# WORLD TRADE ORGANIZATION

RESTRICTED

**WT/DSB/M/322**
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**Dispute Settlement Body**
**28 September 2012**

**MINUTES OF MEETING**

Held in the Centre William Rappard
on 28 September 2012

*Chairman: Mr. Shahid Bashir (Pakistan)*

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

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.118)

2. The Chairman drew attention to document WT/DS176/11/Add.118, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

3. The representative of the United States said that his country had provided a status report in this dispute on 17 September 2012, in accordance with Article 21.6 of the DSU. Legislative proposals had been introduced in the current 112th Congress to implement the recommendations and rulings of the DSB. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

4. The representative of the European Union said that the EU thanked the United States for its most recent status report, and hoped that the US authorities would very soon take steps towards implementing the DSB's ruling and resolve this matter.

5. The representative of Cuba said that brief status reports submitted by the United States in this dispute every month confirmed that, for the past 10 years, the United States had lacked the political will to take any concrete steps to comply with the DSB's recommendations and rulings of February 2002, which had found Section 211 to be inconsistent with the TRIPS Agreement and the Paris Convention. In its status reports, the United States continued to refer to the draft legislation put forward by Congress. However, over the past years of continued non-compliance, neither of the two Chambers had been able to adopt any legislation that could resolve this dispute. It seemed that the United States had serious institutional limitations. However, at the same time, due to its economic, political and military potential, the United States exercised considerable control world-wide and had a capacity to act beyond its borders and to decide on the fate of many countries. Members continued to hear about the US lack of capacity to settle this dispute and the inability of Congress to resolve many pending issues, including Section 211. Article 21.6 of the DSU stipulated that status reports must provide information on the progress made in the implementation of the DSB's recommendations or rulings. In other words, the United States was under obligation to report, in a transparent manner, on the actual events and actions which it claimed were taking place. The US deceptive accounts of alleged progress were unlikely to undermine Cuba's determination to ensure that the DSB's decisions were respected. The only thing that was really preventing the United States from complying with the DSB's rulings was the lack of will, which was in line with the US policy of harassment and the economic, commercial and financial blockade the United States had maintained against Cuba for more than 50 years, in spite of the fact that the blockade had been condemned year after year in the UN General Assembly by a vast majority of member States. Unlike the United States, which had decided through Section 211 to let Barcardi continue misappropriating the Cuban rum trademark Havana Club, Cuba respected the rights attached to more than 5,000 US trademarks and patents registered in Cuba. Instead of respecting the principle of mutual protection of intellectual property, the United States had simply encouraged new actions aimed at the stealing of the Havana Club trademark. Cuba wished to inform the United States that it would continue to denounce those violations and to insist on compliance with WTO rules. Once again, Cuba reaffirmed and reiterated that the only satisfactory solution to this dispute would be to repeal Section 211, without further delay.

6. The representative of the Bolivarian Republic of Venezuela said that her country supported Cuba's statement made at the present meeting. More than ten years had passed since the DSB had ruled on the inconsistency of Section 211 with Article 42 of the TRIPS Agreement, the principles of national treatment and the most-favoured-nation treatment and the Paris Convention. Venezuela noted that Section 211 remained in force, despite the fact that it had been found to be inconsistent with the TRIPS Agreement. This undermined the dispute settlement system, which was considered to be one of the main achievements of the Uruguay Round. Venezuela thanked the United States for its status report, but regretted, once again, that report contained the same information as the previous reports submitted by the United States. The only changes made were the date and the document symbol. This amounted to "action without results" and demonstrated that the United States lacked the political will to comply with the DSB's recommendations and rulings. Venezuela wished to receive status reports containing more detailed and transparent information regarding the steps taken by the United States towards repealing Section 211, which was inconsistent with WTO rules. This would demonstrate the US seriousness and its commitment. As it had already done on numerous occasions, Venezuela urged the United States to end its policy of economic, commercial and financial blockade against Cuba and to comply with the DSB's recommendations.

7. The representative of Zimbabwe said that, time and again, the DSB found itself confronted with this Agenda item concerning a Member's compliance with the DSB's rulings and recommendations. Such was the situation at the present meeting. Members were faced with this situation, not because the WTO did not have the rules of engagement on this matter or because the DSB lacked clarity in its rulings and recommendations in this dispute. Members were in this situation because an important Member, the United States, regrettably continued to disregard with impunity the DSB's rulings and recommendations concerning Section 211. This was so in spite of the numerous calls, in the DSB, for the United States to honour its obligations. This was an act of violation of WTO rules. Zimbabwe, therefore, supported the call by Cuba as well as other delegations and strongly urged the United States to comply with the DSB's recommendations and rulings.

