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Dispute Settlement Body
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MINUTES OF MEETING

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ON 22 OCTOBER 2013

Chairman: Mr. Jonathan Fried (Canada)

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1 SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.131)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.131)

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.106)

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.69)

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.18)

F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.17)

1.1. The Chairman noted that there were six sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. He recalled that Article 21.6 required that: "Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and shall remain on the DSB's Agenda until the issue is resolved". Once again, he called on delegations to provide up-to-date information about compliance efforts and to focus on new developments, suggestions and ideas on progress towards the resolution of disputes.

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.131)

1.2. The Chairman drew attention to document WT/DS176/11/Add.131, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 10 October 2013, in accordance with Article 21.6 of the DSU. As noted in the US status report, at least five bills had been introduced in the current Congress in relation to the recommendations and rulings of the DSB. These included H.R. 214, H.R. 778, H.R. 872, H.R. 873 and S. 647. H.R. 778 and S. 647 would modify Section 211, while H.R. 214, 872 and 873 would repeal Section 211. The United States said that its Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

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

1.5. The representative of Cuba said that, once again, her country wished to place on record its concern about the repeated failure by the United States to implement the DSB's recommendations and rulings in the Section 211 dispute. The United States continued to ignore the DSB's rulings and, contrary to what its status report sought to convey, it continued to infringe fundamental intellectual property rights with respect to the Cuban rum trademark, Havana Club. This reflected the unlawful US policy in support of the economic, commercial and financial blockade maintained by the United States against Cuba for more than 50 years. Cuba wished to point out that this hostile embargo, which prevented compliance with the DSB's rulings in this case had been rejected by the international community for 21 consecutive years before the UN General Assembly. In 2012, 188 UN member States, almost all of which were also WTO Members, had voted for the

General Assembly resolution entitled "Necessity of Ending the Economic, Commercial and Financial Blockade imposed by the United States of America against Cuba". This resolution would be put to the vote again on 29 October 2013. Cuba was convinced that, once again, the resolution would be overwhelmingly endorsed by the international community. However, neither the failure to comply with the DSB's rulings for more than 12 years nor the discredit that had befallen the United States in the UN General Assembly appeared to be of any concern to the US Government. As long as the United States did not offer assurances that it would meet its legal obligations, Cuba would continue to denounce the violations committed by the United States, a country that benefitted the most from the multilateral trading system. Cuba would act accordingly in order to demand that justice be done and that the rights enshrined in legal texts, which underpinned the functioning of the WTO, prevailed. Once again, Cuba reiterated and reaffirmed that the only satisfactory solution was to repeal Section 211, without further delay.

1.6. The representative of Mexico said that his country, once again, urged the parties to this dispute to adopt the necessary measures to comply with the DSB's recommendations and rulings for the benefit of all Members, in accordance with Article 21.1 of the DSU.

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

1.8. 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 remained concerned about the prolonged situation of non-compliance in this dispute, in particular since the interests of a developing-country Member were affected. China urged the United States to implement the DSB's rulings and recommendations without further delay.

1.9. The representative of India said that his country thanked the United States for its status report and its statement made at the present meeting. India noted with regret that the United States had not reported any progress in this long-standing dispute. India felt compelled to stress again that the principle of prompt compliance was missing in this dispute. India reiterated its systemic concern about the situation of continued non-compliance as this undermined the credibility and the confidence Members reposed in the system. India urged the United States to report full compliance without any further delay.

1.10. The representative of Argentina said that his country thanked the United States for its status report. Argentina regretted that, as had been the case for the past few years, the US status report contained nothing new and the United States did not report on any progress. This lack of progress was inconsistent with the principle of prompt compliance within a reasonable period of time provided for in the DSU provisions and affected the interests of a developing-country Member. Argentina urged the United States to make an effort to resolve this dispute.

1.11. The representative of Viet Nam said that his country thanked the United States for its status report and its statement made at the present meeting. Once again, Viet Nam noted that the US report showed very low progress with regard to the implementation of the DSB's recommendations and rulings in this dispute. Viet Nam urged the United States to comply with the DSB's recommendations and rulings, without any further delay, so as to uphold WTO rules and to the benefit of Cuba, a developing-country Member.

