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Dispute Settlement Body
25 April 2014

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 25 APRIL 2014

Chairman: Mr. Fernando De Mateo (Mexico)

Prior to the adoption of the Agenda, the item concerning the adoption of the Panel Reports in the disputes on: "China – Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum" (DS432; DS433) was removed from the proposed Agenda, following China's decision to appeal the Reports.

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1.1. The Chairman noted that there were seven sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. 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". He invited 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.136)

1.2. The Chairman drew attention to document WT/DS176/11/Add.136, 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 her country had provided a status report in this dispute on 14 April 2014, in accordance with Article 21.6 of the DSU. At least six bills had been introduced in the current Congress in relation to the DSB's recommendations and rulings in this dispute. This included H.R. 214, H.R. 778, H.R. 872, H.R. 873, H.R. 1917 and S. 647. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

1.4. The representative of the European Union said that the EU thanked the United States for its most recent status report and its 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 Article 3.2 of the DSU clearly set out the objective of the dispute settlement system, namely, to preserve the rights and obligations of Members enshrined in the legal texts contained in the WTO Agreement. The first sentence of this provision stated that "[t]he dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system". The intention of the DSU drafters had been to provide a rules-based, rapid, efficient and reliable system for the settlement of disputes among Members. Thus, if an agreement was breached, the system was expected to resolve the situation promptly. Consequently, failure to respect the principle of "prompt compliance" caused serious prejudice to the system. Furthermore, the negative effects of unresolved disputes were not limited to the parties to a dispute. By failing to meet its obligations, the United States undermined a system that was based on rules, procedures and practices. Practical experience had shown that the current dispute settlement system was in need of reforms, in particular in the area of effective compliance by Members with the DSB's recommendations and rulings. Section 211, submitted to the US Congress on 21 May 1998, was enacted with a view to rendering the intellectual property rights of Cuban owners null and void in the US territory. The laws governing the US economic, commercial and financial blockade against Cuba did not have sufficient impact in the intellectual property area. Therefore, Section 211 had to be adopted as a legal justification for usurping recognized Cuban trademarks such as "Havana Club". Yet the United States liked to be seen in the WTO and in other organizations such as WIPO as a promoter of rigorous initiatives in the area of intellectual property. In spite of its lack of compliance, the United States was constantly proclaiming itself as one of the leading advocates of compliance with the TRIPS Agreement and other related multilateral agreements. Long-standing violations such as these had serious systematic implications for the functioning and credibility of the WTO dispute settlement system. Cuba reiterated that the United States had been delivering for over 12 years empty statements. In this regard, she wished to quote the Cuban national, Mr. José Martí, that "action speaks louder than words". The immediate repeal of Section 211 required action, not the repetition of the same statements that were not worthy of the DSB's attention.

1.6. The representative of China said that her country thanked the United States for its status report and the statement made at the present meeting. China was disappointed that the United States had, once again, not reported on any progress. The prolonged situation of non-compliance in this dispute was highly incompatible with the obligation of prompt compliance stipulated in the DSU provisions, in particular since the interests of a developing-country Member were concerned. China urged the United States to implement the DSB's rulings and recommendations without any further delay.

1.7. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Cuba. Venezuela was concerned about the US status reports, which did not contain any new information on progress. In Venezuela's view, the continued US failure to comply with the DSB's decision taken 12 years ago showed the lack of political will by the United States to resolve this dispute. Venezuela noted that, despite the DSB's ruling, the United States continued to maintain Section 211. Venezuela recalled that the dispute settlement system was one of the greatest achievements of the multilateral trading system. It was established to improve the effectiveness of the system and, therefore, the current situation of non-compliance was not acceptable. The US non-compliance in this dispute undermined the interests of a developing–country Member, the credibility of the dispute settlement system and of the multilateral trading system. It also set a negative precedent and undermined the DSB ability to settle disputes. Venezuela urged the United States to put an end to its non-compliance with the DSB's recommendations and rulings and to report on actions aimed at resolving this dispute.

1.8. The representative of the Russian Federation said that her country believed that the dispute settlement system provided the stability to the multilateral trading system. Russia urged the parties to this dispute to reach a solution by using all the instruments available under the WTO Agreements. Russia believed that this situation of non-compliance undermined the credibility of the WTO and the respect and confidence of Members.

1.9. The representative of Jamaica said that her country thanked Cuba for its statement and the United States for its status report. Jamaica joined other delegations in voicing its deep concern regarding the continued failure by the United States to implement the DSB's recommendations, which had been adopted in 2002 with respect to Section 211. Jamaica, once again, reminded the United States that this protracted failure to put into place the necessary amendments, in order to comply with its obligations, was incompatible with the DSU's explicit requirement for prompt and effective implementation of the DSB's recommendations. This was of particular concern to Jamaica, as any such failure by a major international trading partner to meet its obligations under international law would invariably have a negative impact on the economic interests of a fellow developing-country Member. Jamaica, therefore, once again recalled that, when ratifying the Marrakesh Agreement establishing the WTO, Members had collectively recognized the need for positive efforts designed to ensure that developing countries, like Cuba, secured a share in the growth in international trade, commensurate with the needs of their economic development. Furthermore, Jamaica was compelled to express its concern about the systemic implications of any disregard for the DSB's rulings. Jamaica strongly believed that such disregard could ultimately serve to undermine the overall integrity of the dispute settlement system, which remained a key pillar of the multilateral trading system. After more than 12 years since the adoption of the DSB's recommendations. Jamaica, once again, joined other delegations in urging the United States to take the required steps and promptly comply with the DSB's recommendations and rulings. A long period of time had passed and now was the time for this matter to be resolved and removed from the DSB Agenda.

1.10. The representative of India said that his country thanked the United States for its status report and the statement made at the present meeting. India noted that the United States did not report any progress. India reiterated that the principle of prompt compliance was missing in this dispute. India renewed its systemic concerns about the continuation of non-compliance, as this undermined the credibility and the confidence that Members reposed in the system. India urged the United States to report full compliance in this dispute without any further delay.

1.11. The representative of Mexico said that, as it had done in the past, his country urged the parties to the dispute to take the necessary steps to comply with the DSB's recommendations and rulings, in accordance with Article 21.1 of the DSU. Mexico thanked the United States for its status report, in which it mentioned that relevant legislation had been introduced in the current session of the US Congress. Mexico thought that it would be helpful to know the status of this legislation and whether there was any public information on the Internet that could be included in future status reports.

1.12. The representative of Ecuador said that his country supported the statement made by Cuba. Ecuador stressed, once again, that Article 21 of the DSU specifically referred to prompt compliance with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Ecuador noted that in the dispute: "United States – Measures Relating to Zeroing and Sunset Reviews: Recourse to Article 21.5 of the DSU by Japan" (WT/DS322/AB/RW), the Appellate Body had raised questions regarding the scope and timing of the obligation to comply with the DSB's recommendations and rulings. The representative of Ecuador quoted that, in its analysis, the Appellate Body had highlighted the following points: "(i) the DSU contains several provisions to specifically address this obligation; (ii) the obligation to comply with the DSB's recommendations and rulings arises once the DSB has adopted a panel or Appellate Body report that has concluded that a measure is inconsistent with a covered agreement; (iii) in accordance with Article 19.1 of the DSU, implementation requires that the Member concerned bring the WTO-inconsistent measure into conformity with the relevant covered agreement(s); (iv) Article 3.7 of the DSU states that in the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism is to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements clarifying that the inconsistent measure to be withdrawn can be brought into compliance by modifying or replacing it with a revised measure; (v) the time-frame within which compliance must be effected is addressed in Article 21 of the DSU. Article 21.1 provides that

prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members. The reference to essential underscores the importance of the obligation to comply with the DSB's recommendations and rulings. The reference to prompt compliance emphasizes the need for the timely implementation of DSB recommendations and rulings; (vi) the timing of implementation is also addressed in Article 21.3 of the DSU. According to this provision, implementation of the recommendations and rulings of the DSB must take place immediately, unless it is impracticable to do so. In other words, the requirement is immediate compliance. However, Article 21.3 of the DSU recognizes that immediate compliance may not always be practicable, in which case it foresees the possibility of the implementing Member being given a reasonable period of time to comply. The reasonable period of time is a limited exemption from the obligation to comply immediately. The obligation to comply with the recommendations and rulings of the DSB has to be fulfilled by the end of the reasonable period of time at the latest. Indeed, any conduct of the implementing Member that was found to be WTO-inconsistent by the DSB must cease by the end of the reasonable period of time. Otherwise, that Member would continue to act in a WTO-inconsistent manner after the end of the reasonable period of time, contrary to Articles 3.7, 19.1, 21.1, 21.3, and 21.5 of the DSU".

1.13. According to the Appellate Body, this was the Appellate Body's general understanding of a WTO Member's obligation to comply with the DSB's recommendations and rulings. This matter of "prompt compliance" or "effective compliance" was a long-standing concern of many developing-country Members. It was a matter that transcended and went beyond other strictly procedural concerns. In light of the discussions in previous years, between June and November 2012, a group of developing-country Members had submitted proposals at the Special Session of the DSB, together with revised legal texts concerned including on "effective compliance". Ecuador believed that these were essential for the smooth functioning of the dispute settlement system. The process of "clarifying" and "improving" the DSU should eventually produce a concrete outcome whereby substantive issues would be dealt with, in particular those that primarily affected the interests of developing-country Members.