8. The representative of China said that her country thanked the United States for its status report and statement made at the present meeting. The prolonged situation of non-compliance in this dispute was highly incompatible with the prompt and effective implementation required under the DSU provisions, in particular since the interests of a developing-country Member were affected. China urged the United States to implement the DSB's rulings and recommendations without further delay.

9. The representative of the Plurinational State of Bolivia said that, over the past ten years, his country had continued to hear the same status report, which did not provide any information on progress made by the United States. Thus, Bolivia reiterated its concern about the lack of solution to this dispute and the US failure to comply with the DSB's recommendations and rulings. As Bolivia had stated on a number of occasions, such non-compliance undermined the credibility and integrity of the multilateral trading system, caused systemic implications and harmed the interests of a developing-country Member. With regard to what had been stated by some delegations, that Cuba could initiate a new dispute on this matter, Bolivia noted that this would involve high costs and would result in continued non-compliance by the United States. Bolivia, once again, urged the United States to comply with the DSB's rulings and recommendations and to make an effort to repeal Section 211. Bolivia supported the concerns expressed by Cuba in its statement made at the present meeting.

10. The representative of Argentina said that his country thanked the United States for its status report and for the statement made at the present meeting. However, Argentina regretted that the United States had, once again, reported non-compliance in this dispute. This situation of non-compliance was inconsistent with the principle of prompt implementation stipulated in the DSU provisions and directly affected the interests of a developing-country Member. Argentina drew attention to the fact that, when a Member with relatively greater economic weight failed to comply with the DSB's recommendations and rulings, to the detriment of the interests of a developing-country Member, this undermined the credibility of the multilateral trading system and affected the commercial interests of affected countries. Argentina supported the statements made by Cuba and other delegations at the present meeting. Argentina urged the parties to the dispute, and in particular the United States, to take all necessary measures to bring itself into compliance with the DSB's rulings and recommendations.

11. The representative of Ecuador said that his country supported the statement made by Cuba. Ecuador stressed, once again, that Article 21 of the DSU referred specifically to prompt compliance with the DSB's rulings and recommendations, in particular since the interests of a developing-country Member were affected. Ecuador hoped that the United States would step up its efforts, in order to ensure the prompt implementation of the DSB's rulings and recommendations by repealing Section 211 completely.

12. The representative of the Dominican Republic said that his country thanked the United States for its status report on implementation of the DSB's rulings and recommendations of February 2002 regarding the inconsistency of Section 211 with WTO rules, as set out in Article 42 of the TRIPS Agreement. The Dominican Republic, once again, urged the United States to step up its internal procedures so as to comply with the DSB's rulings. The long period of time that had passed with no implementation undermined the WTO's credibility.

13. The representative of Nicaragua said that her country, once again, supported Cuba's concerns in this dispute on Section 211, which violated the intellectual property rights of Cuban owners of the Havana Club Rum trademark. As on previous occasions, Nicaragua noted that the US status report was identical to previous reports submitted by the United States over the past ten years. Furthermore, the United States had repeatedly informed Members that the Government was working on the implementation of the DSB's recommendations, but no solution had been reached to implement the DSB's recommendations and rulings. Nicaragua was concerned that this had become a routine feature of DSB meetings. The US failure to comply with the DSB's recommendations and rulings undermined the credibility of the DSB and the multilateral trading system. It could set a negative precedent for other Members, in particular developing countries. Once again, Nicaragua urged the United States to bring its legislation into conformity with the DSB's rulings and recommendations and to comply with its obligations.

14. The representative of Mexico said that her country thanked the United States for its status report and supported the statements made by previous speakers. Article 21.1 of the DSU required prompt compliance with the DSB's rulings and recommendations in order to ensure effective resolution of disputes to the benefit of all Members. Mexico urged the parties to this dispute to take the necessary measures to comply with the DSB's rulings and recommendations to the benefit of all Members. In particular, Mexico called upon the United States to take decisive steps to ensure compliance with the DSB's ruling in this dispute and to stop undermining the credibility of the dispute settlement system.

15. The representative of Brazil said that her country thanked the United States for its status report but noted that, once again, the United States reported lack of progress on this issue. 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.