1.12. The representative of Ecuador said that his country supported the statement made by Cuba. Ecuador was concerned that this prolonged situation of non-compliance was getting worse, in particular since it affected the interests of a developing-country Member. Ecuador hoped that the United States would step up its efforts in order to fully comply with the DSB's recommendations and rulings in this dispute.

1.13. The representative of Nicaragua said that his country thanked the United States for its status report. Nicaragua supported Cuba's position in this dispute regarding Section 211 and the Havana Club trademark. Nicaragua noted that, over the past years, no progress had been made in the implementation of the DSB's recommendations and rulings. Nicaragua, once again, urged the United States to reconsider its measures which were affecting the interests of a developing-

country Member, Cuba. Nicaragua was concerned that the repeated US failure to comply undermined the credibility of the DSB and the multilateral trading system. It could also affect other Members, in particular developing countries such as Nicaragua. Nicaragua hoped that the US authorities would, as early as possible, introduce the necessary legislative reforms so as to comply with the DSB's recommendations and rulings.

1.14. The representative of Angola said that his country supported the statement made by Cuba at the present meeting. Angola thanked the United States for the information it had provided regarding the implementation of the DSB's ruling of 2 February 2002 concerning Section 211, which reflected efforts towards settling the systemic problems. However, Angola wished to reiterate the importance of implementing the DSB's recommendations and rulings, which was an essential element for effective settlement of disputes for the benefit of all Members. Angola recalled that the Panel had concluded that Section 211 was incompatible with the TRIPS Agreement and with the most-favoured-nation principle. The DSB had recommended that the United States adopt measures to comply with the TRIPS Agreement. A delay in the implementation of the DSB's recommendations and rulings not only affected the multilateral trading system, which must ensure security and predictability for all Members, but it may also create a negative precedent for other cases in the future, in particular those affecting developing-country Members. Angola hoped that positive action would be taken to comply with WTO rules.

1.15. The representative of the Bolivarian Republic of Venezuela said that his country supported Cuba, a developing-country Member that challenged the inconsistency of Section 211. The DSB had adopted the recommendations and rulings in the Section 211 dispute, but the United States had not yet complied with those recommendations. Venezuela was even more concerned about President Obama's renewal of the Helms Burton Act, which had a direct impact on this case. Eleven years had passed and the United States had not yet come into compliance within the reasonable period of time stipulated in Article 21.3 of the DSU. The United States submitted the same report at every meeting, stating that its Government was willing to comply with the DSB's ruling, without ultimately doing so. The current situation not only affected Cuba but also set a negative precedent in terms of the credibility of the WTO and its capacity to resolve disputes. Venezuela, therefore, urged the United States to bring this non-compliance to an end and to report to the next DSB meeting on the actions it intended to take to end this situation.

1.16. The representative of El Salvador said that her country thanked the United States for its status report. El Salvador joined previous speakers in expressing its concern about the lack of compliance in this dispute, in particular since the interests of a developing-country Member were affected. El Salvador was also concerned that the lack of compliance affected the multilateral trading system. El Salvador urged both parties to find a way of complying with the DSB's recommendations and rulings.

1.17. 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.131)

1.18. The Chairman drew attention to document WT/DS184/15/Add.131, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.19. The representative of the United States said that his country had provided a status report in this dispute on 10 October 2013, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.20. The representative of Japan said that his country thanked the United States for its statement and status report submitted on 11 October 2013. Since the content of the report had not changed from the previous ones, Japan's position had not changed either as stated at the previous meetings.

1.21. 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.106)

1.22. The Chairman drew attention to document WT/DS160/24/Add.106, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.23. The representative of the United States said that his country had provided a status report in this dispute on 10 October 2013, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the EU, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

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

1.25. 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.69)

1.26. The Chairman drew attention to document WT/DS291/37/Add.69, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

1.27. The representative of the European Union said that, in recent meetings, the EU had already reported on authorization decisions taken in 2012. More recently, at the end of June 2013, the European Commission had authorized three genetically modified oilseed rapes¹, following the absence of an opinion from the Appeal Committee. In July 2013, the Appeal Committee had voted on three authorization decisions², rendering no opinion. They were now under political discussion at Commission level. In September 2013, the standing committee had voted on a draft authorization decision for drought-tolerant maize³ and had rendered no opinion. The draft decision had therefore been presented to the Appeal Committee on 21 October 2013. In addition, at the beginning of October, the EFSA had published opinions on a GM maize⁴ and a GM soybean⁵, both for food and feed uses. As stated many times before, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings. The GMO regulatory regime was working normally as evidenced by the approval decisions and other actions towards approval decisions just mentioned. The details on the relevant products were set out in the written version of the EU statement.

