

**Dispute Settlement Body
24 February 2011**

MINUTES OF MEETING

Held in the Centre William Rappard
on 24 February 2011

Chairman: Mr. Yonov Frederick Agah (Nigeria)

Prior to the adoption of the Agenda, the item concerning the Panel Report in the case on: "Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines" (DS371) was removed from the proposed Agenda following Thailand's decision to appeal the Report.

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

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1. The 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.99)

2. The Chairman drew attention to document WT/DS176/11/Add.99, 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 11 February 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 and 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 no progress had been made by the United States and the EU towards finding a solution to the Section 211 dispute, which had lasted as long as the Doha Round negotiations. The passiveness and lack of progress towards the implementation in this dispute were unacceptable and so was Section 211, which was inconsistent with the rules of international law. The United States did not even make any changes to its monthly status reports. Since this dispute was first considered by the DSB, Cuba and other Members had expressed their concerns and had warned about systemic implications resulting from the failure to resolve this dispute in a satisfactory manner. The only explanation for the current situation was that the United States lacked the will to resolve the matter, while the EU did not use pressure or take appropriate measures against the United States, despite its capacity to do so. Should this lack of compliance continue, one of the WTO pillars could collapse despite Cuba's warning. The dispute settlement system was ineffective and some improvements were urgently needed to preserve its credibility. This was the only way to ensure that the system continued to serve as a useful tool for resolving trade disputes, which was available to all Members regardless of their size. The United States was in breach of fundamental principles contained in the TRIPS Agreement and the DSU provisions.

6. Cuba noted that the 2010 DSB Annual Report, submitted to the General Council in December 2010, showed that out of the ten disputes that were kept under the DSB's surveillance of implementation of recommendations six concerned the United States. Those disputes had been ongoing for nine, ten and even 11 years. Cuba, therefore, wondered whether this was the proper way for the United States to show its commitment to the rules-based multilateral trading system. No country, however powerful, had the authority to place itself above the rules of international law and multilateral trade rules. In Cuba's view, this demonstrated a profound disrespect for the system. Cuba requested that this dispute be resolved, without further delay, through the repeal of Section 211.

7. The representative of Ecuador said that his country thanked the United States for its status report but regretted that, once again, the United States had failed to indicate as to when it would implement the DSB's recommendations and rulings pertaining to this dispute. In light of this and due to its systemic concerns, Ecuador fully supported the statement made by Cuba. Article 21 of the DSU called for "prompt compliance" and stipulated that "particular attention should be paid to matters affecting the interests of developing-country Members". In this dispute, the United States had failed to respect those provisions. Ecuador regretted that, after a long period of time, no solution had been

found to this dispute which affected the interests of a developing-country Member. Cuba was denied a recognized intellectual property right, and if it were to file its own complaint on this matter, it would have to endure a long and costly litigation. Ecuador, once again, urged the United States to repeal Section 211. Finally, Ecuador reiterated its request for more detailed and precise information from the EU on the steps that it had taken to resolve this dispute.

8. The representative of China said that her country thanked the United States for its status report in this dispute and its statement made at the present meeting. China noted that this was the 100th status report in this dispute, and regretted that the United States had, once again, reported non-compliance. Nine years had passed since the adoption of the DSB's recommendations and rulings pertaining to this dispute. In China's view, this situation was not in line with the principle of prompt implementation stipulated in the DSU provisions and raised systemic concerns. China considered that it was highly inappropriate for a developed-country Member to maintain a WTO-inconsistent measure for such a long period of time, in particular since the interests of a developing-country Member were being affected. China, therefore, strongly supported Cuba and urged the United States to implement the DSB's rulings without further delay.

9. The representative of Argentina said that his country thanked the United States for its status report and supported the statement made by Cuba.

10. The representative of Nicaragua said that her country thanked the United States for its status report in this dispute. Nicaragua regretted that the US status report confirmed the continued failure by the United States to implement the DSB's recommendations and rulings. Nicaragua hoped that the United States would continue to work towards taking the necessary steps to ensure that its measures were brought into line with the DSB's recommendations so as to rapidly resolve this long-standing dispute. Nicaragua, once again, called on the United States to implement the DSB's recommendations and rulings to ensure that the dispute settlement system continued to work effectively.

11. The representative of Brazil said that his country thanked the United States for its status report and noted that this was the one-hundredth time that the United States had reported non-compliance in the Section 211 dispute. Brazil hoped that the United States would accelerate its efforts and bring its measures into compliance with its multilateral obligations without further delay.

12. The representative of the Bolivarian Republic of Venezuela said that, once again, his country supported Cuba's concern about the prolonged, embarrassing and unjustified non-compliance by the United States. This lack of compliance not only highlighted the failure of the United States to meet its WTO commitments, it also undermined the credibility of the dispute settlement system. As Cuba recalled, nine years had passed since the expiry of the reasonable period of time for implementation in this dispute. In Venezuela's view, this was a clear indication of inaction on the part of the United States and represented a serious violation of the TRIPS Agreement with trade implications for the Cuban Havana Rum industry. Like previous speakers, Venezuela urged the United States to take concrete steps to repeal Section 211 in order to comply with the DSB's ruling, which had been ignored by the United States for almost a decade.

