article 21.6 of the DSU. The US administration would continue to confer with the EU, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

23. The representative of the European Union said that his delegation had noted that the United States was again reporting non-compliance. The EU remained keen to work with the US authorities towards the complete resolution of this case.

24. 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.36)

25. The Chairman drew attention to document WT/DS291/37/Add.36, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning its measures affecting the approval and marketing of biotech products.

26. The representative of the European Union said that, once again, his delegation noted that EU regulatory procedures on biotech products continued to work as foreseen in the legislation. The number of GMOs authorized since the date of establishment of the Panel was thirty-four. In 2010, 11 applications had been authorized, more than double the number of authorizations in 2009, including one authorization for cultivation. Progress had also been made on other applications for authorization or renewal. Draft decisions on two applications (cotton GHB614, maize MON89034×MON88017) and a draft decision on the renewal of a GM maize (1057) would be sent soon to the Council following the vote in the Standing Committee. Four more draft applications were expected to be discussed in the Standing Committee in February 2011 (MIR604×GA21 maize, BT11×MIR604 maize, 281-24-236/3006-210-23 cotton, Bt11×MIR604×GA21 maize). Furthermore, the European Food Safety Agency had delivered a favourable opinion on the renewal of a GM soy bean (MON Ø4Ø32-6). The EU hoped that the United States and the EU would continue their constructive technical dialogue on which they had re-engaged in July 2010. The EU hoped that this constructive approach, based on dialogue, would allow the parties to leave litigation aside.

27. The representative of the United States said that his country thanked the EU for its status report and its statement. The United States recalled that, at the December 2010 DSB meeting, it had highlighted that, since July 2010, the EU had not approved any of the dozens of pending biotech product applications. Now, another month had passed without an approval. In early February 2011, the EU regulatory Committee with the responsibility for approving biotech products was scheduled to meet to consider four product applications, as had been noted by the EU at the present meeting. The EU's scientific authority had issued positive safety assessments for each product. Two of the products were varieties of maize grown in the United States that had received their positive assessments over eight months ago, in May 2010. The regulatory Committee consisted of representatives of the 27 EU member States, and it operated by rules of qualified majority voting. The United States looked forward to the regulatory committee fulfilling its responsibility and approving the products in accordance with the EU's own scientific opinions. If the regulatory Committee failed to do so, the result would be additional delays in the approvals. As the United States had noted, such delays resulted in substantial barriers to international trade in biotech products.

28. The representative of the European Union said that the GMO regulatory regime was not the subject of the original Panel's findings and neither was its "operation", nor was the status of specific applications not dealt with in the original Panel covered by this Agenda item. In any event, the GMO regulatory regime was working normally. Its functioning should not be rigidly assessed purely quantitatively and in the abstract, in terms of the number of authorizations per year, since this was dependent on various product and case-specific elements and in particular on the quality of applications and on the time needed by applicants to answer requests from EFSA on additional scientific information. In 2010, eleven GMOs had been authorized in the EU, more than double the number of authorizations in 2009. A vote in the Council on two other applications and a renewal were expected to take place soon. The EU noted that allegations by the biotech industry of delays in

authorization procedures for GMOs were not exclusive to the EU. According to an article in the Wall Street Journal (April 2010), the biotech industry was also complaining about the alleged "logjam" at the US Department of Commerce.

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

(e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.16)

30. The Chairman drew attention to document WT/DS322/36/Add.16, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US measures relating to zeroing and sunset reviews.

31. The representative of the United States said that his country had provided a status report in this dispute on 13 January 2011, in accordance with Article 21.6 of the DSU. The United States had made clear its significant concerns with the rulings on zeroing in past disputes and would not repeat its concerns at the present meeting. The United States continued to believe that those rulings went beyond what the text of the agreements provided and what negotiators had agreed to in the Uruguay Round and that such issues should be of concern to all Members. As it had stated many times in the DSB, the United States recognized the systemic importance of compliance with dispute settlement findings. To that end, the United States had devoted significant resources to comply with the DSB's recommendations and rulings in this and other zeroing disputes. In response to the findings in this and other zeroing disputes, on 28 December 2010, the US Department of Commerce had announced a proposal to change the calculation of weighted average dumping margins and assessment rates in certain anti-dumping proceedings, including administrative reviews, new shipper reviews, and original anti-dumping investigations using transaction-to-transaction comparisons, and to address the findings made in connection with sunset reviews.