1.28. 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. As it had explained at past meetings of the DSB, the United States had substantial concerns regarding EU measures affecting the approval of biotech products. At the present meeting, there was one specific issue the United States wished to highlight. This was the DSB's recommendations and rulings with respect to a variety of biotech

¹ Ms8, Rf3 and Ms8xRf3.

² Maize stack events MON89034 x 1507 x MON88017 x 59122 and GM maize MON89034 x 1507 x NK603 as well as GM maize MON810 pollen.

³ MON87460 maize.

⁴ T25 maize.

⁵ MON87708 soybean.

corn known as BT-1507. The application for approval of this product had been pending since 2001, which was 12 years ago. In 2006, the DSB had found that the EU had breached its obligations with respect to this specific product by not undertaking and completing approval procedures without undue delay.⁶ Despite the DSB's recommendations and rulings, the approval application for BT-1507 was still pending. The EU's judicial system now had expressed its own concerns with respect to delays in the approval of BT-1507. More specifically, on 26 September 2013, a court of the European Union had issued a decision concerning the long-pending application for approval of BT-1507.⁷ The court had found that the European Commission had breached the EU's own laws by failing to act with respect to this application. This finding served to reinforce that the EU had not addressed the delays in its measures affecting the approval of biotech products. The EU measures, including such delays in the processing of specific applications, were causing serious disruption of trade in agricultural products. Accordingly, the United States urged the EU to take steps to address these matters.

1.29. The Chairman thanked the EU for providing up-to-date information, including developments on 21 October 2013. He thanked the United States for focusing on practical measures that might help resolve this dispute, which was the spirit of the surveillance discussion intended by the DSU negotiators.

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

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.18)

1.31. The Chairman drew attention to document WT/DS371/15/Add.18, which contained the status report by Thailand on progress in the implementation of the DSB's recommendations in the case concerning Thailand's customs and fiscal measures on cigarettes from the Philippines.

1.32. The representative of Thailand said that, as indicated in its most recent status report, Thailand had received a request from the Philippines for additional information on some of the technical aspects of its implementation, as well as other matters of concern to the Philippines. The relevant agencies of the Thai government were in the process of preparing responses to the Philippines' questions, many of which involved business confidential information. Thailand hoped to provide these responses on a bilateral basis to the Philippines shortly. Thailand also looked forward to continuing its discussions with the Philippines on these matters and to resolving this matter in an amicable manner.

1.33. The representative of the Philippines said that his country thanked Thailand for its status report and its statement made at the present meeting. The Philippines wished to address two issues. First, as mentioned in its statement at the previous DSB meeting and as referred to by Thailand in its status report, the Philippines had submitted a set of questions to Thailand regarding the information that Thailand had submitted to the Philippines in late August. The Philippines recalled that the information, which was being withheld from the importer concerned, was relevant in assessing whether one of Thailand's reported implementation measures was in conformity with the Customs Valuation Agreement. The set of questions that the Philippines had submitted to Thailand addressed issues regarding this information which, in the Philippines view, gave rise to serious misgivings regarding the WTO-consistency of Thailand's declared measure taken to comply. To date, the Philippines had not received any replies to those questions. The second issue, which the Philippines wished to address at the present meeting, related to one of the criminal investigations that the Philippines had referred to consistently in its statements as an outstanding issue affecting Thailand's compliance with the DSB's rulings and recommendations. The Philippines recalled that the criminal investigations concerned alleged under-declaration of customs value on entries that seemed to be covered by this dispute. The concerns that the Philippines had raised related to the grounds on which the findings of under-declaration seemed to be based which, to the Philippines, were not supported by WTO customs valuation rules and directly contradicted findings made by Thai Customs and other Thai governmental agencies. Thailand, as recently as at

⁶ European Communities – Measures Affecting the Approval and Marketing of Biotech Products (WT/DS291/R), adopted 21 November 2006, at para. 8.18(a)(xi).