1.14. The representative of Zimbabwe said that his country thanked the United States for its status report in this dispute. However, like Cuba, China and other delegations had already noted, the US status reports lacked value and contained no information on progress required by the DSU provisions. Zimbabwe was disappointed and regretted that the United States had continued to disregard the DSB's rulings and recommendations in the Section 211 dispute. The continued US failure to comply with its obligations seriously undermined the integrity of the DSB, as well as the effectiveness of its rulings. For a number of years, Zimbabwe, along with other WTO Members, had been calling on the United States to desist from this flagrant violation of WTO rules and to meet its obligations. Zimbabwe, therefore, strongly supported Cuba's statement and urged the United States to comply with the relevant DSB's rulings and recommendations.

1.15. The representative of Nicaragua said that his country thanked the United States for submitting yet another status report. Nicaragua, once again, wished to express its concern about the continued US non-compliance with the DSB's recommendations within the reasonable period of time stipulated in Article 21.3 of the DSU. Nicaragua was also concerned that this situation of non-compliance affected the interests of Cuba, a developing-country Member with a small economy. Non-compliance also undermined the credibility of the dispute settlement system and the confidence that Members had placed in that system. Nicaragua supported Cuba's statement and urged the United States to provide information on the progress made in complying with the DSB's recommendations and rulings.

1.16. The representative of Argentina said that, like the previous speakers, his country regretted that, once again, it had to make a statement on this matter. Argentina reiterated its disappointment about the lack of progress in resolving this dispute. The submission of repetitive status reports, month after month, in which the only change was a symbol number, did not meet the obligation of Article 21.6 of the DSU, which was to report on progress and not to repeat that no progress had been made in finding a solution. Argentina, therefore, supported Mexico's suggestion that Members should be given further information regarding the status of the six bills introduced in the US Congress. Argentina, once again, urged the parties to the dispute, in particular the United States, to make an effort to promptly resolve this issue so that this item could be removed from the DSB Agenda.

1.17. The representative of the Plurinational State of Bolivia said that, over the past 12 years, his country had repeatedly heard the same status report by the United States, which contained no information on progress towards resolving this dispute. Bolivia, therefore, reiterated its concerns as to the systemic implications of the US failure to comply with the DSB's recommendations in this dispute. Bolivia was also concerned about the lack of political will on the part of the United States to comply with the DSB decisions. This failure to comply undermined the credibility of the multilateral trading system and had a negative impact on the interests of a developing-country Member. Once again, Bolivia urged the United States to comply with the DSB's recommendations and rulings and to take steps to remove the restrictions imposed under Section 211. Bolivia supported the concerns expressed by Cuba at the present meeting.

1.18. The representative of El Salvador said that her country thanked the United States for its status report. Like the previous speakers, El Salvador reiterated its concerns about the lack of compliance with the DSB's recommendations and rulings in this dispute. This situation of non-compliance adversely affected a developing-country Member and the multilateral trading system. El Salvador urged the parties to this dispute to take steps to promptly comply with the DSB's recommendations and rulings.

1.19. The representative of Uruguay said that his country thanked the United States for its status report, but regretted that the United States did not report on any new developments in this dispute. In Uruguay's view, it may be useful, as Mexico had suggested, for the United States to provide more information regarding the legislations before Congress.

1.20. The representative of South Africa said that her country thanked the United States for its status report, but noted that it did not contain any new developments in this matter. In that regard, South Africa referred to its previous statements stressing its systemic concerns that non-compliance with the DSB's recommendations and rulings undermined the integrity of an important enforcement pillar of the WTO. South Africa was also concerned that non-compliance undermined the multilateral trading system as a whole and perpetuated negative economic consequences for a particular developing-country Member. South Africa, therefore, urged the United States to bring its legislation into compliance with the DSB's rulings and recommendations.

1.21. The representative of the Dominican Republic said that his country thanked the United States for its status report. As it had done many times over the past years, the Dominican Republic reiterated its concerns about the lack of compliance with the DSB's recommendations and rulings. This non-compliance undermined the credibility of the dispute settlement system and had systemic implications. Furthermore, it affected the interests of a small developing-country Member. The Dominican Republic wished to refer Members to its statements made at previous DSB meetings under this Agenda item, which were reflected in the DSB minutes.

1.22. The representative of Brazil said that his country thanked the United States for its status report concerning this dispute. Brazil noted that, once again, the United States reported lack of meaningful progress towards compliance. 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.

1.23. The representative of Dominica, speaking on behalf of the OECS countries, thanked the United States for its status report and Cuba for its statement. Like previous speakers, the OECS countries supported Cuba on this matter. They remained concerned about the lack of progress and the continued non-compliance with the DSB's rulings and recommendations, in particular since it adversely affected the economic interests of a small developing-country Member. This non-compliance also undermined the credibility of the dispute settlement system, which was a key pillar of the WTO and the multilateral trading system. Therefore, the OECS countries urged prompt compliance with the DSB's rulings and recommendations and urged the parties to find solutions that would bring this dispute to an end.

1.24. The representative of the United States said that her country regretted that some Members had suggested that the US Administration was not providing sufficient details of US implementation efforts. The United States had, in its status report and at past DSB meetings, cited the various legislative proposals that had been introduced by Members of the current US Congress. Further, the US Administration continued to work with Congress to implement the recommendations and rulings in this dispute. As the United States had explained at previous DSB

meetings, it was not always possible or appropriate to recount internal governmental conversations or efforts to pass legislation. The fact that internal deliberations may not be appropriate for public discussion should not be misconstrued as meaning that no steps were being taken. To the contrary, the United States had heard similar criticisms about the level of detail of US status reports in other disputes in which Congress had ultimately passed legislation or had taken other measures to come into compliance. In its statement made at the present meeting, the United States had mentioned six bills that had been introduced in the current Congress. Some of the legislation mentioned would modify Section 211 while other bills would repeal it outright. The United States was ready to provide more specific information on any bill to Members upon inquiry. However, the United States would note that all of these bills were publicly available from the time of introduction. In fact, it was possible to track the progress of any particular bill through the legislative process using available online tools. Therefore, any delegation interested in reviewing these bills may do so using the public material readily available online. In response to the statements by some Members that this dispute raised concerns for the dispute settlement system, as the United States had noted on several occasions, it did not believe that those concerns were well-founded. The facts simply did not support Members' assertions or justify such systemic concerns. The record was clear: the United States had come into compliance, fully and promptly, in the vast majority of its disputes. As for the remaining few instances where its efforts to do so had not yet been entirely successful, the United States had been working actively towards compliance in furtherance of the purpose of the dispute settlement system.

1.25. The representative of Cuba said that her delegation wished to respond to the statement made by the United States. She said that all Members had a commitment to the multilateral trading system. They had to comply with all the DSB's recommendations and rulings and not only with some of them. Cuba had already made this point in its previous statement. Non-compliance in this dispute had been going on for 12 years and had systemic implications. Cuba noted that discussions were under way and some progress was being made in the US Congress with respect to a number of bills and legislative initiatives. Cuba recalled that Article 21.6 of the DSU stated specifically that any information on progress must be submitted in writing. Therefore, information contained in the US statement on the discussions under way in the US Congress should be provided in writing. What Cuba had just heard with respect to the US legislation may have some positive results with regard to compliance in this dispute and in particular with respect to trade relations with Cuba. Given that the bills were not yet submitted before the Senate, Cuba did not know what would happen in Congress. Cuba noted that the US status reports, submitted over the past 12 years regarding its non-compliance with the DSB's recommendations and rulings, had made references to a number of legislative bills which had not yet been considered in Congress. Cuba, therefore, urged the United States to comply with the DSU and to repeal Section 211.

1.26. 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.136)

1.27. The Chairman drew attention to document WT/DS184/15/Add.136, 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.

1.28. The representative of the United States said that her country had provided a status report in this dispute on 14 April 2014, 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.

1.29. The representative of Japan said that his country thanked the United States for its statement and its status report. Japan referred to its previous statements in which it had indicated its desire for this issue to be resolved as soon as possible.

1.30. 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.111)

1.31. The Chairman drew attention to document WT/DS160/24/Add.111, 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.

1.32. The representative of the United States said that her country had provided a status report in this dispute on 14 April 2014, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

1.33. 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 in which it had indicated its desire to resolve this dispute as soon as possible.

1.34. 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.74)

1.35. The Chairman drew attention to document WT/DS291/37/Add.74, 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.

1.36. The representative of the European Union said that, in recent DSB meetings, the EU had already reported on authorization decisions taken up to January 2014. The Appeal Committee of 27 February 2014 had voted on a draft authorization decision for an oilseed rape[1], for food and feed uses and had rendered no opinion. The file was back to the European Commission for final adoption. In addition, the Appeal Committee of 27 March 2014 had voted on a draft authorization decision for a cotton[2] for food and feed uses and had rendered no opinion. The file was back to the Commission for final adoption. One draft decision for authorization of a maize[3] and one decision for authorization of a soya[4], both for food and feed uses, were scheduled for discussion and possible vote at the Standing Committee of 24 April 2014. As had been 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 EU's written statement.