13. The representative of the Dominican Republic said that her country thanked the United States for its most recent status report on its implementation of the DSB's recommendations and rulings regarding Section 211, which was inconsistent with the provisions of the TRIPS Agreement. In that respect, the Dominican Republic, once again, urged the United States to accelerate its domestic procedures in order to comply with the DSB's recommendations. Given that a long period of time had elapsed, the Dominican Republic was concerned that the US lack of implementation undermined the credibility of the dispute settlement system. Once again, the Dominican Republic urged the United States to comply with the DSB's recommendations without further delay.

14. The representative of Mexico said that his country thanked the United States for its status report and urged the parties to resolve this dispute through the legal remedies provided for in the DSU provisions. Mexico noted that if a dispute was not resolved, any Member that considered that its rights were being nullified or impaired could initiate its own dispute. Mexico also noted that the discussion under this Agenda item could provide useful input for the ongoing discussions carried out in the context of the DSU negotiations, in particular with regard to the issue of effective compliance.

15. The representative of Viet Nam said that his country thanked the United States for its status report. Viet Nam supported the statement made by Cuba and urged the United States to comply with the DSB's recommendations without further delay.

16. The representative of Zimbabwe said that his country thanked the United States for its status report. Zimbabwe supported the statement made by Cuba and called upon the United States to take the necessary steps to comply with the DSB's recommendations and rulings.

17. The representative of Paraguay said that her country wished to be associated with the statements made by Cuba and the previous speakers who had expressed concerns about delays in complying with the DSB's recommendations and rulings in this dispute. Delays in implementation raised systemic concerns. Paraguay, therefore, urged the United States to promptly comply with the DSB's recommendation and to repeal Section 211.

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

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.99)

19. The Chairman drew attention to document WT/DS184/15/Add.99, 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.

20. The representative of the United States said that his country had provided a status report in this dispute on 11 February 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 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.

21. 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. As for 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".² Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

² Article 3.3 of the DSU.

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

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.74)

23. The Chairman drew attention to document WT/DS160/24/Add.74, 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.

24. The representative of the United States said that his country had provided a status report in this dispute on 11 February 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.

25. The representative of the European Union said that the EU thanked the United States for its status report and 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.

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

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

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

28. The representative of the European Union said that, once again, the EU noted that its regulatory procedures on biotech products continued to work as foreseen in the legislation. The number of GMOs authorized since the date of establishment of the Panel was thirty-four. 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) had been sent to the Council following the vote in the Standing Committee. Four more draft applications had been voted in the Standing Committee in February 2011 (MIR604×GA21 maize, BT11×MIR604 maize, 281-24-236/3006-210-23 cotton, Bt11×MIR604×GA21 maize). The tentative agenda of the AGRI Council on 17 March 2011 included a vote on those authorizations. 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.

29. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. At the 25 January 2011 DSB meeting, the United States had noted that since July 2010, the EU had not approved any of the dozens of pending biotech product applications. The United States had also noted that, in early February 2011, the EU regulatory committee with the responsibility for approving biotech products had been scheduled to meet to consider four biotech product applications. Each of those products had received positive safety assessments from the EU's own scientific authority. The four products had included two varieties of maize grown in the United States. The regulatory committee had met earlier in

February 2011 to consider the four products. However, the committee had failed to approve any of those products, despite the positive scientific opinions. The United States understood that the majority of the EU member State representatives on the committee had been in favour of approval. However, and unfortunately, the number of votes had not been sufficient to reach the necessary "qualified majority" under the EU rules. As a result, those pending applications would face further delays in approval. The United States emphasized that such delays had real and substantial consequences in terms of blocking trade in biotech products. The United States looked forward to the EU taking steps to address the inaction by the regulatory committee that had the responsibility for biotech products.

30. The representative of the European Union said that the GMO regulatory regime was not the subject of the original Panel's findings and neither its "operation" nor the status of specific applications not dealt with in the original Panel was covered by this Agenda item.

31. 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.17)

32. The Chairman drew attention to document WT/DS322/36/Add.17, 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.

33. The representative of the United States said that his country had provided a status report in this dispute on 11 February 2011, in accordance with Article 21.6 of the DSU. As the United States had explained in its status report and at the January 2011 DSB meeting, in December 2010 the US Department of Commerce had announced a proposal to change the calculation of weighted average dumping margins and assessment rates in certain anti-dumping proceedings. Details of the proposal had been published in the Federal Register.³ As had been explained in that notice, the proposal required a period for public comment, and would involve consultations with appropriate committees in the US Congress. At this time, the US Department of Commerce was continuing with its ongoing work on the December proposal. Given US concerns about the findings regarding zeroing in this and other disputes, responding to those findings had presented substantial challenges for the United States and had required significant resources. The proposal reflected that effort, and addressed adverse findings on zeroing in reviews, sunset reviews, and transaction-to-transaction comparisons in investigations.

34. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan took note that the internal consultation process was underway, based on the proposal announced by the US Department of Commerce on 28 December 2010. While welcoming the development as a positive step forward, Japan was carefully reviewing the proposal to see whether implementation of the proposal sufficed to fully implement the DSB's recommendations and rulings. Japan would welcome further clarification from the United States on the questions it had raised. Japan continued to seek prompt and full compliance by the United States with respect to all the measures at issue that were subject to the recommendations in this dispute. Japan looked forward to a continued dialogue with the United States on this matter and would continue to closely monitor any developments. Japan reserved its right under the DSU to take appropriate action, if necessary.

35. The representative of the United States said that his country noted Japan's comments and would refer those comments to capital. With respect to the December 2010 US proposal, the

³ 75 Federal Register 81533 (28 December 2010).

United States wished to reiterate that the proposal was not final, and that the United States was reviewing the comments received. The United States would also continue to work with interested parties, including Japan, on a solution to this dispute as it moved forward with what was a very challenging domestic implementation process.

36. 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.14)

37. The Chairman drew attention to document WT/DS350/18/Add.14, 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.

38. The representative of the United States said that his country had addressed the issue of compliance with the findings in this dispute in the status report provided on 11 February 2011, and earlier in the discussion under Agenda item 1(e) of the present meeting. The United States, therefore, referred Members to that statement for further details.

39. The representative of the European Union said that his delegation thanked the United States for its status report. The EU said that it had commented on the US proposal of 28 December 2010 at the January 2011 DSB meeting and would refer Members, and in particular the United States, to its statements made at that meeting for further details. The EU appreciated the efforts made by the United States in order to start its work towards compliance with the DSB's recommendations and rulings in zeroing disputes. However, the EU wanted to be very clear that what had been put forward thus far by the United States was not enough to bring about full compliance. More specifically, with regard to the dispute under this Agenda item (DS350), the EU wanted the United States to state exactly which measures it had implemented to date to bring itself into compliance. Based on the most recent US status report, it seemed that with the exception of Section 129(b) reviews for four final determinations (Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from Sweden; Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from the Netherlands; Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from Finland; and Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from Spain) no implementing measure was in place. The proposal which would, "if successful"⁴, hopefully address only a part of the other adverse findings on zeroing was not, at this stage, a measure taken to comply.

40. The United States was asking the EU to be patient and appreciate the effort and resources it had to invest in putting forward its proposal of 28 December 2010. The EU recalled that the already generous deadline for implementation in this dispute had expired on 19 December 2009 (and on 9 April 2007 for the DS294 dispute). This showed how patient and appreciative the EU had been. However, the United States was now also saying that it did not consider it necessary to refund the duties it had continued to impose and collect since after the expiry of the reasonable period of time for compliance. The EU disagreed with the United States on this point. The Appellate Body had made it clear that compliance in the context of zeroing implied not only the 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. While the EU did not dispute the fact that the United States remained free to determine the

⁴ See the US second intervention at the DSB meeting of 25 January 2011 under Agenda item 1(e).

approach to take to bring itself into compliance depending on its domestic procedures, the freedom did not go as far as allowing the United States to ignore the recommendations and ruling altogether. The EU wished to remind the United States that the issue of excess duties paid after the expiry of the reasonable period of time was an issue because the United States had delayed implementation for so long. The EU asked the United States to appreciate the resources the EU had already invested into this matter and understand that in view of what the United States had put forward thus far, the EU was understandably beginning to run out of patience.

41. At the 25 January 2011 DSB meeting, the United States had referred to the Bananas dispute in suggesting that it was not required to refund excess duties it had continued to collect contrary to its WTO obligations. The EU noted that its approach in implementing the Bananas dispute was not relevant to this Agenda item, which dealt with a different dispute (DS350). The EU wished to briefly address the US intervention under Agenda item 1(e) at the January 2011 DSB meeting. At that meeting, the United States had noted that the proposal of 28 December 2010 "is subject to comment, including by WTO Members". The EU wished to observe that, in accordance with the DSU provisions, the DSB kept under surveillance the implementation of adopted recommendations and rulings in WTO disputes. The US proposal of 28 December 2010 was a proposal for a measure taken to comply. Consequently, the EU had commented on it in the DSB and would continue to do so, as appropriate, in the future. The EU did not find it necessary to get involved in domestic decision-making procedures, but trusted that the United States would duly take into account the comments made by the EU at the DSB meeting and would address them in its final proposal.