⁷ Pioneer Hi-Bred International, Inc. v. European Commission, Case T-164/10, Judgment of the General Court (Seventh Chamber) (26 September 2013).

the previous DSB meeting, had stated that it would strive to ensure that these investigations would be carried out in a WTO-consistent manner. Reports had recently appeared in the Thai press that Thailand had now adopted a decision to prosecute the importer and 12 of its current and former employees for alleged under-declaration of customs value. The press reports indicated that the prosecution order covered entries from the Philippines between the years 2003 to 2007, which included the period covered by the DSB's rulings and recommendations in this dispute. The Philippines was concerned about these press reports and intended to seek confirmation of the reports from Thailand and on the bilateral level. The Philippines would welcome, if Thailand was already in a position to comment on these reports at the present meeting and, if the reports were accurate, could provide, in particular, an explanation on the grounds that had motivated the Attorney General to issue the prosecution order. The Philippines would also appreciate receiving confirmation on whether or not the prosecution order included customs valuation entries that were covered by the DSB's rulings and recommendations in the DS371 dispute. To conclude, the Philippines had invested considerable effort in resolving outstanding issues on a bilateral basis in order to avoid further litigation. Given the notable developments, the Philippines urged Thailand to address the outstanding issues as soon as possible in order to avoid returning to formal dispute settlement.

1.34. The representative of Thailand said that her country took note of the Philippines statement and concern and would communicate with its relevant authorities in order to seek an official confirmation regarding the press report and other details mentioned by the Philippines. As stated at the previous meetings, Thailand wished to reiterate that it would strive to ensure that it acted in a WTO-consistent manner to the extent that the investigations referred to by the Philippines involved Thailand's obligations under the WTO law.

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

F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.17)

1.36. The Chairman drew attention to document WT/DS404/11/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 anti-dumping measures on certain shrimp from Viet Nam.

1.37. The representative of the United States said that his country had provided a status report in this dispute on 10 October 2013, in accordance with Article 21.6 of the DSU. In February 2012, the US Department of Commerce had published a modification to its procedures in order to implement DSB recommendations and rulings regarding the use of "zeroing" in anti-dumping reviews. That modification addressed certain findings in this dispute. The United States would continue to consult with interested parties as it worked to address the recommendations and rulings of the DSB.

1.38. The representative of Viet Nam said that his country thanked the United States for its most recent status report. As Members were aware, the reasonable period of time agreed by the parties had expired 14 months ago. However, the United States had not taken any action to implement the DSB's recommendations and rulings. Viet Nam expressed its systemic concern about the US non-compliance with its international obligations. Once again, Viet Nam urged the United States to implement without any further delay, the DSB's recommendations and rulings, in particular to revoke the anti-dumping duty order that was inconsistent with WTO rules and to uphold the multilateral trade rules for the benefit of Viet Nam's exporters.

1.39. The representative of Cuba said that her country was concerned about the prolonged situation of non-compliance in this dispute, in particular since it affected the economic interests of Viet Nam, a developing-country Member. Cuba, therefore, urged the United States to comply with the DSB's recommendations in this dispute and to honour its WTO commitments.

1.40. The representative of the Bolivarian Republic of Venezuela said that his country supported Viet Nam's concerns regarding the need for the United States to adopt the necessary measures that would put an end to this dispute.

1.41. The representative of the United States said that his country wished to respond to some of the comments that had been made in particular by Viet Nam. As the United States had understood the Viet Nam statement, there was an express concern about a lack of effort to comply or to implement the DSB's recommendation and rulings. The United States wished to state that it was disappointed to have heard that from Viet Nam. As Viet Nam was aware, the United States had continually tried to engage with Viet Nam in bilateral discussions that would help resolve their concerns with respect to this issue. The United States encouraged Viet Nam to return to that avenue because it believed that this would be a more productive way forward to address the concerns that Viet Nam had raised.

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

2 CHINA – ANTI-DUMPING AND COUNTERVAILING DUTY MEASURES ON BROILER PRODUCTS FROM THE UNITED STATES

A. Implementation of the recommendations of the DSB

2.1. The Chairman recalled that in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. 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 25 September 2013, the DSB had adopted the Panel Report pertaining to the dispute on: "China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States". He invited China to inform the DSB of its intentions in respect of implementation of the DSB's recommendations and rulings.

2.2. The representative of China said that, on 25 September 2013, the DSB had adopted the Panel Report in the dispute: "China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States" (DS425). According to Article 21.3 of the DSU, China wished to inform the DSB of its intention to implement the DSB's recommendations and rulings in a manner that respected its WTO obligations. China would, therefore, need a reasonable period of time for implementation and stood ready to discuss this matter with the United States at any time convenient to both delegations.