16. The representative of South Africa said that her country regretted that no concrete progress had been made in the implementation of the DSB's recommendations in this dispute, notwithstanding Section 211's proven inconsistency with WTO rules and principles over ten years ago. South Africa was a strong supporter of the multilateral rules-based trading system and regarded the dispute settlement mechanism as an integral part of this system. South Africa, therefore, believed that Members should implement and comply with their obligations promptly to safeguard the legitimacy and integrity of the multilateral trading system. South Africa was particularly concerned that non-compliance with the DSB's rulings and recommendations in this case had a direct and severe impact on a particular developing country insofar as non-compliance had materially affected its trading rights and economic interests. Furthermore, South Africa was of the view that developing countries should be encouraged to pursue and enforce their rights under WTO agreements through the dispute settlement mechanism and to expect prompt redress when such rights were violated. However, continued non-implementation or delay in the implementation of the DSB's rulings would act as a disincentive for developing countries and other Members with fewer resources to actively pursue their rights under the dispute settlement system. Therefore, South Africa urged the United States to bring its legislation into compliance with the DSB's ruling.

17. The representative of the United States said that, in response to the statements made by some Members that this dispute created concerns about the credibility of the dispute settlement system, as the United States had noted on several occasions, the United States did not believe that those concerns were well-founded. Contrary to those assertions, the United States believed that most Members agreed that the dispute settlement system continued to function in a very robust fashion.

18. The representative of Cuba said that her country found it difficult to listen to the US statement since, for the past ten years, the United States had failed to comply with one of the key WTO disciplines.

19. 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.118)

20. The Chairman drew attention to document WT/DS184/15/Add.118, 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.

21. The representative of the United States said that his country had provided a status report in this dispute on 17 September 2012, in accordance with Article 21.6 of the DSU. As of November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. With respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

22. The representative of Japan said that his country thanked the United States for, and took note of, its statement and status report. Japan, once again, called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

23. 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.93)

24. The Chairman drew attention to document WT/DS160/24/Add.93, 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.

25. The representative of the United States said that his country had provided a status report in this dispute on 17 September 2012, 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.

26. The representative of the European Union said that the EU thanked the United States for, and took note of, its status report. As it had stated many times in the past, the EU wished to resolve this case as soon as possible.

27. 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.56)

28. The Chairman drew attention to document WT/DS291/37/Add.56, 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.

29. The representative of the European Union said that the EU, once again, wished to express its hope that it would continue on the constructive path of dialogue with the United States. Three technical meetings had taken place since 2011. The meetings had offered a good opportunity to discuss directly issues of concern to both sides and to follow up closely on developments in the biotech field. In 2012, the Commission had already authorized four more GMOs[1] and had renewed the authorization of a fifth one.[2] Three of those decisions[3] had been adopted only six months after the relevant EFSA opinions had been published. In addition, EFSA had adopted an opinion on maize MIR162, which had been published on 21 June 2012. EFSA had presented the opinion to Member states on 16 July 2012. A proposal for approval was going through the internal decision-making process.[4] Regarding the concerns expressed by the United States on the back-log of approvals, the EU, once again, recalled that the EU approval system was not covered by the DSB's recommendations and rulings. The EU underlined that the GMO regulatory regime was working normally as evidenced by the approval decisions just mentioned. The functioning of the GMO regime should not be rigidly assessed purely quantitatively and in the abstract, in terms of the number of authorizations per year, since this was dependent on various product and case-specific elements and in particular on the quality of applications and on the time needed by applicants to answer requests from EFSA on additional scientific information.

30. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. As the United States had explained at past meetings of the DSB, the United States said that it continued to have serious concerns regarding EU measures affecting the approval of biotech products. The EU measures, including delays in approvals, had resulted in substantial restrictions on the importation of US agricultural products. As an example of US concerns, at the present meeting, the United States said that it would like to highlight the EU measures with respect to recent action on a specific corn variety known as MIR162, which the EU had also referred to at the present meeting. This variety was currently being produced in the United States. It had passed safety evaluations, and had been approved in a number of major markets. The EU's failure to approve this product was contributing to major market disruptions. The EU's own scientific authority (EFSA) had also completed a full risk assessment. Like authorities in other Members, EFSA had concluded that MIR162 was safe for consumption. The approval of MIR162 was sought not only by US producers, but also by EU purchasers. The United States said that, earlier this year, the organization representing the EU's animal feed industry had written to the EU Commission and had asked that the Commission take prompt action on the application. Under the EU system, products receiving favourable safety assessments were submitted to a regulatory committee that had the responsibility for adopting product approvals. The regulatory committee consisted of EU member State representatives, and took decisions based on a system of weighted voting. The EU regulatory committee had considered the MIR162 application earlier this month and despite all of the factors calling for prompt action, the regulatory committee had failed to approve the product. As a result, the application would be delayed while it was passed on to further steps in the EU system. Unfortunately, the example of MIR162 was the rule, not the exception. Over at least the last decade, the EU's regulatory committee had not approved a single biotech product application.