32. First, with respect to reviews, the Department of Commerce proposed to compare monthly weighted average export prices with monthly weighted average normal values, and to grant an offset for comparisons that showed an export price that exceeded normal value in the calculation of the weighted average margin of dumping and assessment rate. This would parallel the methodology that the Department now applied in original investigations and would apply to administrative reviews as well as new shipper reviews.

33. Second, with respect to the transaction-to-transaction approach in original investigations, it should be noted that the Department of Commerce had rarely applied this approach in investigations. However, in light of findings by the Appellate Body with respect to this approach in this dispute, to the extent that any prior application of the transaction-to-transaction approach in an investigation could be considered as establishing a practice with respect to the granting or denial of offsets for non-dumped comparisons, the Department proposed to withdraw any such practice.

34. Third, and finally, the modifications that the Department proposed with respect to reviews, and the modifications that the Department had already made with respect to investigations, would address the findings in this dispute with respect to sunset reviews. Details of the proposal had been published in the Federal Register (75 Fed. Reg. 81,533 (28 December 2010)). Under US law, there would be a period for public comment on the proposal and for consultations with appropriate committees in the US Congress. Because of its concerns about the findings regarding zeroing in this and other disputes, responding to those findings in a proposal had presented substantial challenges for the United States and had required significant resources. The proposal discussed at the present meeting reflected that effort and, if successful, would address adverse findings on zeroing in reviews, sunset reviews, and transaction-to-transaction comparisons in investigations.

35. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan welcomed the fact that the United States had announced a proposal to amend certain procedures on anti-dumping, and had commenced an internal process to ensure compliance with the DSB's recommendations. While welcoming this positive development, Japan noted that the proposal did not make it clear whether implementation of the proposal sufficed to implement the DSB's recommendations and rulings fully. For example, the proposal did not indicate how intermediate weighted average comparisons, made on a monthly basis, would be aggregated for a one-year review period. While Japan understood that it was not the intention of the United States to leave room for the use of the methodologies that had been found to be WTO-inconsistent, it wished to obtain assurance on this point. In addition, Japan recalled that the DSB's recommendations and rulings covered several "as applied" measures that did not appear to be addressed by the proposal.

36. First, several period reviews had been found to be WTO-inconsistent. Since the end of the reasonable period of time more than three years ago, the United States had continued to collect duties at unchanged WTO-inconsistent rates established in the "as applied" periodic reviews. For a number of those reviews, many entries remained unliquidated, and the United States was still to collect final anti-dumping duties, but had yet to calculate assessment rates without zeroing. Second, a sunset review had also been found to be WTO-inconsistent and had not yet been brought into conformity with the Anti-Dumping Agreement. Japan, therefore, had a keen interest in how those "as applied" measures would be treated in the internal process of the United States. Japan continued to seek prompt and full compliance by the United States in this matter with respect to all of the measures at issue. With that in mind, Japan looked forward to the US clarification of its proposal in light of Japan's comments, which were provisional and not exhaustive. Japan would continue to closely monitor developments and might take appropriate action if necessary.

37. The representative of the United States said that his country took note of Japan's comments and would convey Japan's questions to capital. With respect to the issue of past reviews, the Department of Commerce had issued a proposal which was not final and did not prejudge what might happen in any specific past review. The proposal was subject to comment, including by WTO Members. The United States would continue to work with interested parties, including Japan, on a solution to this dispute as it moved forward with what everyone would agree was a very challenging domestic implementation process.

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

(f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.13)

39. The Chairman drew attention to document WT/DS350/18/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 the existence and application of zeroing methodology by the United States.

40. The representative of the United States said that his country had provided a status report in this dispute on 13 January 2011. The United States had addressed the issue of compliance with the findings in this dispute in that status report, and earlier during the discussion under Agenda item 1(e) of the present meeting. The United States referred Members to the written status report and the statement it had just made for further details.