1.37. The representative of the United States said that her country thanked the EU for its status report and its statement made at the present meeting. At prior DSB meetings, the United States had recalled that the EU had not addressed the product-specific DSB recommendation and ruling with respect to a variety of biotech corn known as BT-1507.[5] The application for approval of this product had been pending since 2001. The United States also took note that the EU had stated at the February 2014 DSB meeting that measures approving the use of BT-1507 "are now to be adopted by the Commission in accordance with the applicable rules". The EU's scientific authority had already issued at least three positive safety assessments for this application. No further regulatory procedures were called for under the EU's own rules. The United States regretted, however, that the Commission had yet to take action. As a result, the EU measures on the approval of BT-1507 continued to be delayed. The handling of the BT-1507 application over the

[1] GT73 oilseed rape.
[2] T304-40 cotton.
[3] T304-40 cotton.
[4] MON87708.
[5] "European Communities – Measures Affecting the Approval and Marketing of Biotech Products" (WT/DS291/R), adopted on 21 November 2006, at para. 8.18(a)(xi).

past 13 years exemplified the problems with EU measures affecting the approval of biotech products. In addition to this biotech product, there were at least six other pending approval applications for which positive opinions had been issued by the EU's scientific authority. Yet, these applications continued to face delays in approval. In closing, the United States urged the EU to take steps to address the problems with EU measures affecting approval of biotech products, including delays in approvals and bans imposed by EU member States on products approved at the EU level.

1.38. 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.23)

1.39. The Chairman drew attention to document WT/DS371/15/Add.23, 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.

1.40. The representative of Thailand said that, as indicated in its most recent status report, Thailand had provided the last outstanding responses to the Philippines' requests for information with respect to Thailand's implementation of the DSB's recommendations and rulings. Thailand welcomed any follow-up questions that the Philippines may wish to raise. Thailand was satisfied that it had taken all necessary actions to implement the DSB's recommendations and rulings and had provided all relevant information related to the rulings. To the extent that the Philippines retained any concern about matters that had not been the subject of the DSB's recommendations and rulings, Thailand was willing to discuss those concerns with the Philippines. However, Thailand believed that those discussions should be on a bilateral basis. Thailand looked forward to positively continuing discussions with the Philippines in order to resolve this dispute in an amicable and satisfactory manner.

1.41. The representative of the Philippines said that his country thanked Thailand for its status report and its statement. The Philippines recalled that, at recent DSB meetings, it had highlighted two of the remaining outstanding issues with regard to Thailand's compliance with the DSB's recommendations and rulings. The first was the recent decision by the Thai Attorney General to prosecute an importer of Philippine goods, and several of the importer's current and former employees, for alleged under-declaration of customs values in the 2003-2007 time-period, which included the period covered by the DSB's recommendations and rulings in this dispute. The second issue concerned a decision by the Thai Customs Board of Appeals to reject the declared transaction values for 210 entries of Philippine goods from 2002. On the second issue, as had been mentioned in its status report and statement, Thailand had recently provided replies to the Philippines' questions raised in September 2013. The Philippines thanked Thailand for the replies which provided some substantive information that it was currently in the process of assessing. The Philippines would address possible further questions that may arise from Thailand's replies in its ongoing dialogue with its ASEAN partner. Furthermore, the Philippines expected to still receive answers to its questions on the Prosecution Order and to be able to also discuss this matter with Thailand in its ongoing dialogue. Additionally, since there were differing views regarding the matters that were subject to the DSB's recommendations and rulings, the Philippines reserved its rights to comment on Thailand's statement at the next DSB meeting.

1.42. The representative of Thailand said that her country noted the Philippines' concern regarding the prosecution under Thai law. However, as mentioned at the previous DSB meeting, the Thai Ministry of Commerce had communicated with the relevant Thai authorities on the Philippines' questions and concerns. Thailand reiterated that it would ensure that it acted in a WTO-consistent manner to the extent that this particular concern of the Philippines involved Thailand's obligations under WTO law.

1.43. 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.22)

1.44. The Chairman drew attention to document WT/DS404/11/Add.22, 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.

1.45. The representative of the United States said that her country had provided a status report in this dispute on 14 April 2014, in accordance with Article 21.6 of the DSU. As it had noted at past DSB meetings, the US Department of Commerce had published a modification to its procedures in February 2012 in order to implement the DSB's recommendations and rulings regarding the use of "zeroing" in anti-dumping reviews. That modification addressed certain findings in this dispute. The United States would continue to consult with interested parties as it worked to address the recommendations and rulings of the DSB.

1.46. The representative of Viet Nam said that his country thanked the United States for its status report and the statement made at the present meeting. Viet Nam recalled that the reasonable period of time mutually agreed by the parties to the dispute had expired 16 months ago. However, the United States had not taken any action to recalculate and revoke the anti-dumping duty order for the second and third administrative review that was inconsistent with the DSB's ruling. Viet Nam reiterated its systemic concerns about the US non-compliance in this dispute and with international public law obligations. Viet Nam, once again, requested the United States to fully comply with the DSB's recommendations and rulings without any further delay so as to maintain the multilateral trading system discipline and for the benefit of Viet Nam, a developing-country Member.

1.47. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Viet Nam. Venezuela shared Viet Nam's concerns regarding the need for the United States to implement the measures in order to resolve this dispute promptly.

1.48. The representative of Cuba said that her country wished to underline the need for effective compliance, in particular since the interests of a developing-country Member like Viet Nam were concerned. Non-compliance with the DSB's rulings and recommendations was not justified in this case. The US status report and Viet Nam's statement showed that this was yet another situation of non-compliance by the United States. Cuba urged the United States to take necessary measures in order to comply with its WTO obligations.

1.49. The representative of the United States said that her country was disappointed by Viet Nam's comments at the present meeting. As Viet Nam was aware, the United States had continually tried to engage Viet Nam in bilateral discussions to resolve their concerns with respect to this issue. The United States encouraged Viet Nam to make use of that avenue, which the United States believed would be a more productive way forward to address the concerns that had been raised. The United States was actively working on this matter, and would be pleased to consult with interested parties, including Viet Nam, as it worked to address the recommendations and rulings of the DSB.

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

G. Canada – Certain measures affecting the renewable energy generation sector/Canada – Measures relating to the feed-in tariff program: Status report by Canada (WT/DS412/17/Add.2 – WT/DS426/17/Add.2)

1.51. The Chairman drew attention to document WT/DS412/17/Add.2 – WT/DS426/17/Add.2, which contained the status report by Canada on progress in the implementation of the DSB's recommendations in the cases concerning Canada's measures affecting the renewable energy generation sector and the measures relating to the feed-in tariff program.

1.52. The representative of Canada said that the DSB had adopted the recommendations and rulings in these disputes on 24 May 2013. Canada, Japan and the EU had initially agreed that the

reasonable period of time for Canada to implement these recommendations and rulings would end on 24 March 2014, and had then subsequently agreed to modify the reasonable period of time to expire on 5 June 2014. The measures taken by Canada and the Government of Ontario with a view to ensuring compliance with the DSB's recommendations and rulings had been outlined in previous status reports. In addition to those compliance steps, the Government of Ontario had tabled legislation to provide the Minister of Energy with the authority to direct the Ontario Power Authority to procure electricity under the FIT Program without any domestic content requirements. This legislation had passed Second Reading and had been referred to a Committee of the Ontario Legislative Assembly for review.

1.53. The representative of Japan said that his country thanked Canada for its statement and its status report submitted on 14 April 2014. Japan took note that the bill, which would terminate the domestic content requirement in the concerned FIT Program, had been referred to the Standing Committee of the Ontario Legislative Assembly. Japan would appreciate if Canada could provide the following information in the near future: (i) if the bill could be modified at the Committees' level, what kind of modification would be expected; and (ii) the prospect of when the bill would be passed. As had been stated at the previous DSB meeting, Japan strongly hoped that the bill would be passed and be in force prior to 5 June 2014, when the modified reasonable period of time for this dispute expired and when the current session of the Legislative Assembly of Ontario would end.

1.54. The representative of the European Union said that the EU thanked Canada for its third status report. The EU noted in particular that another step in the legislative procedure in the Ontario Parliament had been completed. The EU looked forward to further reports from Canada in the next DSB meetings concerning the status of implementation of the DSB's recommendations and rulings.

1.55. The representative of Canada said that his country wished to respond to the two questions posed by Japan. Canada had some information that it could provide at the present meeting. With respect to the first question about whether or not any modifications would be sought during the Committee review by the Government Ontario, Bill 153 was a Government bill, so in that context it was very unlikely that the Government of Ontario itself would seek to propose any amendments during the Committee process. With respect to the second question about the prospects for the bill being passed, Bill 153 was subject to Ontario's legislative process and Canada had, on previous occasions, provided Japan and the EU as well as others with information about that process. Canada was happy to continue to discuss with them about how that process would work.