[1] A5547-127 soybean, 356043 soybean, MON87701 soybean, MON87701 X MON89788 soybean.
[2] 40-3-2 soybean.
[3] Authorization decision for 356043 and MON87701 soybeans, MON87701 X MON89788 soybean.
[4] Regulatory committee on 10 September 2012, Appeal Committee on 2 October 2012.

Instead, every application had been subject to further unnecessary and time-consuming steps under the EU measures. The United States urged the EU to address these problems affecting the approval of biotech products.

31. The representative of the European Union said that, with regard to US comments on MIR162, the EU wished to point out that the matter would be submitted to the so-called Appeal Committee on 2 October 2012. The suggestion by the United States that there were systemic delays was simply not true.

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

(e) United States – Anti-dumping administrative reviews and other measures related to imports of certain orange juice from Brazil: Status report by the United States (WT/DS382/10/Add.9)

33. The Chairman drew attention to document WT/DS382/10/Add.9, 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 administrative reviews and other measures related to imports of certain orange juice from Brazil.

34. The representative of the United States said that his country had provided a status report in this dispute on 17 September 2012. Pursuant to the sequencing agreement between Brazil and the United States[5], the United States was ready to engage with Brazil should it have any further questions regarding this matter.

35. The representative of Brazil said that her country thanked the United States for its status report. Brazil had followed attentively the implementation of the final rule published by the US Department of Commerce, which had modified the calculation of dumping margins and reviews. Brazil would consult with the United States with a view to reaching a solution to this dispute.

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

(f) Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.5)

37. The Chairman drew attention to document WT/DS371/15/Add.5, 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.

38. The representative of Thailand said that her country had provided a status report in this dispute on 18 September 2012. As it had explained in that status report and in previous status reports, Thailand had engaged in very detailed informal meetings with the Philippines in order to resolve any outstanding issues regarding implementation in this dispute. As part of that process, Thailand had discussed not just measures to be taken towards implementation, but had also revised measures previously taken in order to reflect the Philippines views on these measures. This technical process continued and was an effective means of resolving any technical issues regarding Thailand's implementation of the DSB's recommendations and rulings in this dispute. Thailand shared the Philippines' desire for a prompt and lasting resolution of this dispute. Therefore, Thailand welcomed the opportunity to continue these technical discussions and was ready to discuss any other concerns the Philippines may have at appropriate levels.

[5] WT/DS382/11.

39. The representative of the Philippines said that his country thanked Thailand for its sixth status report and statement made at the present meeting. More than four months had passed since the expiry of the reasonable period of time on 15 May 2012, which required Thailand to comply on most issues covered by the DSB's rulings and recommendations. During those four months, the Philippines had invested considerable time and effort to work with Thailand bilaterally to address the issues that remained unresolved. The Philippines had chosen this bilateral process in a spirit of mutual cooperation and with the objective of avoiding, if possible, further litigation. The process had borne some fruit, as demonstrated by Thailand's status report and statement made at the present meeting. However, the steps that had been taken by Thailand were not sufficient to bring it into compliance, and several important issues remained outstanding. Reflecting on Thailand's most recent report, the Philippines would now consider whether to continue to pursue bilateral efforts to resolve the remaining outstanding issues. However, in so doing, the Philippines emphasized that it fully reserved its rights under the DSU.

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

(g) United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.4)

41. The Chairman drew attention to document WT/DS404/11/Add.4, 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.

42. The representative of the United States said that his country had provided a status report in this dispute on 17 September 2012, in accordance with Article 21.6 of the DSU. In February 2012, the US Department of Commerce had published a modification to its procedures in order to implement the DSB's recommendations and rulings regarding the use of "zeroing" in anti-dumping reviews. That modification addressed certain findings in this dispute. On 28 June 2012, the US Trade Representative had requested, pursuant to Section 129 of the Uruguay Round Agreements Act, that the Department of Commerce take action necessary to implement the DSB's recommendations and rulings 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.