42. The representative of China said that her country thanked the United States for its status report and its statement made at the present meeting. China welcomed the positive steps taken by the United States towards the implementation of the DSB's recommendations and rulings pertaining to this dispute. However, with regard to the end of the practice of zeroing in reviews that appeared in the Federal Register on 28 December 2010, China wished to make two comments on the new procedure proposed by the US Department of Commerce (USDOC). First, with regard to the prior original anti-dumping investigations and reviews, the USDOC should provide exporters with the opportunity to petition a revised dumping margin calculation. This would require the USDOC to adopt guidelines for the transition period from the prior methodology to the revised methodology. China believed that currently effective dumping margins calculated using zeroing methodology should be eligible for revision to ensure fairness and to avoid prolonged and unnecessary litigations.

43. Second, the United States should take this opportunity to clarify important issues concerning the use of targeted dumping and communicate its intention to abide by clear international obligations and prohibit the use of zeroing methodology. The USDOC proposal did not identify the issue of targeted dumping by name, but did clearly refer to it when explaining the proposed methodology. Specifically, the USDOC had indicated that the revised methodology would be used in administrative reviews, "except where the department determines that application of a different comparison method is more appropriate". In a series of recent original investigations, the USDOC had taken the position that a finding of targeted dumping produced broad discretions for the dumping margin calculation, and the average-to-transaction comparison methodology used in the targeted dumping context incorporated the zeroing methodology. China had serious concerns about the appropriateness of this recently-developed practice. China asked the United States to clarify how the USDOC used the targeted dumping methodology to calculate dumping margins, and why the zeroing methodology was necessary in connection with this alternative method. China looked forward to the clarification by the United States of its proposal in light of those comments.

44. The representative of the United States said that a number of substantive issues had just been raised. The United States looked forward to receiving those statements and conveying those comments to capital. At this point, the United States wished to react to two issues in the EU's statement. First, the United States believed it understood the EU to say that the EU preferred to make

DSB statements on this matter rather than other communications. Every WTO Member had the right to make a DSB statement: there was no question about that. But it was also clear that the resolution of a dispute, especially one as politically difficult as this dispute, would only be found through sustained bilateral engagement, and not through DSB statements. In that respect, the United States welcomed the bilateral contacts it had with several Members seeking to discuss this issue and would welcome further constructive engagement by the EU on this matter. Second, the United States took note of the EU's very brief reference to the Bananas dispute. At the January 2011 DSB meeting, the United States had asked if the EU's assertions that all duties collected since the end of the reasonable period of time must be refunded meant that the EU had changed its position and whether it had, therefore, refunded duties in the Bananas dispute back to the end of the reasonable period of time in 1999. The EU had not addressed that issue at the present meeting. That meant that one could reasonably infer that the EU had not changed its position and had not refunded those duties. The United States appreciated the clarification, even if expressed very economically. Finally, as stated under the previous Agenda sub-item, the United States would continue to work with interested parties, including the EU, on a solution to this dispute as it moved forward with what was a very challenging domestic implementation process.

45. The representative of the European Union said that his delegation welcomed the US suggestion for a constructive bilateral dialogue on this matter. However, the EU may have to revert to the US statement made at the present meeting at the next DSB meeting. For the record, and in response to the US references to the Bananas dispute, he said that no inferences in the legal sense should be drawn from the statement made by the EU at the present meeting.

46. 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.8)

47. The Chairman drew attention to document WT/DS294/38/Add.8, 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.

48. The representative of the United States said that his country had addressed the issue of compliance with the findings in this dispute in the status report provided on 11 February 2011, and earlier in the discussion under Agenda items 1(e) and 1(f) of the present meeting. The United States, therefore, referred Members to those statements for further details.

49. The representative of the European Union said that the EU thanked the United States for its status report and referred Members to its statements under Agenda item 1(f) in which it had explained its concerns regarding the US proposal of 28 December 2010.

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/Add.1)

51. The Chairman drew attention to document WT/DS363/17/Add.1, 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 pertaining to this dispute. 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 wished to reiterate 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 currently conducting an analysis on how to amend the relevant measures at issue. Certain measures were in the process of being amended and draft revisions had been published for public comments. China would continue its implementation efforts in order to resolve this matter.

53. The representative of the United States said that his country thanked China for its status report and the statement made at the present meeting. The United States looked forward to China's implementation of the DSB's recommendations and rulings pertaining to this matter by the agreed deadline of 19 March 2011. The United States understood that draft revisions had been published for certain of the measures at issue. The United States hoped that China would issue draft revisions for the remaining measures promptly in order to ensure that the deadline for implementation was met.

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

2. 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

55. 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.

56. The representative of Japan said that FY 2010 Annual Disbursement Report published in December 2010⁵ showed that the CDSOA remained operational. As US Customs and Border Protection had explained, "the distribution process will continue for an undetermined period".⁶ 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. In accordance with Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report pertaining to this dispute.