1.56. 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

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

2.2. The representative of the European Union said that the EU wished to inform the DSB that the authorized level of retaliation against the United States had been adjusted as from 1 May 2014. The regulation containing the EU measures had been published on 25 March 2014 and had been notified to the DSB on 4 April 2014. 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 pertaining to this dispute.

2.3. 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 in order to resolve this long-standing dispute. Japan believed that the United States was under obligation to provide the DSB with a status report in this dispute, in accordance with Article 21.6 of the DSU.

2.4. The representative of India said that his country thanked Japan and the EU for regularly keeping this item on the DSB's Agenda. India shared their concerns and endorsed their views. The CDSOA remained operational, allowing for disbursements by the US Administration to its domestic industry, thereby adversely affecting the rights of other WTO Members. India agreed with previous speakers that this item should continue to remain under the DSB's surveillance until the achievement of full compliance.

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

2.6. The representative of Thailand said that his country wished to refer to its previous statements made under this Agenda item. Thailand's position on this matter had not changed.

2.7. The representative of Brazil said that his country supported the statements made by previous speakers. In particular, Brazil agreed with the EU that the continued disbursements under the Byrd Amendment at this point in time were not in conformity with the DSB's rulings and recommendations.

2.8. The representative of the United States said that, as her 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. Furthermore, the United States recalled that Members, including the EU and Japan, had acknowledged during previous DSB meetings that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, which was 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. 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 which would repeat, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States also regretted that the EU had decided to continue to apply its suspension of concessions and was disappointed with that decision. Indeed, previously the EU had made clear that its purpose in suspending concessions was to "induce compliance". As the United States had taken all steps necessary to comply with the DSB's rulings and recommendations, it failed to see how the continued suspension of concessions could further that purpose. Furthermore, as the United States had observed previously, the DSB had only authorized the suspension of concessions or other obligations as provided in the Award of the Arbitrator. The United States continued to review the action by the EU and would not accept any characterization of such continued retaliation as consistent with the DSB's authorization.

2.9. The DSB took note of the statements.

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

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

3.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Antigua and Barbuda. He further stated that it was his understanding that, in the absence of Antigua and Barbuda at the present meeting, the representative of Dominica would make a statement on behalf of Antigua and Barbuda.

3.2. The representative of Dominica, speaking on behalf of Antigua and Barbuda, read out the following statement: "I am today reading this statement prepared by, and on behalf of the delegation of Antigua and Barbuda, which has requested that this item be placed on the Agenda for today's meeting of the DSB. Antigua and Barbuda would like to once more inform the DSB of the complete lack of progress in attaining some sort of acceptable resolution in this dispute with the United States over the cross-border supply of gambling and betting services. Despite what the United States told this Body at the last session at which Antigua and Barbuda provided an update,

the United States has made no settlement offer, nor could the United States be waiting for an Antiguan response to the minimalist proposals thrown out by the United States at the last meeting of the delegations in Washington DC late last year – for as they then knew full well, and as the Antiguan negotiators clearly advised at the conclusion of that session, those proposals could not in any respect form the basis for a comprehensive settlement of this dispute. Antigua and Barbuda is confident that not one Member here present would disagree if the details of the proposals were laid before this Body. In addition to its ongoing frustration at the failure and refusal of the United States to fairly and reasonably work towards a settlement of this dispute, Antigua and Barbuda would like to make clear its objection to the manner in which the United States has attempted to cast the country as somehow being an impediment to the United States' efforts to alter their GATS commitments so as to avoid having to comply with the recommendations and rulings of the DSB in this dispute. Although the formal process of in essence 'moving backward' on the liberalization of trade in services has never truly been tested, what is clear is that non-compliance with long-standing rulings of the DSB in this dispute followed by a removal of a commitment without any form of compensation or trade adjustment accruing to the possible benefit of Antigua and Barbuda cannot be a hallmark of a functioning multilateral trade system. And, as the lead negotiator for the United States during the GATS Article XXI rounds of discussions some years ago expressly admitted to the Antiguan delegation, they had nothing to offer Antigua and Barbuda by way of trade concessions that could be of any benefit to the Antiguan economy. That was just the way it was, which brings us to the final point for today's session. Over ten years of following the rules and prevailing, millions of dollars of cost and expense, hours upon hours of fruitless and frustrating attempts at negotiation – and what has the tiny, developing economy of Antigua and Barbuda gained from the process? Yes, the government is actively working on a programme to implement the suspension of concessions and other obligations approved by the DSB. And although it has taken a long time, the government is confident that the methodology and programme it has developed and is in the late stages of implementing, will pass muster with all reasonable assessors. However, even recourse to this remedy of last resort has led to public statements and pronouncements, accusations that if the Antiguan government were to actually impose the suspension of concessions, somehow Antigua and Barbuda would be the outliers here, somehow Antigua and Barbuda would be moving beyond the pale, while at the same time the United States continues to ignore a decade-old ruling against it by this Body. Further, there is no doubt that the major economies of the world do not have to face the same fears and uncertainties when they – as they have indeed done – make their own recourse to such remedies.

3.3. So just what does this dispute resolution process do for a country such as Antigua and Barbuda? It seems perhaps the harsh light of this prolonged action by one of the weakest against the strongest is on the verge of condemning the multilateral trading system established here some two decades ago as what its critics then feared – a vehicle by which the strong economies could extract concessions from the weak while at the same time effectively stone-walling – no, in fairness, denying – the ability of small economies to obtain any meaningful recourse when wronged by others. This, Antigua and Barbuda believes, is a serious issue that needs to be honestly appraised and met head-on. Particularly in the case of a small, import-dependent economy, it is terribly difficult to understand what true, substantive benefits the WTO has to offer. Almost 20 years ago, prescient Antiguans developed something new that, for a 'brief shining moment', stood to transform the jurisdiction in a way that simply wasn't otherwise possible given the country's lack of exportable natural resources. Now with the ultimate proliferation and acceptance of this industry, not just globally but in the United States domestic-only market as well, remote gaming hasn't proven to be the nefarious, dangerous activity that the United States alleged it to be during the substantive proceedings of DS285. But maybe what it did prove to be was something that powerful domestic gaming interests in the United States – with the full support of their government – decided could not be shared with others, particularly small and vulnerable others, regardless of treaty commitments to the contrary."

3.4. The representative of China said that her country thanked Antigua and Barbuda for inscribing this matter on the DSB's Agenda. China also thanked Dominica for the statement made on behalf of Antigua and Barbuda at the present meeting. China sympathized with the difficulties that Antigua and Barbuda, a small and vulnerable economy, faced in order to ensure full implementation of the DSB's rulings and recommendations. China urged the parties to the dispute to engage effectively with each other with a view to finding a solution to end this long-standing implementation issue. China suggested that perhaps the Secretariat could assist the parties in this matter.

3.5. The representative of India said that his country thanked Antigua and Barbuda for its statement. India fully understood its frustration and concern. The WTO dispute settlement system was conceived as a system where all WTO Members, irrespective of their size and status, could get their disputes resolved and their rights protected. Any act of non-compliance undermined this fate of the Members in the dispute settlement system. India, therefore, requested the two parties to mutually resolve this dispute at the earliest.

3.6. The representative of Trinidad and Tobago said that his country thanked Antigua and Barbuda for its status report under this Agenda item. Trinidad and Tobago had been following with interest and some degree of concern the dispute involving a CARICOM country, Antigua and Barbuda, and the United States regarding the implementation of the DSB's recommendations and rulings adopted on the cross-border supply of gambling and betting services. Trinidad and Tobago's position in this dispute had been clearly elucidated in previous DSB meetings and there was no need to repeat in detail its previous statements. Trinidad and Tobago stood firmly behind the decision arrived at by the heads of government at the CARICOM meeting held in Haiti in 2013. The decision taken at that meeting was that this long-standing dispute be amicably resolved at the earliest possible opportunity. Trinidad and Tobago trusted that the meaningful dialogue would continue between the United States and Antigua and Barbuda in order to resolve this dispute.

3.7. The representative of Argentina said that his country thanked Antigua and Barbuda for inscribing this item on the DSB's Agenda. Argentina also thanked Dominica for its statement made on behalf of Antigua and Barbuda, in order to keep the DSB abreast of developments in this matter. However, Argentina regretted that, once again, no progress had been made. Argentina, therefore, expressed its renewed concern about the systemic implications of protracted failure to comply with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Argentina recalled that Article 21.1 of the DSU was clear in this respect and stated that: "prompt compliance with the recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members". Argentina, therefore, urged the parties to this dispute to redouble their efforts to reach a fair and equitable solution to this long-standing dispute.

3.8. The representative of Cuba said that her country regretted that one Member had several long-standing disputes and its failure to comply affected a developing-country Member, in this case Antigua and Barbuda, a small, vulnerable economy. Cuba fully supported the statement made by Dominica, on behalf of Antigua and Barbuda. Cuba noted that several Members had also spoken in favour of Antigua and Barbuda which, for more than five years, had been making efforts to ensure that the United States complied with its legal obligations. Nevertheless, no real progress had been made towards a solution to this dispute. Consequently, a vital sector was affected in one of the smallest economies of the world. Cuba urged the United States to promptly comply with its obligations and to compensate Antigua and Barbuda.