43. The representative of Viet Nam said that his country thanked the United States for its status report and its statement made at the present meeting. Viet Nam noted that the reasonable period of time for implementation in this dispute had expired on 2 July 2012. Thus, Viet Nam was concerned about the lack of compliance by the United States in this dispute. In that regard, Viet Nam requested the United States to implement without further delay the DSB's recommendations and rulings to the benefit of Viet Nam and the multilateral trading system.

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

(h) European Communities – Definitive anti-dumping measures on certain iron or steel fasteners from China: Status report by the European Union (WT/DS397/15/Add.2)

45. The Chairman drew attention to document WT/DS397/15/Add.2, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning EU anti-dumping measures on certain iron or steel fasteners from China.

46. The representative of the European Union said that the EU was working on the implementation of the DSB's recommendations and rulings in this dispute and was making an effort to complete the implementation before the expiry of the reasonable period of time on 12 October 2012. First, the provision of the EU Basic Anti-Dumping Regulation that had been found to be "as such" incompatible with the Anti-Dumping Agreement had already been amended in a manner that fully respected the EU's WTO obligations. As announced by the EU at the previous DSB meeting, the legislative procedure had concluded with the publication of the amendment in the Official Journal of the EU on 3 September 2012. That amendment had already entered into force. Second, a review had been initiated in order to implement the DSB's recommendations and rulings related to the specific EU anti-dumping measures on certain iron or steel fasteners originating in China. The relevant procedures were ongoing and were expected to be finalized in the near future.

47. The representative of China said that her country thanked the EU for its status report and noted that the EU had made efforts to implement the DSB's rulings and recommendations. With respect to the EU Regulation amending Article 9(5) of the Basic Anti-Dumping Regulation which had been published on 3 September 2012, China noted that the new legislation would apply, on a non-discriminatory basis, to imports from all WTO Members, and would not only focus on the so-called "non-market economy" countries. However, as it had stated at the 31 August 2012 DSB meeting, China was of the view that the EU had not yet fully and properly implemented the DSB's recommendations and rulings. In particular, China believed that, among others, the criterion of the "economic structure" was not consistent with the findings of the Appellate Body and the DSB's decision on this matter. China noted that "the economic structure of the supplying country" was not one of the factors that the Appellate Body had considered as being determinant to decide whether two or more legally distinct exporters were in such a relationship that they should be treated as a single entity. In fact, the reference to "the economic structure" did not introduce a separate criterion, but was only relevant to the extent that it may provide evidence of the factors as referred to in paragraph 376 of the Appellate Body Report. The distorted interpretation by the amendment to the Basic Anti-Dumping Regulation not only left aside the criteria put forward by the Appellate Body, but also led to nullifying the rule that individual treatment should be granted as stipulated in the Anti-Dumping Agreement. China was also concerned about the R548 review investigation. The EU had subjected the granting of individual treatment to exporting producers to certain conditions; it had failed to fully disclose normal value product type and to ensure fair price comparison; it had declined to redefine the domestic industry; and, therefore, it had failed to comply with the DSB's recommendations and rulings. China urged the EU to make adequate efforts so as to fully implement the DSB's recommendations and rulings by the end of the reasonable period of time.

48. The representative of the European Union said that, with regard to Article 9(5) of the Basic Anti-Dumping Regulation, as the EU had explained at the 31 August 2012 DSB meeting, the Amendment was in full compliance with the Appellate Body Report. The Amendment removed completely the individual treatment test that had been found to be incompatible with the Anti-Dumping Agreement. It also provided that, in certain situations, suppliers that were legally distinct from other suppliers or that were legally distinct from the State may nevertheless be considered as a single entity for the purpose of specifying the duty. This simply reproduced the findings of the Appellate Body (in particular paragraph 367). In particular, the factors that may be taken into account by the investigating authority while making such a determination were taken verbatim from the Appellate Body Report (paragraphs 376 and 367). On the economic structure of the supplying country, according to the amendment, "the economic structure of the supplying country" was one of the factors that may be taken into account when deciding whether different suppliers should be treated as a single entity for the purpose of specifying the duty. This factor was based on the Appellate Body Report. Indeed, paragraph 367 of the report read "…the economic structure of a WTO Member may be used as evidence before an investigating authority to determine whether the State and a number of exporters or producers subject to an investigation are sufficiently related to constitute a single entity such that a single margin should be calculated and a single duty be imposed on them…". It should

also be noted that the possible consideration of the "economic structure" applied in all investigations where the issue of a "single entity" arises, and was not limited to investigations regarding particular WTO Members. Therefore, the EU could not accept the suggestion that this factor was incompatible with the Appellate Body Report.