57. The representative of the European Union said that, as it had been 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.

⁵ See US Customs and Border Protection's website at:
http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/annual_report/

⁶ 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

58. The representative of India said that his country thanked the EU and Japan for regularly bringing this issue before the DSB. Non-compliance by a Member raised serious concerns about the credibility of the dispute settlement system. India urged the United States to immediately stop the WTO-inconsistent disbursements under the CDSOA. This issue should continue to remain on the Agenda of the DSB until full compliance was achieved.

59. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the Agenda of the DSB. As at previous DSB meetings, Brazil urged the United States to stop making disbursements pursuant to the CDSOA in order to comply with the DSB's recommendations and rulings. In the absence of such action, this dispute remained unresolved, and the United States was required to provide status reports pursuant to Article 21.6 of the DSU.

60. The representative of Canada said that his country agreed with the EU and Japan that the Byrd Amendment remained subject to the DSB surveillance until the United States ceased to administer it.

61. The representative of China said that her country thanked the EU and Japan for placing this item on the Agenda of the present meeting. China shared the concerns expressed by previous speakers and wished to join them in urging the United States to fully comply with the DSB's rulings on this matter.

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

63. The representative of the United States said that, as his country had already explained at numerous 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 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 on this matter, as the United States had already explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports repeating, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes.

64. The DSB took note of the statements.

3. European Communities – Certain measures prohibiting the importation and marketing of seal products

(a) Request for the establishment of a panel by Canada (WT/DS369/2)

65. The Chairman drew attention to the communication from Canada contained in document WT/DS369/2, and invited the representative of Canada to speak.

66. The representative of Canada said that, at the present meeting, Canada was making two requests for the establishment of a panel. The first request concerned Belgian and Dutch measures that had entered into force on 28 April and 23 October 2007, respectively, and that prohibited the importation and the marketing of seal products. The second request referred to an EU regulation that

had entered into force on 20 August 2010 to ban trade in seal products. While it may have been that the EU ban superseded the Belgian and the Dutch bans for the purposes of the application of EU law, Canada understood that, to date, the two national bans had not yet been repealed and therefore remained in effect. This was why, at the present meeting, Canada proceeded with two separate panel requests. Canada understood that, according to the EU, the measures that were the subject of Canada's panel requests had been instituted in response to concerns of its citizens and consumers about the animal welfare aspects of the seal harvest. While Canada respected an individual's choice to support or oppose the seal harvest, and noted that several EU member States also allowed their citizens to participate in the hunting of seals, Canada also believed that trade restrictions could not be justified by relying on myths and misinformation and encouraged people to form their opinions based on the facts. Those facts were the following: (i) Canadian seal harvest was lawful, sustainable, humane, strictly regulated and guided by rigorous animal welfare principles that were internationally recognized by virtually all independent observers; (ii) the methods used by Canadian sealers and prescribed in Canada's Marine Mammal Regulations were consistent with the recommendations of independent veterinarians and many of the conclusions of the EU's own European Food Safety Authority report released in 2007; (iii) the Canadian government monitored the seal harvest closely, including ongoing aerial patrols, sophisticated vessel monitoring systems, at-sea and dockside vessel inspections, and regular inspections of processing facilities; (iv) Canada took seriously its role as a steward of the environment and of wildlife and was committed to enforcing the seal harvest regulations to the fullest extent of the law; (v) Canadian officials interacted regularly with the sealing industry to make sure that sealers fully understood and carried out their obligations under licence conditions and regulations; (vi) the Canadian seal harvest helped to provide thousands of jobs in Canada's remote coastal and northern communities where few economic opportunities existed; and (vii) it had also been an important part of the Inuit way of life for centuries.

67. Requesting the establishment of a panel was the latest step in Canada's lengthy engagement with the EU on this issue. Over the past number of years, Canadian officials had made representations at all levels of the EU to express Canada's concerns with the potential impacts of these bans and to inform them of those facts. Canada had also shared its concerns on multiple occasions at the WTO TBT Committee. In response to the enactment of the first bans, Canada had held consultations with the EU, representing Belgium and the Netherlands, on 14 November 2007. Following those consultations, Canada had chosen to delay pursuing that dispute further when it had become evident that an EU-wide ban on the trade in seal products was being contemplated. When the EU-wide ban had come into force on 20 November 2009, Canada had launched a separate dispute by requesting consultations with the EU on the new measure. Those consultations had been held on 15 December 2009. On 17 August 2010, the EU had published an additional measure which had purported to set out, in a detailed manner, how the exceptions to the ban on trade in seal products were going to be implemented. As a result, Canada had requested supplementary consultations, which had been held on 1 December 2010. Unfortunately, despite Canada's efforts to find a mutually agreeable solution, the matter had not been resolved.