3.9. The representative of Brazil said that his country thanked Antigua and Barbuda for including this item on the DSB's Agenda. As it had expressed before, Brazil was of the view that the WTO dispute settlement system had proved to be a very useful tool for resolving trade disputes among WTO Members through a rules-based mechanism. However, the credibility and effectiveness of the system depended on the premise that the mechanism worked for the benefit of all Members, regardless of their size or level of development. Bearing that in mind, Brazil encouraged both parties to the dispute to engage in effective negotiations with a view to reaching a mutually agreed solution in this dispute, in accordance with the DSB's rulings on this matter.

3.10. The representative of Jamaica said that his country supported the statement made by Dominica, on behalf of Antigua and Barbuda, under this Agenda item. Jamaica had consistently called for a timely resolution of this matter by fully implementing the DSB's ruling in favour of Antigua and Barbuda. Jamaica remained concerned about the US protracted failure to comply with the DSB's recommendations and rulings of 20 April 2005. The member States of the Caribbean Community had also repeatedly expressed the region's profound disappointment at the failure to resolve this matter in line with the DSB's decisions. Jamaica firmly believed that any failure to comply with the DSB's decisions posed a threat to the integrity of the DSB and weakened the very foundation upon which the WTO rested. For all countries who relied on the rules-based multilateral trading system, small, vulnerable economies in particular, it was extremely important that the credibility of the dispute settlement system be preserved and strengthened through faithful implementation of decisions and it should not be undermined by non-compliance. Jamaica, once

again, urged the United States to take the steps necessary to honour its obligations outlined in the Appellate Body Report contained in document WT/DS285/AB/R, which ruled in favour of Antigua and Barbuda.

3.11. The representative of the Bolivarian Republic of Venezuela said that her country noted that non-compliance in this dispute affected the interests of a developing-country Member. In that regard, Venezuela supported the statement made by Dominica on behalf of Antigua and Barbuda. The repeated failure by the United States in this dispute, and in many others, to comply with the DSB's recommendations and rulings, violated the fundamental principles and rules of the multilateral system. The US non-compliance also had systemic effects on the credibility and the effectiveness of the DSB as the appropriate forum for the resolution of trade disputes between Members. What was more serious was that the US failure to comply had a direct impact on a developing-country Member whose economy was mostly based on the provision of services. Thus, any restriction in the area of services had a negative impact on Antigua and Barbuda's economy. The DSB had adopted its recommendations and rulings a few years ago and had called on the United States to put an end to this situation. However, the United States had not yet complied with the DSB's recommendations and rulings. Venezuela, therefore, urged the United States to bring this non-compliance to an end and to report on the actions it had taken to resolve this matter.

3.12. The representative of the Dominican Republic said that his country thanked Dominica for the statement made on behalf of Antigua and Barbuda. The Dominican Republic urged the United States to comply in this dispute, which affected the interests of a small, vulnerable economy in the Caribbean that had placed its trust in the WTO rules. The Dominican Republic, once again, noted that this was yet again another case of systemic concern that affected the credibility of the WTO.

3.13. The representative of Dominica, speaking on behalf of the OECS countries, said that he wished to refer delegations to the statement made by Dominica on behalf of the OECS countries at the 28 January 2013 DSB meeting, which was contained in document WT/DSB/M/328.

3.14. The representative of Dominica, speaking also on behalf of the CARICOM countries, wished to refer delegations to the statement made by Trinidad & Tobago on behalf of the CARICOM countries at the 27 February 2013 DSB meeting, which was contained in document WT/DSB/M/329.

3.15. The representative of the United States said that, as her country had stated before, the United States remained committed to constructive dialogue with Antigua to resolve this matter and had been open to meeting with Antigua on this matter at many different levels of the US government. As Members were aware, the United States had invoked the GATS process to withdraw the gambling concession at issue. In fact, and as was acknowledged by Antigua in its statement, all affected WTO Members except for Antigua had agreed to the US proposed amendment. Nevertheless, the United States remained of the view that a negotiated resolution was the best outcome here, and it would continue with those efforts. At the most recent meeting between Antigua and the United States Trade Representative, in November 2013, the United States had presented, in good faith, a range of items that could be part of a final settlement package. The United States continued to await a detailed response or counter-proposal from Antigua and remained ready to engage with Antigua on these issues. It was US policy not to comment publicly on ongoing negotiations, but as noted, the United States continued to await a constructive answer or a realistic counter-proposal from Antigua in response to the settlement package that it had presented and it disagreed with the characterizations made by Antigua on this point. Finally, with respect to comments regarding the US respect for the WTO dispute settlement system, the WTO dispute settlement system had concluded with a definitive finding on the scope of the US schedule as drafted in 1994. The United States had accepted that result. Following the final DSB report, the United States had made consistent, good-faith efforts to settle the dispute with Antigua. The United States also had proceeded to use the multilateral GATS Article XXI rules, which had been adopted for the purpose of allowing Members to make modifications to their schedules while maintaining a balance of benefits among Members. Both of these courses reflected the United States respect for the findings of the dispute settlement system.

3.16. 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. He then invited the representative of the United States to speak.

4.2. The representative of the United States said that her country continued to have serious concerns that China had failed to bring its measures into conformity with its WTO obligations. The situation had not changed since the United States had first begun raising this matter in the DSB. In particular, China maintained a ban on foreign suppliers by imposing a licensing requirement to provide EPS, while providing no procedures for foreign suppliers to obtain that license. As a result, China's own domestic champion remained at present the only EPS company that had ever been able to operate in China's domestic market. China's measures could not be reconciled with the DSB's findings that China's WTO obligations included both market access and national treatment commitments concerning Mode 3 for electronic payment services.[6] The United States did take note again of China's statements in prior DSB meetings that China was working on the necessary regulations that would allow for the licensing of foreign EPS suppliers. The United States observed that the regulations had still not yet been issued. Accordingly, the United States urged China to adopt measures that would allow the licensing of foreign EPS suppliers and that would bring its measures into conformity with China's WTO obligations.

4.3. The representative of China said that her country regretted that the United States had, once again, brought this matter before the DSB. China referred to its statements made under this Agenda item at previous DSB meetings. China had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute, in a timely manner. China urged the United States to reconsider the systemic implications of raising before the DSB this matter, which was outside China's compliance obligations.

4.4. The representative of the United States said that, as her country had stated before, the United States strongly disagreed with China's statement that it had come into full compliance. The DSB's rulings and recommendations clearly stated that "China has made a commitment on market access concerning mode 3"[7] and that "China has made a commitment on national treatment concerning mode 3".[8] Currently, China did not allow foreign EPS suppliers access to the market under mode 3 due to a licensing restriction that set forth no criteria and no procedure under which to obtain the license. Meanwhile, China Union Pay, the only domestic supplier, continued to operate while foreign EPS suppliers could not. In light of these facts, China should live up to its commitments and come into compliance.

4.5. The representative of China said that her country regretted that it had to repeat its position. China's understanding of the Panel Report stipulating China's commitments under the WTO was very clear. China had undertaken its national-treatment commitment and market-access commitment, according to the interpretations by the Panel. China's payment services commitment under this dispute concerned the provision of certain services in Macau and Hong Kong. China had fully implemented its commitment with regard to this dispute. China urged the United States to read the Panel Report again carefully and examine what was contained therein.

4.6. The representative of the United States said that China's statement that language in the Report adopted by the DSB (e.g., that "China has made a commitment on market access concerning mode 3" and that "China has made a commitment on national treatment concerning mode 3") were merely "precursors" and not really findings or recommendations and rulings was extremely troubling. It would be a significant repudiation of China's WTO obligations for China to disagree with these findings of the Panel adopted by the DSB that defined China's WTO commitments and were at the core of the dispute. China knew, and all knew, that China had commitments here – it should live up to them.

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[6] "China – Certain Measures Affecting Electronic Payment Services", WT/DS413/R (adopted on 31 August 2012), paras. 7.575, 7.678.

[7] Idem., at para. 7.575.

[8] Idem., at para. 7.678.

4.7. The representative of China said that the parties to this dispute should discuss this issue further in a different forum. China urged the United States to consider whether or not the discussion in the DSB would be appropriate and, in order to resolve this dispute, China asked the United States to discuss this matter in another forum.

4.8. The DSB took note of the statements.

5 EUROPEAN UNION – ANTI-DUMPING MEASURES ON BIODIESEL FROM ARGENTINA

A. Request for the establishment of a panel by Argentina (WT/DS473/5)

5.1. The Chairman recalled that the DSB had considered this matter at its meeting on 26 March 2014 and had agreed to revert to it. He drew attention to the communication from Argentina contained in document WT/DS473/5, and invited the representative of Argentina to speak.