49. The representative of China said that, at the 31 August 2012 DSB meeting, her country had noted that the EU had claimed that it had fully implemented the DSB's recommendations and rulings. China had double checked the Appellate Body Report and did not think that the EU was in full compliance with the DSB's recommendations. First, as mentioned in the Appellate Body Report, the economic structure was evidence that could be presented, but not a criterion. Second, even the term itself was the same. The essence of the ruling was that the burden of proof should not be imposed on the exporters. In the amendment to the Basic Anti-Dumping Regulation, China did not see how the individual treatment test would be applied. China noted the factors that could be considered, including economic structure, but the amendment did not specify the terms of how they could be used. It left discretion for the authority and could be abused. That was why China had concerns and would monitor how it would be applied in particular cases in the future.

50. The representative of the European Union said that, with regard to the burden of proof, the individual treatment test that was based on a rebuttable presumption had been removed from the Basic Anti-Dumping Regulation. It was clear that the new provision did not establish such a presumption. The determination would need to be made by the investigating authority, on the basis of facts and evidence submitted or gathered in the investigation, in conformity with the findings of the Appellate Body (paragraph 364).

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

**2. China – Certain measures affecting electronic payment services**

(a) Implementation of the recommendations of the DSB

52. The Chairman recalled that, in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In that respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 31 August 2012, the DSB had adopted the Panel Report pertaining to the dispute on: "China – Certain Measures Affecting Electronic Payment Services". Therefore, he invited China to inform the DSB of its intentions in respect of implementation of the DSB's recommendations and rulings.

53. The representative of China said that, on 31 August 2012, the DSB had adopted the Panel Report in this dispute. According to Article 21.3 of the DSU, China wished to inform the DSB of its intention to implement the DSB's recommendations and rulings in this dispute in a manner that respected its WTO obligations. China would need a reasonable period of time in which to implement the DSB's recommendations and rulings. China was ready to discuss this matter with the United States.

54. The representative of the United States said that his country thanked China for its statement made at the present meeting, indicating that it intended to implement the DSB's recommendations and rulings in this dispute. China's measures affecting electronic payment services had been and continued to be of significant concern to the United States. Electronic payment services (EPS) allowed consumers to purchase goods and services without cash. EPS enabled, facilitated and

managed the flow of information and the transfer of funds from cardholders' banks to merchants' banks. These services were vital to facilitating global commerce and essential to the operation of any modern economy. In China alone, each year well over US$1 trillion worth of electronic payment card transactions were processed. China had instituted and maintained measures that discriminated against foreign EPS suppliers at every stage of a card-based electronic payment that took place in China in China's domestic currency. China's discriminatory measures had ensured the market dominance of a Chinese entity, China UnionPay Ltd (CUP) and had prevented foreign suppliers from providing this important service. The United States, therefore, looked forward to China moving promptly to bring its measures into compliance with its obligations. The United States stood ready to discuss with China under Article 21.3(b) of the DSU a reasonable period of time for its implementation.

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

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

(a) Statements by the European Union and Japan

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

57. The representative of the European Union said that, as it had done many times before, the EU requested the United States to stop transferring anti-dumping and countervailing duties to the US industry. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations and rulings. Once again, the EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit status reports in this dispute.

58. The representative of Japan said that the CDSOA continued to be operational as FY 2012 distribution process was well underway.[6] Japan urged the United States to stop the illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report pertaining to this dispute.

59. The representative of Brazil said that her country thanked the EU and Japan for keeping this item on the DSB's Agenda. As it had expressed in previous meetings, Brazil was of the view that the United States was under obligation to submit a status report in this dispute until such time as no more disbursements were made pursuant to the Byrd Amendment. Only then would the issue be resolved within the meaning of the DSU and the United States would be released from its obligation to provide status reports pertaining to this dispute.

60. The representative of India said that his country thanked the EU and Japan for regularly bringing this issue before the DSB. India shared their concerns and supported their views.

61. 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.

62. The representative of Thailand said that her country thanked the EU and Japan for inscribing this item on the Agenda of the present meeting. Thailand referred to its previous statements made under this Agenda item. Thailand's position on this matter had not changed.