2.3. The representative of the United States said that his country thanked China for its statement made at the present meeting, indicating that it intended to implement the DSB's recommendations and rulings in this dispute. China's anti-dumping and countervailing duty measures on broiler products from the United States had been and continued to be of significant concern. The United States, therefore, looked forward to China moving promptly to bring its measures into compliance with its obligations. The United States noted China's comments regarding the need for a reasonable period of time and stood ready to discuss with China, under Article 21.3(b) of the DSU, a reasonable period of time for implementation of the DSB's recommendations and rulings.

2.4. The representative of China said that her country wished to respond to the comments the United States had made at the previous DSB meeting regarding the so-called "systemic misuse by China of AD and CVD measures". In China's view, it was unfair and without any grounds to criticize a Member's trade remedy practice as having systemic problems, just because one measure of that Member had been found to be inconsistent with WTO rules in limited aspects. If this logic stood, China did have serious concerns about the systemic problems within the US trade remedy system. The United States, not China, was a Member that had been challenged in the WTO in 46 out of the 97 disputes in which the Anti-Dumping Agreement was cited, and in 32 out of the 99 disputes in which the SCM Agreement was cited. China wondered whether this data suggested the existence of serious systemic problems in the US trade remedy investigation practice. As all Members were aware, the US zeroing practice had been found to be inconsistent with WTO rules in various cases such as DS294, DS322, DS350 and DS422. The Appellate Body, in the DS379 dispute, had found that the United States had failed to determine public bodies in a WTO-consistent manner, and had failed to properly address the double remedy issue. As a developing-country Member, although China's investigation authority was quite young, China had always endeavoured to conduct trade remedy investigations in a manner consistent with WTO rules. Even though China had been found

to be inconsistent with the WTO rules in two disputes, it had fully implemented the DSB's rulings and recommendations by the end of the reasonable period of time in one dispute, and was in the process of implementing within the reasonable period of time in the other dispute.

2.5. The representative of the United States said that his country thanked China for its intervention but, quite frankly, the United States was not quite sure that it understood the relevance of China's remarks under this Agenda item, which was about DS427. With respect to this dispute, the United States was curious as to how China intended to implement the recommendations and rulings of the DSB. Regarding China's comments as to whether or not there were systemic concerns, the United States urged all delegates to take a look at the Panel and Appellate Body Reports involving China and the AD and SCM Agreements. Those Reports all highlighted similar problems with China's administration of its trade remedy laws, and delegates could draw their own conclusions from those Reports.

2.6. The Chairman thanked the two delegations for their statements. As he had said at the outset of this Agenda item, following the adoption of a panel/AB report, the DSU set out a very methodical progression. First, the affected country had to inform the DSB as to how it intended to implement the DSB recommendations. Second, as had been seen under Agenda item 1 of the present meeting as well as in subsequent meetings, the DSB monitored and surveyed whether that implementation was unfolding as promised. With regard to systemic issues concerning the structure or administration of a trade remedy law, he noted that there was another WTO Committee where that information could be exchanged and explored in further detail.

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

3 UNITED STATES – CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

A. Statements by the European Union and Japan

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

3.2. The representative of the European Union said that, once again, the EU requested that the United States stop transferring anti-dumping and countervailing duties to the US industry. Such disbursements were clearly incompatible with the DSB's recommendations and rulings. The EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit status reports in this dispute.

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

3.4. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. As it had expressed in previous meetings, Brazil was of the view that the United States was under obligation to stop making disbursements pursuant to the Byrd Amendment. Only then would the issue be resolved within the meaning of the DSU and the United States would be released from its obligations to provide status reports in this dispute.

3.5. The representative of India said that his country thanked the EU and Japan for bringing this issue before the DSB Agenda. India shared their concerns and supported their views. India agreed with the previous speakers that the United States was under obligation to submit status reports and that this issue should remain under the DSB's surveillance until the United States fully implemented the DSB's rulings and recommendations.

3.6. The representative of Thailand said that her country thanked Japan and the EU for bringing this item before the DSB. Thailand continued to urge the United States to cease the disbursements and fully implement the DSB's rulings on this matter.

3.7. The representative of Canada said that his country wished to refer to its previous statements on this Agenda item. Canada's position had not changed.