5.2. The representative of Argentina said that, as his country had mentioned at the DSB meeting on 26 March 2014 when it had first requested the establishment of a panel, Argentina's biodiesel sector was remarkable for its environmental and social sustainability. It had become one of the most efficient in the world due to the technology, scale and level of integration of the soybean production chain as a whole. Development of its biodiesel sector had made Argentina one of the world's leading exporters. Approximately US$1.8 billion worth of biodiesel had gone to the EU in 2011 and around US$1.5 billion in 2012. However, since the anti-dumping duties imposed by the EU on biodiesel from Argentina had taken effect on 27 November 2013, the market for this product had been closed. These measures appeared to have the sole objective of protecting a local industry whose levels of efficiency and profitability were insufficient to allow it to operate freely in the market. Argentina and the EU were continuing to explore possible alternatives to resolve this dispute, but had been unable to find a mutually satisfactory solution to date. Argentina believed that the only satisfactory way to address its claim would be to remove the measure imposed by Implementing Regulation (EU) No. 1194/2013. As it had stated when it had first submitted its panel request before the DSB, Argentina considered the anti-dumping measures imposed by the EU to be in breach of various provisions of Articles 2, 3 and 9 of the Anti-Dumping Agreement, as well as Article VI of the GATT 1994. Argentina also believed that certain provisions of Regulation (EC) No. 1225/2009 (the "Basic Regulation"), which enabled the investigating authority to make determinations in relation to the construction of normal value, were themselves inconsistent with the Anti-Dumping Agreement and the obligations assumed by the EU under the Marrakesh Agreement. For that reason, and having stated the importance of this product and this market for Argentina's exports, pursuant to Articles 4.7 and 6.1 of the DSU, Article XXIII of the GATT 1994 and Article 17 of the Anti-Dumping Agreement, Argentina was requesting, for the second time, the establishment of a panel with standard terms of reference set forth in Article 7.1 of the DSU.

5.3. The representative of the European Union said that the EU regretted that Argentina had requested the establishment of a panel for the second time. As it had stated at the previous DSB meeting, the EU's impression was that Argentina was willing to find a mutually acceptable solution to this dispute. The EU was convinced that its measures were in conformity with the WTO Agreements and it would defend them vigorously.

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

5.5. The representatives of Australia, China, Malaysia, Norway, Russian Federation, Saudi Arabia, Turkey and the United States reserved their third-party rights to participate in the Panel's proceedings.

6 AUSTRALIA – CERTAIN MEASURES CONCERNING TRADEMARKS, GEOGRAPHICAL INDICATIONS AND OTHER PLAIN PACKAGING REQUIREMENTS APPLICABLE TO TOBACCO PRODUCTS AND PACKAGING

A. Request for the establishment of a panel by the Dominican Republic (WT/DS441/15)

6.1. The Chairman recalled that the DSB had considered this matter at its meeting on 17 December 2012 and had agreed to revert to it. He drew attention to the communication from the Dominican Republic contained in document WT/DS441/15, and invited the representative of the Dominican Republic to make a statement.

6.2. The representative of the Dominican Republic said that, since December 2012, all tobacco products in Australia must be marketed in plain packaging, without any brand names, trademarks or geographical indications, in addition to meeting other strict requirements. Australia imposed these measures through the Tobacco Plain Packaging Act of 2011 and its implementing regulations. In September 2012, the Dominican Republic had held consultations with Australia on these plain packaging measures, but these consultations had unfortunately failed to settle this dispute. The Dominican Republic, therefore, had decided to request the DSB to establish a panel, but the request had been blocked by Australia at the DSB meeting held on 17 December 2012 (WT/DSB/M/327). At the present meeting, the Dominican Republic was requesting, for the second time, the establishment of a panel to examine the consistency of Australia's plain packaging measures with WTO rules. The Dominican Republic fully agreed with Australia's health objectives, but considered that these plain packaging measures failed to produce the intended effect of reducing tobacco prevalence. They were, moreover, harmful to the Dominican Republic's high-quality tobacco sector. By banning all design features on the packaging of tobacco products and requiring plain packaging, they prevented Dominican Republic producers from differentiating their high-quality products from other competing products in the market. Thus, plain packaging was not only an ineffective health policy but it also undermined fair competition in the market, thereby violating Australia's obligations under the TRIPS and the TBT Agreements. In light of this, the Dominican Republic intended to challenge Australia's plain packaging measures before a WTO panel and respectfully requested that the DSB establish a panel at the present meeting.

6.3. The representative of Australia said that, as it had stated on numerous occasions in the DSB over the past 18 months or more, Australia was a world leader in effective tobacco control strategies. Tobacco plain packaging was the next logical step in Australia's long history of tobacco control. Australia's tobacco plain packaging measure was a sound, well-considered measure designed to achieve a legitimate objective, the protection of public health. The WTO covered agreements recognized the fundamental right of Members to implement measures necessary for the achievement of this objective and provided the necessary flexibilities for Members to do so. All WTO Members, including the Dominican Republic and Australia, had to confront the global tobacco epidemic. Recent studies showed that there were more than 2,200 deaths from tobacco use in the Dominican Republic each year. The World Health Organization (WHO) estimated that global deaths from tobacco use would rise from 3 million in 1990 to 8.4 million in 2020 and 10 million in 2030, with 70% of these deaths occurring in developing countries. Australia acknowledged the tobacco control steps that had been taken by the Dominican Republic, such as the introduction of smoke-free environments in educational facilities, including Universities, and mandatory health warnings on tobacco packaging. In light of its shared global interest, Australia continued to be surprised at the Dominican Republic's decision to challenge Australia's tobacco plain packaging measure, particularly as that measure did not undermine the protection afforded to trademarks and geographical indications under the TRIPS Agreement. Nor was the measure more trade restrictive than necessary to fulfil its legitimate public health objective. The tobacco plain packaging measure was origin neutral and even-handed in its application. It was clearly non-discriminatory. It applied to all tobacco products, regardless of type or origin, and represented best practice in tobacco control.

6.4. The Dominican Republic's first request for the establishment of a panel regarding Australia's tobacco plain packaging measure had been considered at the 17 December 2012 DSB meeting. At that meeting, Australia had rejected that request as it was entitled to do so. Over 16 months had now elapsed since that request was considered by the DSB. During that time, the Dominican Republic had taken no steps to resolve the dispute. This extraordinary delay between panel requests was completely at odds with established DSB practice and, in Australia's view, had created a highly unfortunate precedent, one which the Membership may wish to reflect on further

in due course. Australia had placed its views about the interpretation of Article 6.1 of the DSU on the record at the September 2013 DSB meeting, following the ten-month delay between panel requests by Honduras. Australia stood by those views, which also applied to its dispute with the Dominican Republic. However, Australia did not wish to reopen that debate at the present meeting. Australia was of the view that such a lengthy delay between panel requests raised an important systemic question which had implications for the dispute settlement system generally, not just for this particular dispute. In that context, Australia recalled the concerns it had raised at the 26 March 2014 meeting of the DSB, in which it had highlighted the importance for all WTO Members to act consistently with the fundamental principles underpinning the operation of the WTO dispute settlement system, as set out in Article 3 of the DSU. These principles included Article 3.2 of the DSU, which provided that the WTO dispute settlement system was "a central element in providing security and predictability to the multilateral trading system", while Article 3.3 of the DSU recognized that the prompt settlement of disputes was "essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members". These principles applied to all disputes instituted under the DSU, including the tobacco plain packaging disputes. As the time since the Dominican Republic's first panel request in December 2012 had stretched out, Australia had grown increasingly concerned about statements from some of the complainants, including the Dominican Republic, cautioning other Members to await the outcome of the disputes against Australia before implementing similar tobacco control measures, while at the same time not taking steps to prosecute those claims. Australia was pleased to note, however, that any regulatory chill induced by the complainants' undue delay in prosecuting the tobacco plain packaging disputes had thawed to some extent with the announcement by other WTO Members that they too intended to adopt tobacco plain packaging. Australia welcomed those announcements.

6.5. The prompt settlement of the tobacco plain packaging disputes going forward would provide all Members with certainty and predictability about the application of relevant provisions of the GATT 1994, the TBT and the TRIPS Agreements to tobacco plain packaging. Despite questions on whether this request should be considered a first or second panel request and its broader systemic concerns, Australia would not stand in the way of a panel being established at the present meeting at the request of the Dominican Republic. In doing so, Australia wished to avoid contributing to any further delay in the multiple disputes relating to Australia's tobacco plain packaging measure. Australia hoped that all the complaints regarding its tobacco plain packaging measure could be managed in the most efficient way possible. In support of that objective, Australia welcomed the Dominican Republic's agreement to a joint panel composition time-table across the tobacco disputes. This included a meeting with the WTO Director-General on 24 April on panel composition involving all the parties, including the Dominican Republic and Cuba; the establishment of panels at the present meeting at the requests of the Dominican Republic and Cuba; and the appointment by the Director-General on 5 May 2014 of the same persons to serve as panelists in all five of the related tobacco plain packaging disputes. Given that these disputes related to the same matter, Australia also expected the time-table in the five proceedings to be harmonized, pursuant to Article 9.3 of the DSU. For the information of Members, Australia and the five complainants in the tobacco plain packaging disputes had sent on 24 April a communication to the DSB Chair outlining the procedural agreement that had been reached between all the parties concerning the panel composition process in these disputes. Australia understood that this communication would be distributed to the wider Membership shortly.