41. The representative of the European Union said that his delegation welcomed the publication by the US Department of Commerce (USDOC) on 28 December 2010, of a proposal, which should, if adopted and implemented correctly, contribute to ending the practice of zeroing in administrative reviews. The EU believed that the proposed weighted average-to-weighted average methodology could satisfy WTO requirements only if: (i) the new methodology was used so as to establish one

single dumping margin for the whole review period, for the purposes of both the duty assessment and the cash deposit rate; (ii) the US offset "negative" monthly amounts of dumping (i.e. where the weighted-average export price exceeded normal value) against "positive" monthly amounts of dumping, in all cases; and, (iii) the amount of duty collected from importers under the new methodology never exceeded the exporter's dumping margin. The EU also noted that, despite what seemed like a move away from zeroing, the USDOC retained the possibility, pursuant to the proposal, to use a different approach in reviews besides the weighted average-to-weighted average approach in some instances ("except where the Department determines that applications of a different comparison method is more appropriate."). In that respect, the EU wished to ask the United States to clarify what criteria the USDOC would use to vary from the "normal" method outlined in the proposal, and whether zeroing would be used in connection with any alternative methods. While the proposal by the USDOC was a step in the right direction it should be clear that the proposal, even if adopted and implemented correctly, would not bring about full implementation, unless it was supplemented by additional measures.

42. Much to the EU's disappointment, the reasonable period of time for implementation had expired over a year ago in the DS350 case and nearly four years ago in the DS294 case, without the United States having brought itself into full compliance. Since then duties calculated with zeroing had been imposed and liquidated contrary to US compliance obligations. Even more worryingly, they continued to be imposed and collected. The Appellate Body had made it clear that compliance in the context of zeroing implied not only cessation of zeroing in the assessment of duties, but also in consequent measures that, in the ordinary course of the imposition of anti-dumping duties, derived mechanically from the assessment of duties. Consequently, to the extent that a measure of this kind remained based on zeroing, the United States had failed to comply with the DSB's recommendations and rulings by applying that measure after the end of the reasonable period of time.

43. The US proposal of 28 December 2010 was not proposing to do anything with regard to duties imposed and collected contrary to the US compliance obligations, after the expiry of the reasonable period of time. To the EU's knowledge, the United States had not yet taken any action to bring itself into compliance with its WTO obligations. This raised serious concerns as to the US intention to fully implement the DSB's rulings and recommendations. The EU wanted to know how the United States intended to deal with excess duties paid. Did the United States intend to correct the original review calculations by removing zeroing in each of the outstanding cases and would the United States do so immediately? The EU urged the United States to complete the process for adoption of the proposal swiftly and to address the issue of excess duties paid, after the deadline for implementation had expired, without further delay. The EU recalled that compliance in this and other zeroing disputes was already long overdue and that further delays and incomplete implementation could not be acceptable.

44. The representative of the United States said that his country took note of the EU's comments, and as with Japan's questions, would refer the EU's questions to capital. However, the United States wished to briefly comment on two issues raised by the EU. With respect to past reviews, as had been noted under the previous sub-item, the Department of Commerce had issued a proposal. The proposal was not final, did not prejudge what might happen in any specific past review, and was subject to comment. The EU had also raised the issue of duties "imposed and collected after the expiry of the reasonable period of time". With respect to the issue of duties already collected, the United States would be interested in hearing more explanation from the EU on its position on this issue. The United States was not aware of any other instances in which a Member had refunded duties in response to an adverse finding in a WTO dispute. For example, the United States had understood that the EU had taken a very different approach in the Bananas dispute. However, the EU's statement at the present meeting appeared to indicate a different position. The United States wished, therefore, to ask the EU to explain how it refunded duties related to the Bananas dispute where the reasonable period of time had expired in January 1999. The United States would continue to work with

interested parties, including the EU, on a solution to this dispute as it moved forward with the very challenging domestic implementation process.

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

(g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/38/Add.7)

46. The Chairman drew attention to document WT/DS294/38/Add.7, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US laws, regulations and methodology for calculating dumping margins.

47. The representative of the United States said that his country had provided a status report in this dispute on 13 January 2011. The United States had addressed the issue of compliance with the findings in this dispute in that written status report, and earlier in the discussion under Agenda item 1(e) and 1(f). The United States referred Members to its written status report as well as those earlier statements for further details.

48. The representative of the European Union said that his delegation would refer Members to its statement under Agenda item 1(f) regarding the DS350 dispute. All concerns raised in relation to implementation in that dispute only applied more forcefully in relation to this dispute, where the deadline for implementation had expired on 9 April 2007. Once again, the EU urged the United States to work swiftly towards full compliance.

49. The representative of the United States said that his country thanked the EU for the efficiency of its statement. In that same spirit, the United States referred Members to its statements under the previous two Agenda sub-items in response to the EU's concerns.