[6] http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cdsoa_fy12/

63. The representative of the United States said that, as his country had explained at previous DSB meetings, the President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that Members had acknowledged during previous DSB meetings that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007. With respect to comments regarding further status reports in this matter, as it had explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports repeating the progress the United States had made in the implementation of the DSB's recommendations and rulings.

64. The DSB took note of the statements.

**4. Australia – Certain measures concerning trademarks and other plain packaging requirements applicable to tobacco products and packaging**

(a) Request for the establishment of a panel by Ukraine (WT/DS434/11)

65. The Chairman recalled that the DSB had considered this matter at its meeting on 31 August 2012 and had agreed to revert to it. He drew attention to the communication from Ukraine contained in document WT/DS434/11, and invited the representative of Ukraine to speak.

66. The representative of Ukraine recalled that, on 14 August 2012, her country had submitted its first request for the establishment of a panel regarding Australia's plain packaging requirements applicable to tobacco products and their packaging. At the DSB meeting on 31 August 2012, Ukraine had presented its position on this matter and had requested the DSB to establish a panel, with standard terms of reference, to examine the matter set out in Ukraine's panel request. Australia had objected to the establishment of a panel at that meeting. Ukraine had requested the establishment of a panel because the consultations on this matter had not been fruitful and failed to resolve the dispute. Since then, there had been no positive developments to resolve the matter. Australia's measures denied the rights provided under the TRIPS Agreement and eroded the protection of intellectual property rights. The measures imposed severe restrictions on the use of validly registered trademarks and imposed a significant number of product and packaging requirements that would standardize tobacco products and their packages in Australia. Following the notification of the Tobacco Plain Packaging Bill to the WTO in April 2011, Ukraine had, on several occasions and in various fora, expressed its serious concerns about these measures, which were inconsistent with a number of Australia's WTO obligations. In that context, Ukraine and several other WTO Members had posed specific questions to Australia in an attempt to obtain additional information from Australia concerning the basis for the measures and their alleged consistency with Australia's obligations. Regrettably, Australia had never directly responded to the many constructive questions posed by Ukraine. Ukraine wished to emphasize that every government, including the Ukraine Government, clearly had a sovereign right to introduce any regulations to protect and improve the health of its population. However, Ukraine considered that governments should pursue legitimate health policies through effective measures without unnecessarily restricting international trade and without nullifying intellectual property rights as guaranteed by international trade and investment rules.

67. As described in more detail in its panel request, Ukraine considered that Australia's plain packaging requirements, as identified in the request, violated a number of Australia's obligations under the TRIPS Agreement, the TBT Agreement and the GATT1994. In particular, Ukraine considered that the plain packaging measures were inconsistent with the TRIPS Agreement and the Paris Convention because the measures failed to give effect to the trademark holder's legitimate intellectual property rights as protected under those Agreements. In addition, Ukraine considered that the measures were clearly more trade restrictive than necessary to achieve the stated health objectives

and thus violated Article 2.2 of the TBT Agreement as an unnecessary obstacle to trade. Finally, Ukraine considered that the plain packaging measures adversely affected competitive opportunities for imported products and foreign trademark right holders and thus failed to respect the national treatment requirement set out in several provisions of the WTO Agreements. Therefore, for the second time, Ukraine was requesting that the DSB establish a panel to examine the matter, as set out in its request for the establishment of a panel, with standard terms of reference.