6.6. The representative of the Dominican Republic said that his country thanked Australia for agreeing to the establishment of a panel. However, with respect to the reference regarding the time-period that had elapsed since the panel first request was filed, he noted that this matter had been discussed when Honduras had submitted its second panel request. The parties had expressed their views and the DSB had established a panel at the meeting when the panel request was placed on Agenda by Honduras for the second time. The Dominican Republic wished to refer delegations to the statements made at the September 2013 DSB meeting when the panel request by Honduras had been considered. [9]

6.7. The representative of Ukraine said that his country had also initiated a dispute settlement proceeding over the same plain packaging measure imposed by Australia on tobacco products that was at issue in the request for the establishment of a panel by the Dominican Republic. Ukraine thus shared the concerns expressed by the Dominican Republic in terms of the lack of consistency

[9] WT/DSB/M/337.

of this measure with Australia's obligations. Ukraine welcomed Australia's decision to accept the request by the Dominican Republic.

6.8. The representative of Honduras said that his country had followed with interest the dispute initiated by the Dominican Republic against Australia's plain packaging legislation. Honduras had also initiated a dispute against Australia over the same measure and had asked that the DSB establish a panel. He recalled that this request had first been made in November 2012 in order to settle this dispute. As it had already stated, Honduras supported the adoption of tobacco control measures to protect public health, as long as the measures were compatible with WTO rules. In Honduras' view, Australia's measures undermined the main functions of trademarks and geographical indications of tobacco products, and were contrary to the TRIPS Agreement. These measures were also inconsistent with the TBT Agreement, since they were more trade restrictive than necessary. Honduras would continue to support the efforts of other Members who also considered that Australia's plain packaging measures were inconsistent with WTO rules.

6.9. The representative of New Zealand said that her country understood that the DSB would establish a panel at the present meeting and, in reserving its third-party rights, New Zealand wished to take this opportunity to make some brief comments about this matter. Members would recall that New Zealand had welcomed Australia's decision to legislate for the plain packaging of tobacco products. New Zealand shared Australia's public health objective. New Zealand also had a strong trade and systemic interest in seeing WTO disciplines correctly applied. In its view, Australia had paid close attention to and had respected its WTO obligations in developing and implementing its tobacco plain packaging measures. New Zealand thanked Australia and the Dominican Republic for the opportunity to participate as a third party in the consultations on this matter held on 27 September 2012. New Zealand had found the consultations useful in further clarifying the nature, scope, and underlying intent of the measures in question, as well as in better understanding the precise nature of the Dominican Republic's concerns. New Zealand shared Australia's concern about the unfortunate precedent created by the extraordinary delay of 16 months between the Dominican Republic's panel requests. New Zealand recalled the concerns it had expressed at the meeting of the DSB on 26 March 2014, and noted once more that the procedural issues highlighted by Australia had implications for the proper and effective functioning of the dispute settlement system generally, not just for this particular dispute. Members may wish to reflect further on those issues in due course. New Zealand shared Australia's desire to see all the complaints regarding the tobacco plain packaging measure managed in the most efficient way possible, including through the appointment of the same persons to serve as panelists in all five of the related tobacco plain packaging disputes, and the harmonization of the timetable for the five proceedings. To this end, New Zealand welcomed Australia's advice of the procedural agreement reached by the parties in these disputes concerning the panel composition process. New Zealand looked forward to receiving a copy of the agreement.

6.10. The representative of Cuba said that her country fully supported the request made by the Dominican Republic for the establishment of a panel to examine the plain packaging measures imposed by Australia. The Dominican Republic was another country affected by the plain packaging measures for tobacco products and had a long-standing tradition in tobacco production, which made the impact on its economy much more significant since it depended, to a great extent, on exports of this product. Cuba shared the concerns expressed by the Dominican Republic regarding the plain packaging measures imposed by Australia on tobacco products. Cuba welcomed the establishment of a panel at the present meeting.

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

6.12. The representatives of Argentina, Brazil, Canada, Chile, China, Cuba, the European Union, Guatemala, Honduras, India, Japan, Korea, Malaysia, Mexico, New Zealand, Nicaragua, Norway, Philippines, Russian Federation, Singapore, Chinese Taipei, Thailand, Trinidad & Tobago, Turkey, Ukraine, the United States, Uruguay and Zimbabwe reserved their third-party rights to participate in the Panel's proceedings.

7 AUSTRALIA – CERTAIN MEASURES CONCERNING TRADEMARKS, GEOGRAPHICAL INDICATIONS AND OTHER PLAIN PACKAGING REQUIREMENTS APPLICABLE TO TOBACCO PRODUCTS AND PACKAGING

A. Request for the establishment of a panel by Cuba (WT/DS458/14)

7.1. The Chairman drew attention to the communication from Cuba contained in document WT/DS458/14, and invited the representative of Cuba to speak.

7.2. The representative of Cuba said that her country requested that the DSB establish a panel to examine this dispute. Cuba was the fifth Member to have requested the establishment of a panel to review the consistency of Australia's measures on plain packaging with the WTO rules. These measures had entered into force on 1 December 2012. They regulated the appearance and the characteristics on the packing used for the retail and marketing of tobacco products. They had a significant restriction on Cuban exporters' ability to distinguish their products from those of other competitors and had limited their ability to show both the original trademarks, as well as geographical indications, making the appearance of the outside packaging considerably similar for many tobacco products, many of which were quite different. In that regard, Cuba was requesting that the DSB establish, at the present meeting, a panel in order to examine whether these measures were inconsistent with a number of provisions in the TRIPS Agreement, the TBT Agreement and the GATT 1994, as referred to in its panel request, dated 4 February 2014. This was a decision that Cuba had carefully analysed and it was the first time that Cuba had requested the DSB to establish a panel. In that respect, Cuba had three comments to make. First, Cuba had been seriously considering Australia's position, namely that plain packaging constituted a measure that was necessary and appropriate for tobacco control. Cuba was requesting the establishment of a panel some 15 months following the date of implementation of the measure in Australia and this had been done only when the effects of this measure had become evident. Cuba recognized that tobacco consumption did have serious public health consequences. Nevertheless, Cuba was opposed to plain packaging because, in its view, the measure was disproportionate and there was no convincing evidence that this had generated or would generate tangible benefits for public health in Australia. Cuba reasserted the fact that it did not challenge the consequences of tobacco consumption on human health; rather Cuba was addressing a completely different matter, namely, to determine whether plain packaging constituted an appropriate public health measure.

7.3. Second, Cuba had raised this matter in the DSB in order to protect a fundamental segment of its economy on the basis of the existence of real and unjustified injury. Cuba had been consciously following a production pattern, which was labour intensive compared to the mechanical production methods that were prevalent in the tobacco industry. The production methods used in its tobacco sector involved higher levels of use of man power. Cuban tobacco products, which were mostly exported, were made entirely by hand by highly-skilled workers, and as a small and vulnerable economy with limited export opportunities, the exports of tobacco products was particularly important. In particular, the handmade cigars known as premium handmade cigars or *puros*. Australia's measures may have a serious effect on Cuba's ability to gain earnings from the exports of these products. In an environment where intellectual property rights and, in particular, trademarks and geographical indications could no longer be displayed in their original form, consumers would not be able to distinguish between Cuban top-quality tobacco products from other products. If the plain packaging measures were replicated on other export markets, in all likelihood the effect would be a decrease in the prices of these premium quality products from Cuba, which would obviously not have any compensatory benefit on public health, nor would it attain the objective of an overall reduction in consumption and tobacco prevalence.

7.4. The third issue Cuba wished to raise concerned the significant systemic consequences of this dispute. The case against Australia's measures could not be reduced just to tobacco control. The panel's ruling in this dispute may have an impact on the assessment of a number of regulatory provisions, including possible initiatives to promote the establishment of plain packaging for other products. Consequently, in all likelihood, the approach adopted in this dispute would have an effect on WTO Members, not just in their ability as regulators on their domestic market, but also as states who, on their own territory, had intellectual property rights and exporters of a broad range of products which could be affected. Cuba requested the establishment of a panel and wished that all the complaints on this matter be consolidated pursuant to Article 9.3 of the DSU. The same panel should review the issues brought forward by Ukraine, Honduras, the Dominican Republic and Indonesia: DS343, DS435, DS441 and DS467, respectively. Cuba thanked Australia and the other

complainants for the procedural discussions, which ensured that Cuba's request could be taken up together with the other disputes already underway. The procedural agreements on this matter had recently been notified to the DSB.