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

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

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

52. The representative of China said that her country was presenting its status report, in accordance with Article 21.6 of the DSU. On 19 January 2010, the DSB had adopted the Appellate Body Report and the Panel Report on this dispute and, on 12 July 2010, China and the United States had informed the DSB that the reasonable period of time for implementation was 14 months. Accordingly, the reasonable period of time would expire on 19 March 2011. China again reiterated its intention to implement the DSB's recommendations and rulings. Following the DSB's adoption of the Appellate Body Report and the Panel Report, relevant Chinese agencies had begun to actively study various possible ways of implementation. Considering that this dispute concerned a number of Chinese administrative measures on cultural products and was embodied with more complexity and sensitivity than other disputes, China was actively engaged in its internal procedures on how to amend the relevant measures at issue to make them compliant with the DSB's rulings and recommendations.

53. The representative of the United States said that his country thanked China for its status report and its statement. As had been noted by China, the reasonable period of time in this dispute would

expire on 19 March 2011. The United States looked forward to China's implementation of the DSB's recommendations and rulings in connection with this matter by that date. In that regard, the United States welcomed China's statement at the present meeting reaffirming its intention to comply within the reasonable period of time.

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

2. Australia – Measures affecting the importation of apples from New Zealand

(a) Implementation of the recommendations of the DSB

55. 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 17 December 2010, the DSB had adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, in the case on: "Australia – Measures Affecting the Importation of Apples from New Zealand". The 30-day period in this case had expired on 16 January 2011 and, on 10 January 2011, Australia had informed the DSB, in writing, of its intentions in respect of implementation. The relevant communication was contained in document WT/DS367/18. He invited the representative of Australia to make a statement.

56. The representative of Australia said that, at its meeting of 17 December 2010, the DSB had adopted the recommendations and rulings in the dispute: "Australia – Measures Affecting the Importation of Apples from New Zealand". New Zealand had agreed that Australia would inform the DSB of its intentions regarding implementation of the DSB's recommendations and rulings by written notification, rather than at a special meeting of the DSB, within the 30 day time-frame required by Article 21.3 of the DSU. As stated in its written communication circulated on 13 January 2011 (WT/DS367/18), Australia intended to implement the DSB's recommendations and rulings in this dispute in a manner consistent with its WTO obligations. The Australian Government Department of Agriculture, Fisheries and Forestry, through Biosecurity Australia, would conduct a review of the existing policy for New Zealand apples for the three pests at issue in this dispute. The review would be conducted to the standard of an import risk analysis, and would take into account the DSB's recommendations and rulings. Australia would need a reasonable period of time in which to conduct this review and implement the DSB's recommendations and rulings. Australia was in discussions with New Zealand on this matter, in accordance with Article 21.3(b) of the DSU.

57. The representative of New Zealand said that her country thanked Australia for its written notification of its intentions dated 13 January 2011, indicating that it intended to implement the DSB's recommendations and rulings in this dispute, and for its statement at the present meeting. New Zealand looked forward to further discussions with Australia on a reasonable period of time, under Article 21.3(b) of the DSU, for the implementation of the DSB's rulings and recommendations in this dispute.

58. The DSB took note of the statements, and of the information provided by Australia 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

59. 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.

60. The representative of the European Union said that, as it had done many times before, the EU wished to ask the United States when it would effectively stop the transfer of anti-dumping and countervailing duties to the US industry, and hence, put an end to the condemned measure. The fact that the United States had stopped disbursing duties collected after a certain period in time did not achieve full compliance. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations. Once again, the EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit status reports pertaining to this dispute.

61. The representative of Japan said that the CDSOA disbursements for FY 2010 announced the previous month[2] showed that the CDSOA remained operational. As US Customs and Border Protection had explained, "the distribution process will continue for an undetermined period".[3] Japan urged the United States to stop the illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report pertaining to this dispute.

62. The representative of India said that his country thanked the EU and Japan for regularly bringing this issue before the DSB. India remained highly disappointed at the US continued operation of the CDSOA and shared the concerns of both Japan and the EU. As stated on earlier occasions, India was concerned that non-compliance by Members led to a growing lack of credibility of the WTO dispute settlement system. India agreed with the EU and Japan that the Byrd Amendment should continue to remain under the surveillance of the DSB until the United States ceased to administer it.

63. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. Brazil urged the United States to stop making disbursements pursuant to the CDSOA and to implement the DSB's recommendations and rulings pertaining to this dispute. Only then would the issue in this dispute be "resolved" within the meaning of Article 21.6 of the DSU and the United States would no longer be required to provide status reports.

64. The representative of Canada said that her country thanked the EU and Japan for placing this item on the DSB's Agenda. Canada wished to reiterate its view that the CDSOA remained subject to the surveillance of the DSB until the United States ceased to administer it.

65. The representative of Thailand said that his country thanked the EU and Japan for continuing to bring this item before the DSB and supported the statements made by previous speakers. Thailand continued to urge the United States to fully comply with the DSB's rulings and recommendations on this matter.

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[2] See US Customs and Border Protection's website at: http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/annual_report/

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

66. The representative of China said that her country thanked the EU and Japan for raising this matter at the DSB meeting. China shared the concerns expressed by previous speakers and joined them in urging the United States to fully comply with the DSB's rulings.

67. The representative of the United States said that, as his country had already explained at previous DSB meetings, the US President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Furthermore, the United States recalled that Members, including the EU and Japan, 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. The United States, therefore, did not understand the purpose for which the EU and Japan had inscribed this item on the Agenda of the present meeting. With respect to comments regarding further status reports, the United States failed to see what purpose would be served by further submission of status reports repeating, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes.

68. The DSB took note of the statements.

4. Dominican Republic – Safeguard measures on imports of polypropylene bags and tubular fabric

(a) Request for the establishment of a panel by Costa Rica (WT/DS415/7)

(b) Request for the establishment of a panel by Guatemala (WT/DS416/7)

(c) Request for the establishment of a panel by Honduras (WT/DS417/7)

(d) Request for the establishment of a panel by El Salvador (WT/DS418/7)

69. The Chairman proposed that the four 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 Costa Rica contained in document WT/DS415/7 and invited the representative of Costa Rica to speak.

70. The representative of Costa Rica said that, on 5 October 2010, the Dominican Republic had announced the imposition of the safeguard measures on imports of polypropylene bags and tubular fabric from Costa Rica. On 15 October 2010, Costa Rica had responded by requesting consultations with the Dominican Republic, since it considered the safeguard measures to be inconsistent, *inter alia*, with Article XIX of the GATT 1994 and with the Agreement on Safeguards. El Salvador, Honduras and Guatemala had also requested consultations on the same measure. Those consultations had been held on 16 and 17 November 2010 but, unfortunately, they had not resulted in a mutually satisfactory solution. Consequently, on 15 December 2010, Costa Rica had requested the DSB to establish a panel to examine the matter. As Costa Rica had explained in its request for the establishment of a panel, the measures imposed by the Dominican Republic violated its WTO obligations, and had caused its imports of polypropylene bags and tubular fabric from Costa Rica to cease entirely, thus having a negative effect on Costa Rica's industry. Costa Rica wished to express its systemic concern about the growing number of occasions in the past few months on which the Dominican Republic had resorted to the Article XIX safeguard mechanism to restrict imports. The ease and frequency with which the Dominican Republic had resorted to what was an exceptional mechanism was a source of serious concern. Since other Members had also requested the establishment of a panel on the same matter, Costa Rica was requesting, pursuant to Article 9.1 of the DSU, the establishment of a single panel, to examine the different complaints, with standard terms of reference as set out in Article 7 of the DSU.

71. The Chairman drew attention to the communication from Guatemala contained in document WT/DS416/7 and invited the representative of Guatemala to speak.

72. The representative of Guatemala said that his country also considered the safeguard measures imposed by the Dominican Republic on imports of polypropylene bags and tubular fabric to be inconsistent, *inter alia*, with Article XIX of the GATT 1994 and the Agreement on Safeguards. For that reason, Guatemala had requested consultations with the Dominican Republic on the matter on 15 October 2010. The consultations had taken place on 16 and 17 November 2010. Unfortunately, although the consultations had helped to narrow the gap between the parties and had enabled them to exchange views on the challenged measures, they had not resolved the dispute. Consequently, Guatemala had requested that the DSB establish a panel to examine this matter. Since other Members had also requested the establishment of a panel on the same matter, Guatemala was requesting, pursuant to Article 9.1 of the DSU, the establishment of a single panel to examine the different complaints, with standard terms of reference, as set out in Article 7 of the DSU.

73. The Chairman drew attention to the communication from Honduras contained in document WT/DS417/7 and invited the representative of Honduras to speak.