68. As outlined in its two separate letters, dated 11 February 2011, to the DSB, Canada considered that the Belgian and Dutch measures and the EU measures were inconsistent with the EU's WTO obligations, including under the GATT 1994 and the TBT Agreement. In accordance with those letters, Canada was requesting that two panels be established, with standard terms of reference, to examine the Belgian and Dutch measures prohibiting the importation and the marketing of seal products and to examine the EU measures restricting trade in seal products. Canada noted that, although it had requested that two panels be established, it hoped that the EU would agree to have the two panels joined once they had been established, so that the two disputes, which were closely related, could be heard by the same panelists. Therefore, under this Agenda item, Canada was requesting the establishment of a panel pertaining to the DS369 dispute, with standard terms of reference.

69. The representative of the European Union said that the EU took note of Canada's request for the establishment of a panel. The EU believed that the measures were neither protectionist nor discriminatory and that they were fully in compliance with WTO rules. The EU stood ready to defend its measures. The EU also noted that, as a matter of EU law, the measures subject to the DS369 dispute had to be internally compatible with the measures subject to the dispute under the next Agenda item pertaining to the DS400 dispute. Therefore, and to the extent there would be any internal inconsistencies, the measures subject to the DS369 dispute may be amended or even repealed as the case may be. However, the EU regretted that Canada, after the consultations held in the past few years, had requested the establishment of a panel at the present meeting. At this stage, the EU opposed the establishment of a panel.

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

4. European Communities – Measures prohibiting the importation and marketing of seal products

(a) Request for the establishment of a panel by Canada (WT/DS400/4)

71. The Chairman drew attention to the communication from Canada contained in document WT/DS400/4, and invited the representative of Canada to speak.

72. The representative of Canada said that rather than repeating the explanation provided under the previous Agenda item, Canada asked that the record of the meeting reflect the comments already made on this matter. In addition, Canada wished to comment on an exemption contained in the EU marketing ban. The Regulation allowed seal products to be placed on the market only where they resulted from hunts traditionally conducted by Inuit and other indigenous communities. However, the Inuit themselves had made it clear that they strongly opposed the regulation. Sealing had been and continued to be an important part of the Inuit way of life, demonstrating individual hunting skills and expressing cultural pride and identity. In the 1980s, the EC had imposed a ban on certain seal products, which had virtually destroyed the market for seal products and had led to a loss of livelihood for Inuit who sold seal skins as a by-product of the subsistence hunt. Interestingly, that ban had also contained a specific exemption for Inuit seal products. While the market in Europe for Canadian seal products had eventually recovered somewhat, the chilling effect of the various pieces of legislation currently in force had resulted in an extreme decline in Canadian exports. For example, exports of raw seal fur skins to the EU had fallen by 94 per cent in 2009 as compared to 2008. Based on previous experience, there was every reason to believe that the EU's exemption for trade in traditional Inuit and Aboriginal seal products would, again, prove to be ineffective, particularly in the face of the collapse of the larger market, and the Inuit would, once again, suffer the effects. The solution to this was the restoration of full market access. Therefore, under this Agenda item, Canada was requesting the establishment of a Panel pertaining to the DS400 dispute, with standard terms of reference.

73. The representative of the European Union said that the EU wished to refer to its statement made under the previous Agenda item relating to the DS369 dispute. Therefore, the EU opposed the establishment of a panel at the present meeting.

74. The representative of Norway said that her country took note of Canada's request for the establishment of a panel in this long-standing dispute concerning the EU's measures prohibiting the importation and marketing of seal products. The measures had serious implications for Norway as well, which was why it had requested and had held consultations, together with Canada, on this matter. This dispute was not just about seal products, but more importantly about a Member's right to harvest, in a sustainable manner, from its living marine resources and to market the products of hunting and fishing. Norway considered that there were no justifiable grounds for the ban introduced

by the EU. The seal populations were not threatened and Norway's hunt was strictly controlled and performed respecting the highest ethical standards. Norway, therefore, sympathized with Canada's request for a panel and was considering the appropriate next steps.

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

5. China – Certain measures affecting electronic payment services

(a) Request for the establishment of a panel by the United States (WT/DS413/2)

76. The Chairman drew attention to the communication from the United States contained in document WT/DS413/2, and invited the representative of the United States to speak.

77. The representative of the United States said that, for several years, his country had been concerned about certain measures maintained by China affecting suppliers of electronic payment services. Electronic payment services formed the essential architecture for the many millions of payment card transactions that occurred every day worldwide. Those vital services enabled and managed the transfer of funds to permit cardholders to pay merchants supplying goods and services. Hundreds of billions of dollars' worth of electronic payment transactions had been processed in China in 2010. In the financial services sector, as set out in China's services Schedule⁷, China undertook both market access and national treatment commitments with respect to these services. Members had every reason to expect to be able to compete to provide these services to Chinese businesses and consumers. However, despite its GATS commitments, China imposed market access restrictions and requirements on service suppliers of other Members seeking to supply electronic payment services in China. Many of those restrictions served to protect the monopoly position of a single Chinese entity, known as China UnionPay, and over time China's measures had increased the restrictions on foreign suppliers. The restrictions included, for example, the following: (i) China UnionPay was the only entity that China permitted to supply electronic payment services for payment card transactions denominated and paid in renminbi in China; (ii) China required that all payment cards issued in China capable of being used for transactions denominated and paid in renminbi, including dual-currency cards, must bear the China UnionPay logo; (iii) China required that all inter-bank transactions involving payment cards be handled through China UnionPay; and (iv) China prohibited the use of non-China UnionPay payment cards for cross-region or inter-bank transactions.