3.8. The representative of China said that her country shared the concerns that had been expressed by the previous speakers on this item.

3.9. The representative of the United States said that, as his country had noted at previous DSB meetings, the President had signed the Deficit Reduction Act into law on 8 February 2006 which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled furthermore that Members, 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, more than six years ago. 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 in this matter, as it had already explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports repeating, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes.

3.10. The DSB took note of the statements.

4 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. Statement by the United States

4.1. The Chairman said that this item was on the Agenda of the present meeting at the request of the United States and invited the representative of the United States to speak.

4.2. The representative of the United States said that the reason why the United States had placed this item on the Agenda was because it continued to have serious concerns that China had not implemented the DSB's recommendations and rulings in this dispute. Most notably, China was currently not allowing any non-Chinese suppliers of electronic payment services to do business in China. The United States recalled that this dispute was about measures China had taken that blocked and discriminated against non-Chinese suppliers of electronic payment services, in favour of providing protection and privilege to its own domestic champion, China Union Pay. The DSB had concluded that China's measures were inconsistent with China's WTO obligations. With regard to China's commitments, the Panel Report adopted by the DSB had made two unequivocal statements: "China has made a commitment on market access concerning mode 3"⁸; and "China has made a commitment on national treatment concerning mode 3".⁹ At present, nearly three months after the expiration of the reasonable period of time, and nearly 14 months after the adoption of the Panel Report, two facts remained clear. No foreign suppliers of electronic payment services were doing business in China, nor could they. China Union Pay, China's only electronic payment services supplier, was still the only supplier that was doing business, and was authorized to do business, in China. This meant that despite China's two mode 3 commitments, which the United States had highlighted earlier, China Union Pay, China's domestic champion, was still receiving unfairly advantageous treatment because it could do business in China while foreign suppliers could not. China's measures that were taken just before the end of the reasonable period of time provided that an EPS supplier, dubbed a clearing institution, must be approved by the government before it could do business. However, China had issued no regulation and had provided no pathway for that approval which, even under China's own domestic law, it was required to do. Accordingly, that left China Union Pay as the only domestic Chinese clearing institution doing business at the present day. China's commitments and the DSB's recommendations and rulings regarding an open and fair market in China for electronic payment services were clear. The United States expected and called on China to respect its WTO obligations without further delay.

⁸ "China – Certain Measures Affecting Electronic Payment Services", WT/DS413/R (adopted on 31 August 2012), para. 7.575.

⁹ *Idem*, para. 7.678.

4.3. The representative of China said that her country regretted that the United States had inscribed this item on the Agenda of the present meeting. As it had reported at the DSB meeting on 23 July 2013, China had fully implemented the DSB's recommendations and rulings within the reasonable period of time in this dispute. China did not understand the purpose for which this item had been inscribed by the United States. Regarding the market access commitment issues, the Panel's ruling was very limited. The Panel had concluded that there was no requirement that mandated the use of CUP or established CUP as the "sole supplier" of EPS for all domestic RMB payment card transactions. The Panel had also found that China had not undertaken a market access commitment under mode 1 in Sector 7.B(d) of its Schedule in respect of the services at issue in this dispute. In respect to mode 3 under Article XVI of the GATS, the Panel had rejected the US claim that the imposition of issuer, acquirer and terminal equipment requirements imposed a limitation on the number of EPS suppliers in China in the form of a monopoly or exclusive service supplier, and thus the Panel was "unable to conclude that the issuer, terminal equipment and acquirer requirements, considered either separately or in combination, are inconsistent with Article XVI:2(a) of the GATS". By contrast, the Panel had only found that the Hong Kong/Macao requirements imposed a limitation on the number of service suppliers in the form of a monopoly and were thus inconsistent with Article XVI:2(a) of the GATS. That was the only finding of inconsistency with regard to China's market access commitments in this dispute, and China had fully implemented the recommendations. At the previous bilateral technical meetings between capital teams of both sides, China had provided the United States further explanation and clarification with respect to the implementation. With respect to other US concerns which were outside the implementation of the DSB's rulings and recommendations in this dispute, China remained open to further bilateral discussion at the appropriate forum.