74. The representative of Honduras said that, on 18 October 2010, Honduras had requested consultations with the Dominican Republic regarding its safeguard measures imposed on imports of polypropylene bags and tubular fabric. Honduras considered those measures to be inconsistent, *inter alia*, with Article XIX of the GATT 1994 and with the Agreement on Safeguards. The consultations had been held on 16 and 17 November 2010, but unfortunately, although the consultations had helped to narrow the gap between the parties and had enabled them to exchange views on the challenged measures, they had not resolved the matter. Therefore, Honduras had requested the establishment of a panel to examine this matter. Since other Members had also requested the establishment of a panel on the same matter, Honduras was requesting, pursuant to Article 9.1 of the DSU, the establishment of a single panel to examine the different complaints with standard terms of reference as set out in Article 7 of the DSU.

75. The Chairman drew attention to the communication from El Salvador contained in document WT/DS418/7 and invited the representative of El Salvador to speak.

76. The representative of El Salvador said that, on 19 October 2010, his country had requested consultations with the Dominican Republic regarding its safeguard measures imposed on imports of polypropylene bags and tubular fabric. El Salvador considered that those measures were inconsistent with, *inter alia*, Article XIX of the GATT 1994 and with the Agreement on Safeguards. El Salvador, together with other Members that had been affected by the safeguard measures on polypropylene bags and tubular fabric, had held consultations with the Dominican Republic on 16 and 17 November 2010. Unfortunately, although those consultations had helped to narrow the gap between the parties and had enabled them to exchange views on the challenged measures, they had not resolved the dispute. Prior to the consultations, El Salvador had expressed concern regarding the measures at issue through various official channels, including the Committee on Safeguards. Nevertheless, pursuant to a resolution of the Commission for the Regulation of Unfair Trade Practices and Safeguard Measures of the Dominican Republic, the definitive safeguard measure on polypropylene bags and tubular fabric, which had a negative impact on El Salvador's exports to the Dominican Republic's market, had been in force since 18 October 2010. Consequently, El Salvador had requested the DSB to establish a panel to examine this matter. Since other Members had also requested the establishment of a panel on the same matter, El Salvador was requesting, pursuant to Article 9.1 of the DSU, the establishment of a single panel to examine the different complaints with standard terms of reference as set out in Article 7 of the DSU.

77. The representative of the Dominican Republic said that his country thanked its Central American trading partners for their statements. As had been indicated, the consultations held on 16

and 17 November had enabled the parties to the disputes to exchange views. However, one could not claim that this matter could have been resolved in one round of consultations. Therefore, at the present meeting, the Dominican Republic was not in a position to agree to the establishment of a panel requested by Costa Rica, Guatemala, Honduras and El Salvador. The Dominican Republic believed that the parties' efforts to continue their dialogue should be pursued and was open to any such dialogue.

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

5. European Communities – Definitive anti-dumping measures on certain iron or steel fasteners from China

(a) Joint request by the European Union and China for a decision by the DSB (WT/DS397/6)

79. The Chairman drew attention to the communication from the European Union and China contained in document WT/DS397/6 and invited the representative of China to speak.

80. The representative of China said that, as had been stated in the procedural agreement between the EU and China, taking into account the current workload of the Appellate Body, the parties to the dispute had agreed that the 60-day time period in Article 16.4 of the DSU as applicable to the dispute: "EC – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China", be extended to 25 March 2011. China considered that a DSB decision for this purpose would provide greater flexibility in scheduling, given the heavy workload of the Appellate Body.

81. The representative of the European Union said that, as it had already been stated by China, in order to take into account the current workload of the Appellate Body, the parties to the dispute: "EC – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China", had concluded a procedural agreement regarding the time period under Article 16.4 of the DSU. Therefore, at the present meeting, the EU was requesting the DSB to adopt the draft decision, as set out in document WT/DS397/6.

82. The DSB took note of the statements.

83. The Chairman proposed that: "The DSB agree that, upon a request by China or the European Union, the DSB shall no later than 25 March 2011 adopt the Report of the Panel in the dispute: "*European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*", contained in document WT/DS397/R, unless (i) the DSB decides by consensus not to do so or (ii) China or European Union notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU".

84. The DSB so agreed.

6. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/440)

85. The Chairman drew attention to document WT/DSB/W/440, which contained additional names proposed for inclusion in 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/440.

86. The DSB so agreed.