78. The United States considered that these and other measures identified in its panel request were inconsistent with China's obligations under the GATS. In particular, China's measures appeared to breach its obligation under Article XVI of the GATS to accord services and services suppliers of any other Member treatment no less favourable than that provided for in China's Schedule. Furthermore, these measures also appeared to breach China's obligations under Article XVII of the GATS to accord to services and service suppliers of any other Member treatment no less favourable than that it accorded to its own like services and service suppliers. Accordingly, the United States requested that the DSB establish a panel to examine the matter set out in its panel request, with standard terms of reference.

79. The representative of China said that her country respected the US rights under the DSU provisions, however, it regretted that the United States requested the DSB to establish a panel to examine this dispute. Contrary to what the United States had stated, China had consistently observed the WTO rules and had positively implemented its commitments undertaken upon its accession to the WTO. Following the US request for consultations, China had held sincere consultations with the United States and had positively responded to the US questions. Meanwhile, China noticed that the

⁷ Schedule of Specific Commitments on Services annexed to the Protocol on the Accession of the People's Republic of China.

US panel request included measures which, China believed, were not listed in the request for consultations. Considering that this dispute was still premature, China requested that the United States reconsider its panel request and did not agree to the establishment of a panel at the present meeting.

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

6. China – Countervailing and anti-dumping duties on grain oriented flat-rolled electrical steel from the United States

(a) Request for the establishment of a panel by the United States (WT/DS414/2)

81. The Chairman drew attention to the communication from the United States contained in document WT/DS414/2, and invited the representative of the United States to speak.

82. The representative of the United States said that China had imposed anti-dumping and countervailing duties on grain-oriented electrical steel, known by the acronym GOES, from the United States. China's dumping and subsidy determinations in the GOES investigation appeared to breach a number of its obligations under the GATT 1994, the Anti-dumping Agreement, and the Subsidies Agreement. The apparent inconsistencies were set out in detail in the US request for the establishment of a panel. The US concerns related to every phase of China's investigation. In short, the United States believed that there were profound procedural and substantive deficiencies in the investigation, and these made the determinations unsustainable under WTO rules. Accordingly, the United States requested that the DSB establish a panel to examine the matter set out in the US panel request, with standard terms of reference.

83. The representative of China said that her country regretted that the United States had decided to request the DSB to establish a panel to examine this dispute. During the investigations concerned, the Chinese investigating authority had effectively found that: (i) the US product had been dumped into China and had benefited from US government's subsidies; and (ii) that the dumped and subsidized imports had caused material injury to the domestic industry of China. As a result, China had imposed an anti-dumping measure and a countervailing measure. China regretted that the United States had proceeded with its panel request, regardless of the facts and explanations China had given during the consultations and regardless of China's wish to resolve this dispute through bilateral consultations. China believed that its measures were consistent with the WTO rules. Furthermore, China wished to point out that the US panel request contained claims which had not been listed in the request for consultations and had not been subject to consultations. China requested the United States to reconsider its panel request and did not agree to the establishment of a panel at the present meeting.

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

7. United States – Use of zeroing in anti-dumping measures involving products from Korea

(a) Report of the Panel (WT/DS402/R)

85. The Chairman recalled that, at its meeting on 18 May 2010, the DSB had established a panel to examine the complaint by Korea pertaining to this matter. The Report of the Panel, contained in document WT/DS402/R, had been circulated on 18 January 2011 as an unrestricted document and was before the DSB for adoption at the request of Korea. The adoption procedure was without prejudice to the right of Members to express their views on the Report.

86. The representative of Korea said that his country thanked the Panel and the Secretariat for their work in resolving this matter. In addition, Korea wished to express its appreciation for the

constructive and positive efforts by the United States and the third parties to communicate their positions, and to assist in focusing the issues before the Panel, in accordance with the DSU provisions. Korea welcomed the adoption of the Panel Report, which had found that the measures at issue were inconsistent with the first sentence of Article 2.4.2 of the Anti-Dumping Agreement. Korea noted that the DSB had adopted recommendations and rulings finding the use of "zeroing" to be inconsistent with the Anti-Dumping Agreement on several occasions. Korea further noted its long-standing concern about the use of the zeroing methodology in all stages of anti-dumping proceedings, and its consistent position that all forms of zeroing should be eliminated. Korea looked forward to the US prompt implementation of the Panel's findings in this dispute and would remain vigilant in monitoring the situation in the future.