7.5. The representative of Australia said that the WHO had recognized the global nature of the tobacco epidemic. Tobacco plain packaging was one of the means recommended by the WHO Framework Convention on Tobacco Control (FCTC) to combat this epidemic and Australia was proud to have been the first country to implement this measure. Australia's tobacco plain packaging measure had now been fully in force for over a year. Australia noted that 178 countries had ratified the FCTC and commended those Members who were now in the process of adopting tobacco plain packaging legislation or had signalled their intention to adopt similar measures in the future. Australia had long been a world leader in addressing the public health challenges posed by tobacco use and tobacco plain packaging was an important step in keeping with that tradition. The tobacco plain packaging measure was an investment in the long term health of Australians and the effects of the measure would be seen over the long term. However, Australia was pleased to report that, as part of its comprehensive range of tobacco control measures, Australia believed that tobacco plain packaging was already having a positive impact. Early anecdotal reports by some smokers had indicated that they no longer enjoyed smoking and that the taste of tobacco had changed with the introduction of plain packaging. They had also indicated that the health warnings displayed on tobacco products were more noticeable. These reports were supported by findings from recent studies. Research conducted by the Cancer Council Victoria in November 2012 indicated that smokers of plain packaged tobacco products were more likely to perceive their tobacco as being lower in quality and less satisfying than a year ago, and that smokers were more likely to think about and prioritize quitting. Further, research funded by the Cancer Institute NSW had found a 78% increase in the number of calls to the smoking cessation helpline, Quitline, in NSW and the ACT, associated with the introduction of tobacco plain packaging. Finally, the findings of a recent observational study on the prevalence of cigarette pack display and smoking in outdoor venues, before and after the introduction of tobacco plain packaging and larger graphic health warnings, indicated a decline in apparent active smoking rates and personal pack display (packs clearly visible on tables) among patrons. Tobacco use was the leading global cause of preventable death. According to the WHO, tobacco currently killed nearly six million people a year worldwide. The number of preventable deaths caused by tobacco use was likely to continue to rise sharply in the future and would disproportionately affect developing countries like Cuba.

7.6. Australia noted that the Cuban government had a proud record in the field of public health. Addressing the WTO TRIPS Council in 2012, Cuba's representative had reminded Members that Cuba was "recognized internationally as a staunch defender of the right to life and health, which it viewed as a supreme human right". Given that stance, it was unsurprising that the harmful effects of tobacco were a serious concern to the Cuban Government. The WHO estimated that 31.1% of male adults in Cuba were current smokers. In Latin America and the central Caribbean region, tobacco-related deaths were expected to triple from 3.3% of total deaths in 1990 to 9.4% in 2020. In other words, almost one in every ten people who died in the Latin American and central Caribbean region in 2020 would die as a result of tobacco use in one form or another, a clear indicator of the increasing toll tobacco-related diseases would take on countries such as Cuba. Australia commended Cuba for its efforts to protect the health of its citizens by adopting tobacco control laws that mandated health warnings on tobacco packages and ban smoking on public transport, in health care facilities and schools and universities. Cuba had also undertaken national mass media campaigns in the past to warn its citizens about the dangers of tobacco and had signed the WHO FCTC in 2004. Against this background, Australia was disappointed that Cuba had requested the DSB to establish a panel in relation to tobacco plain packaging. In the interests of ensuring a harmonized panel process, consistent with Australia's desire to ensure the overall efficiency and effectiveness of the WTO dispute settlement proceedings concerning tobacco plain packaging, and in line with the procedural agreement it had reached with Cuba in relation to panel composition, Australia accepted Cuba's request to establish a panel in this dispute. However, Australia also noted that Cuba's panel request included claims that had not been set out in Cuba's 3 May 2013 request for consultations. Australia thanked Cuba for making efforts to ensure that the five complaints regarding Australia's tobacco plain packaging measure were managed in the most efficient way possible. As it had stated previously, Australia considered it important that, to the greatest extent possible, the same persons be appointed to serve as panelists in all of the disputes involving Australia's tobacco plain packaging measure, and that the timetable for the panel process in these disputes be harmonized, pursuant to Article 9.3 of the DSU. In support of this objective, Cuba, like the Dominican Republic, had helped to facilitate the alignment of these disputes by

agreeing to panel composition in this dispute to be undertaken by the Director-General at the same time as he composed the panels in the other four tobacco plain packaging disputes. As Australia noted in its earlier intervention in relation to the Dominican Republic, all the parties in the tobacco plain packaging disputes had sent a communication to the DSB Chair outlining the procedural agreement that had been reached concerning the panel composition process in these disputes.

7.7. The representative of Ukraine said that his country had also initiated a dispute on the same measure imposed by Australia. Ukraine shared the concerns expressed by Cuba regarding the lack of consistency of this measure with Australia's WTO obligations and welcomed Australia's decision to accept Cuba's panel request at the present meeting.

7.8. The representative of Honduras said that his country had followed with interest the dispute initiated by Cuba against Australia's plain packaging measures on tobacco products. As Members were aware, Honduras was also challenging these measures. He recalled that, at its meeting in September 2013, the DSB had established a panel to examine this dispute. As it had previously stated, Honduras was not challenging Members' rights to adopt measures to protect public health. This was permissible as long as it had a solid scientific basis and did not affect or violate WTO rules, in particular the TRIPS Agreement and the TBT provisions. Honduras would continue to support the efforts of other Members who also considered that Australia's plain packaging measures on tobacco products were inconsistent with WTO rules.

7.9. The representative of the Dominican Republic said that his country supported Cuba's request for the establishment of a panel to examine Australia's plain packaging measures on tobacco products, which were inconsistent with all of the agreements covered under the Uruguay Round, the TRIPS Agreement and the TBT Agreement. Like the Dominican Republic, Cuba had been a traditional producer and exporter of tobacco products of high quality, known as *puros* or cigars. Both Cuba and the Dominican Republic were countries with small and vulnerable economies and the tobacco industry represented an important part in generating foreign exchange and jobs for the two countries. These excessive measures on marketing of tobacco products were a source of deep concern for both countries.

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

7.11. The representatives of Argentina, Brazil, Canada, Chile, China, the Dominican Republic, the European Union, Guatemala, Honduras, India, Japan, Korea, Malaysia, Mexico, New Zealand, Nicaragua, Norway, Philippines, Russian Federation, Singapore, Chinese Taipei, Thailand, Turkey, Ukraine, the United States, Uruguay and Zimbabwe reserved their third-party rights to participate in the Panel's proceedings.

8 INDIA – CERTAIN MEASURES RELATING TO SOLAR CELLS AND SOLAR MODULES

A. Request for the establishment of a panel by the United States (WT/DS456/5)

8.1. The Chairman drew attention to the communication from the United States contained in document WT/DS456/5, and invited the representative of the United States to speak.

8.2. The representative of the United States said that, on 6 February 2013, the United States had requested consultations with India concerning domestic content requirements under Phase I of a solar energy program known as the National Solar Mission ("NSM"). Consultations had failed to resolve the dispute. Regrettably, when India had launched a Phase II of its NSM, India had again imposed domestic content requirements. Moreover, India had chosen to extend the domestic content requirements to additional types of solar cells and modules. Accordingly, on 10 February 2014, the United States had requested consultations with India concerning domestic content requirements under Phase II. Consultations had again failed to resolve the dispute. As set out in the US request for the establishment of a panel, the domestic content requirements under Phase I and Phase II of the NSM appeared to constitute a breach of India's obligations under the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the Agreement on Trade-Related Investment Measures (TRIMs Agreement). Specifically, the measures at issue appeared to be inconsistent with Article III:4 of the GATT 1994 because they accorded less favourable treatment to imported products than to like products of national origin. The measures also appeared to be

inconsistent with Article 2.1 of the TRIMs Agreement because they were investment measures related to trade in goods that were inconsistent with Article III:4 of the GATT 1994. For those reasons, the United States requested that the DSB establish a panel to examine the matter set out in the US panel request.

8.3. The representative of India said that his country was disappointed that the United States had requested the DSB to establish a panel in this dispute. The most recent consultations in this dispute had been held in Geneva on 20 March 2014. India had engaged in those consultations constructively and had been forthcoming in its replies to the many questions posed by the United States. India strongly believed that the possibility of resolving this dispute mutually still existed. India, therefore, was not in a position to agree to the establishment of a panel at the present meeting.

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

9 PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/522)

9.1. The Chairman drew attention to document WT/DSB/W/522, which contained one new name proposed by Chile 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 name contained in document WT/DSB/W/522.

9.2. The DSB so agreed.

10 AB SELECTION PROCESS UPDATE

10.1. The Chairman said that, as Members were aware, he had circulated at the present meeting a proposal regarding the AB selection process. He thanked all delegations for their flexibility and willingness to cooperate in an effort to find a way forward. He was aware of the fact that this proposal was before the DSB for the first time at the present meeting. It was, therefore, his intention to give delegations some time in order to consult with capitals. Delegations who wished to provide comments on the draft decision should contact him directly or the Secretariat as soon as possible. Once delegations agreed to the proposal, a special DSB meeting would be convened as soon as possible to deal with this matter. He wished to give delegations time for reflection and comments on the draft decision. He would inform delegations as soon as possible when the matter would be considered by the DSB. He hoped that the proposal would be accepted by all delegations. He said that he had been consulting with many delegations and thanked them for their efforts in this regard.

10.2. The representative of Kenya said that his country thanked the Chairman for his proposal, which had just been circulated. Kenya had taken note of it and would refer it to capital, as the Chairman had indicated. Kenya, therefore, reserved its right to come back with more comments on the Chair's proposal.

10.3. The DSB took note of the statements.

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