4.4. The Chairman said that he wished to invite Members to reflect on the cumulative impact of items 2, 3 and 4 of the Agenda of the present meeting. These items had several parallels to each other in terms of situations where the DSB was no longer exercising its mandatory surveillance in the wake of a statement of full compliance and yet Members came forward with concerns about non-implementation or non-compliance with decisions. There was, of course, the compliance panel route under Article 21.5 of the DSU. Therefore, delegations may wish to discuss informally, or in a special meeting, how the DSB could contribute ultimately to improving the implementation of decisions and rulings.

4.5. The DSB took note of the statements.

5 RUSSIAN FEDERATION – RECYCLING FEE ON MOTOR VEHICLES

A. Request for the establishment of a panel by the European Union (WT/DS462/8)

5.1. The Chairman drew attention to the communication from the European Union contained in document WT/DS462/8, and invited the representative of the European Union to speak.

5.2. The representative of the European Union said that the EU requested the establishment of a panel concerning Russia's "recycling fee" on motor vehicles, with standard terms of reference. This request followed EU efforts to find a solution with Russia over more than a year, including through formal WTO consultations that had been held in July 2013. Despite those efforts, the measure was still in place and the fee continued to severely hamper trade. In addition to its negative economic impact, the recycling fee also raised very important systemic concerns. Russia had introduced the fee on 1 September 2012, just days after joining the WTO, and the economic effect of the fee was to negate Russia's tariff commitments in the relevant sector. To mention only its most problematic element, the fee was imposed on imported vehicles, but vehicles produced in Russia were exempted. An exemption was also available for vehicles imported from Kazakhstan and Belarus. The EU therefore considered that the fee was incompatible with the WTO's most basic rules, *inter alia*, those prohibiting discrimination against and as between imported products. The EU took note of the Duma's recent adoption of a law amending the measures. However, the EU had not received any clarifications regarding the implementing rules, under which the just described discrimination remained in place. Additionally, and despite repeated promises by the Russian Government, the EU had not obtained satisfactory responses in relation to further discriminatory elements of the recycling fee, which had also been the subject of the consultations. The EU continued to await information from Russia about new developments and had no choice but to request the establishment of a panel to rule on this matter.

5.3. The representative of the Russian Federation said that her country regretted that the EU requested the establishment of a panel to examine this matter. As requested by the EU, the consultations on this issue had been held on 29 and 30 July 2013 in Brussels. The Russian Federation had participated in those consultations in good faith and had demonstrated its willingness to resolve the issue. During the consultations held, the Russian Federation had provided the EU with answers to over 120 questions. The representatives of the Russian Federation had not only participated in those consultations, but had also provided the EU with additional information in writing after the consultations. It seemed, to the Russian Federation, that those consultations had not been treated with the respect they deserved. No effort had been made on the EU side to find the mutually agreed solution, which was the preferred option in case of any differences between Members in accordance with the DSU. The consultations, in Russia's view, were conducted as a mere formality. The Russian Federation also wished to inform the Membership that the EU request covered a number of measures in respect of which the Government of the Russian Federation had launched the process of modification in order to improve the utilization regime from the point of view of the legitimate policy objectives it was put in place for. As discussed with the EU during the consultations, the respective legislation had been adopted by the State Duma in the first reading on 8 October 2013 and finally on 16 October 2013. It had been signed by the President of the Russian Federation. That legislation eliminated sections of existing utilization fee regime to which the EU had referred in its request for consultations. However, the EU in its request for the establishment of a panel had ignored this fact. The Russian Federation believed that the matter needed further clarifications and could be resolved through consultations. For those reasons, the Russian Federation was not in a position to agree to the establishment of a panel at the present meeting. The Russian Federation sought the continuation of the consultations process.

5.4. The Chairman said that there was no agreement between the parties to move to the next step. In that regard, the DSB would take note of the statements. The DSB may well revert to this at its next meeting but he had heard, from both sides, a desire to have further clarifications and exchange. The EU, if he had heard the statement correctly, was looking forward to clarification regarding implementing rules and the Russian Federation had concluded its statement by confirming that it considered that the matter needed further clarifications as well. He wished both parties well in their further consultations.