87. The representative of the United States said that his country also thanked the Panel and the Secretariat for their work on this dispute. As the United States had indicated in its statements on zeroing in the past, the US concerns with findings on the topic had been principally directed at those findings relating to zeroing outside the context of average-to-average comparisons in investigations. With regard to zeroing in the context of average-to-average comparisons in investigations, the US Department of Commerce had announced years ago that it would discontinue zeroing in this context as a result of previous DSB recommendations and rulings.

88. The representative of the European Union said that the EU welcomed the Panel Report which had, once again, confirmed the WTO-inconsistency of US zeroing.

89. The DSB took note of the statements and adopted the Panel Report contained in WT/DS402/R.

8. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/443)

90. The Chairman drew attention to document WT/DSB/W/443, 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/443.

91. The DSB so agreed.

9. Election of Chairperson

92. The outgoing Chairman of the DSB said that he wished to thank Members for their support and cooperation over the past year. He also wished to thank the Secretariat for its support and assistance provided to him in the course of the year and hoped that similar support would be provided to his successor. He then recalled that, at its meeting on 22 February 2011, the General Council had taken note of the consensus on a slate of names for Chairpersons to a number of WTO bodies, including the DSB. On the basis of the understanding reached by the General Council, he proposed that the DSB elect by acclamation Ambassador Elin Østebø Johansen of Norway as Chairperson of the DSB.

93. The DSB so agreed.

94. The incoming Chairperson of the DSB thanked Members for electing her and said that she looked forward to working with them and with the Secretariat. She thanked the outgoing Chairman for the efficient manner in which he had chaired the DSB meetings and wished him all the best in his new challenging role as the Chairman of the General Council.

95. The representative of the United States said that his country wished to take this opportunity to congratulate Ambassador Johansen for her election, and to extend its welcome to her as she assumed the Chairmanship of the DSB. The United States looked forward to working with her over the coming year. The United States also thanked Ambassador Agah for his many contributions to the work of the DSB during the past year. The United States looked forward to continuing to work with him in his new capacity as Chairman of the General Council.

96. The representative of China said that her country welcomed Ambassador Johansen in her new role as the Chairperson of the DSB and looked forward to working with her. China also thanked Ambassador Agah for his work over the past year and appreciated the extensive experience and sincere commitment he had brought to the DSB. China was confident that Ambassador Agah's qualities would contribute to the benefit of all Members in his new role as the Chairman of the General Council.

97. The representative of Canada said that his country also thanked Ambassador Agah for his Chairmanship and his stellar leadership over the past year, and hoped that Ambassador Agah would carry that into the General Council. Canada welcomed Ambassador Johansen as the Chairperson of the DSB.

98. The representative of Brazil said that his country thanked Ambassador Agah for having steered the DSB during the past year and wished him all the best in his new challenging role as Chairman of the General Council. Brazil warmly welcomed Ambassador Johansen and looked forward to working with her.

99. The representative of Cuba said that his country welcomed the incoming Chairperson and looked forward to working constructively with her. Cuba also thanked the outgoing Chairman for his work in the past year.

100. The representative of Korea said that his country thanked Ambassador Agah for his leadership as Chairman of the DSB in the past year and wished him all the best in his new role. Korea warmly welcomed Ambassador Johansen as the new Chairperson of the DSB and looked forward to working with her.

101. The representative of the European Union said that his delegation thanked Ambassador Agah for the very efficient manner of chairing the DSB meetings and wished him all the best in his new role as the Chairman of the General Council. The EU also welcomed Ambassador Johansen as the new Chairperson of the DSB.

102. The representative of Japan said that his country wished to join others in thanking Ambassador Agah for his leadership and guidance in the past year and wished him all the best in his next endeavour. Japan also welcomed Ambassador Johansen as the new Chairperson of the DSB and looked forward to working with her.

103. The representative of Cameroon said that his country congratulated and welcomed the incoming Chairperson. Cameroon thanked Ambassador Agah and wished him all the best in his new role as the Chairman of the General Council.

104. The representative of Australia said that her country welcomed the incoming Chairperson and thanked Ambassador Agah for his effective leadership and wished him all the best in his new role as the Chairman of the General Council.

105. The representative of the Dominican Republic said that her country thanked Ambassador Agah for the excellent work carried out in the past year and wished him every success in

his new role. The Dominican Republic congratulated Ambassador Johansen on her new role as the Chairperson of the DSB.

106. The representative of Chinese Taipei said that his delegation thanked Ambassador Agah for having chaired the DSB over the past year, appreciated his efforts and dedication and wished him all the best in chairing the General Council. Chinese Taipei welcomed Ambassador Johansen and looked forward to working with her.

107. The DSB took note of the statements.