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

6 ADOPTION OF THE 2013 DRAFT ANNUAL REPORT OF THE DSB (WT/DSB/W/508 & WT/DSB/W/508/ADD.1)

6.1. The Chairman said that he was submitting, for adoption, the draft text of the 2013 Annual Report of the DSB contained in document WT/DSB/W/508 and Add.1 pursuant to the Procedures for an Annual Overview of WTO Activities and for Reporting under the WTO, contained in document WT/L/105. The Report covered the work of the DSB since the previous Annual Report contained in document WT/DSB/58. The Report covered meetings of the DSB from 30 November 2012 through 25 September 2013. He noted that the Report was in two parts: a summary report and an addendum, which was the overview of the state of play of WTO disputes covering the period from 1 January 1995 to 30 September 2013, prepared by the Secretariat on its own responsibility. Before formally submitting the draft Report to the DSB for adoption, he wished to say a few words regarding the new format of the Report. He recalled that, at the DSB meeting in July 2013, he had circulated a revised format of the Annual Report. The new and redesigned layout contained information organized by the nature of the activity reported, such as surveillance, panel establishment, and adoption of panel and Appellate Body reports. That design reflected a change from the case-by-case approach that had been followed in previous reports. The revised format also contained a final section regarding the overall activity of the DSB and factual conclusions. The objective behind the change in format was to produce a more user-friendly and shorter report, and to seek to make the format more readable and more accessible to a broader public. At the July 2013 DSB meeting, he had asked delegations to comment on the revised format by the end of July. He had received some constructive comments endorsing the overall approach and offering a few refinements, which were mainly of an editorial nature. He thanked all delegations for their collaboration in creating this new and improved Report. He was confident that this Report would contribute to a broader understanding of the work of the DSB and that it would add to the efforts of the WTO Members to foster transparency in their activities. With these words of introduction, he proposed that the DSB adopt the draft Annual Report at the present meeting and that the

Secretariat be authorized to update the Report under its own responsibility in order to include actions taken by the DSB at the present meeting. The updated Annual Report would then be submitted for consideration by the General Council at its meeting to be held in November 2013. Subsequently, the Report would be forwarded to the Ministerial Conference in December 2013, which would undertake the annual overview of WTO activities. Therefore, he proposed that the DSB take note of the statement and adopt the draft Annual Report of the DSB contained in WT/DSB/W/508 and Add.1 on the understanding that it would be further updated by the Secretariat.

6.2. The DSB took note of the statement and adopted the draft Annual Report contained in document WT/DSB/W/508 and Add.1 on the understanding that it would be further updated by the Secretariat.¹⁰

7 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/514)

7.1. The Chairman drew attention to document WT/DSB/W/514, which contained five new names that had been proposed by Argentina for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/514.

7.2. The DSB so agreed.

8 STATEMENT BY THE CHAIRMAN REGARDING MATTERS RELATED TO THE APPELLATE BODY

8.1. The Chairman, speaking under "Other Business", said that he wished to make a short statement concerning matters related to the Appellate Body. First, as Members would recall, the interviews by the Selection Committee of the four candidates for the vacancy in the Appellate Body had been held on 21 October 2013 in the afternoon. The next phase of the process was the opportunity for any delegation to meet with the Selection Committee to express their view on one or more of the candidates. The Selection Committee would be available to meet with delegations on 24, 25 and 28 October 2013. Those delegations who wished to meet with the Selection Committee should contact the Secretariat, the Council/TNC Division, to make an appointment or could also send comments in writing. Written comments should be submitted in sealed envelopes and be addressed to the Chair of the DSB, in care of the Council/TNC Division and should be sent no later than 31 October 2013. Written comments would be made available only to the other members of the Selection Committee. As the DSB had previously agreed, following the interviews held the previous day and following the consultations with interested delegations, the Selection Committee was required to make its recommendation to the DSB no later than 7 November 2013. That recommendation would be sent by fax to delegations and would enable the DSB to consider the recommendation at its regularly scheduled meeting on 25 November 2013.

8.2. Second, on the possible reappointment of Mr. Peter Van den Bossche for a second-four year term in the Appellate Body, the Chairman wished to report that he was continuing his consultations. He said that he had benefitted greatly from the insights of key delegations and had sought the views of those with extensive experience in dispute settlement, either as litigants or as former DSB Chairs. He invited any other delegation with views on the possible reappointment of Mr. Van den Bossche to consult with him by 31 October 2013. He hoped to conclude his consultations and to come forward with a recommendation by 7 November 2013.

8.3. The DSB took note of the statement.

¹⁰ Subsequently, the Annual Report was circulated in document WT/DSB/61 and Add.1