68. The representative of Australia said that, like all WTO Members, Australia and Ukraine were confronting the global tobacco epidemic. Australia was aware of the substantial progress which Ukraine had made in implementing tobacco control measures in accordance with the WHO Framework Convention on Tobacco Control (Framework Convention), to which both Australia and Ukraine were parties. That progress included, since 16 September 2012, a wide ban in Ukraine on tobacco advertising, sponsorship and promotion; from 4 October 2012, new health warnings on cigarettes, covering 50 per cent of the front and back of packs; and from 16 December 2012, a ban on smoking in all public and work places including cafes, bars and restaurants. Ukraine had also implemented significant increases in tobacco excise in recent years. Australia noted that Ukraine, like Australia, was a member of the Working Group which developed the Guidelines for implementation of Article 11 of the Framework Convention, which included a recommendation that parties should consider adopting tobacco plain packaging. Those Guidelines were adopted by consensus of the Conference of the Parties to the Framework Convention, together with the Guidelines for implementation of Article 13, which also recommended plain packaging. Australia's tobacco plain packaging measure was clearly in line with those Guidelines. Given Ukraine's own tobacco control initiatives in accordance with the Framework Convention and its membership of the Article 11 Working Group, Australia was surprised and disappointed that Ukraine had decided to challenge its tobacco plain packaging measure. This step was at odds with the policies being pursued within Ukraine to comply with the Framework Convention. Indeed, in implementing an increasingly comprehensive suite of tobacco control measures, Ukraine appeared to be following a similar path to the progressively more comprehensive and stringent approach to tobacco control which had been adopted over time by Australia. The tobacco plain packaging measure was a sound, well-considered measure designed to achieve a legitimate objective, the protection of public health. The WTO Agreements recognized the fundamental right of Members to implement measures necessary for the protection of the public health of their citizens. The measure applied to all tobacco products, regardless of origin, and was clearly non-discriminatory. The tobacco plain packaging measure did not undermine the protection afforded to trademarks as required under the TRIPS Agreement. Nor was the measure more trade restrictive than necessary to fulfil its legitimate objective. Australia understood that the DSB would establish a panel at the present meeting and noted that Ukraine's panel request included claims that had not been set out in Ukraine's 13 March 2012 request for consultations. Australia would work with the Panel and Ukraine to resolve this dispute in accordance with the rules provided in the DSU and other relevant agreements.

69. The representative of Uruguay said that his country had participated in the consultations, given its interest in this dispute, which dealt with Members' fundamental sovereign rights to protect public health, and in particular their right to effectively fight the most serious pandemic facing humanity. In this case, a Member was acting in accordance with the standards and recommendations established under the WHO protocols to control tobacco consumption and also in accordance with WTO rules. Multilateral trade rules could not, and should not force Members to allow a product that caused an alarming and unacceptable number of deaths to continue to be sold packaged like a sweet to attract new victims. This would undermine the credibility of the multilateral trading system. Those who depended on the WTO's multilateral trading system felt obliged to defend it from the detrimental effect from an industry that had caused irreparable social and economic damage to countries and was an obstacle to sustainable development. The assertion that this activity generated economic benefits for Members was false and that would be proven with irrefutable data. Not only was this statement unsubstantiated in economic terms, but it was an insult to the six million people who died annually

from active and passive smoking and to their families. Uruguay regretted that Ukraine had chosen to proceed with this dispute, thus giving the false impression that WTO Members were not entitled to impose legitimate measures that they deemed necessary to protect the public health of their population. To address a legitimate public health issue was a priority not only for Australia but for the international community. The time that would be taken to confirm the legitimate importance of protecting public health over trade, both at the WTO and in international public law, would only result in further loss of human lives and delayed sustainable development.

70. The representative of New Zealand said that her country understood that the DSB would establish a panel on this dispute at the present meeting and New Zealand would request to be joined in the Panel's proceedings as a third party. New Zealand welcomed the Australian Government's decision to legislate for the plain packaging of tobacco products. New Zealand thanked Australia and Ukraine for the opportunity to participate as a third party in the consultations on this matter held on 12 April 2012. While New Zealand was not a significant exporter of tobacco products, as an importer this dispute was of direct trade interest, including to New Zealand's regulatory agencies as they sought to deliver public health objectives through a comprehensive national programme of tobacco control measures. In that regard, New Zealand was also considering plain packaging as an additional tobacco control measure. New Zealand also had a strong systemic interest in seeing WTO disciplines correctly applied. It was clear from past discussions that Australia had paid close attention to, and had respected its WTO obligations in developing its plain packaging proposal. New Zealand noted that WTO rules included appropriate flexibility to enable Members to regulate for health and other public policy purposes. New Zealand 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 Ukraine's concerns. New Zealand shared Australia's disappointment at Ukraine's decision to request the establishment of a panel in this dispute.

71. The representative of Norway said that public health and tobacco control were topics of particular interest to his country. In Norway's view, it was within the rights, indeed the obligations of each WTO Member to adopt measures which were necessary to protect public health, with the proviso that such measures were consistent with the WTO Agreements. Plain packaging of tobacco products was a recommended measure under the Framework Convention on Tobacco Control. It was Norway's firm view that the Framework Convention and the relevant WTO Agreements were mutually supportive and that it was possible to implement measures intended to regulate the packaging of tobacco products in line with both sets of binding obligations. Therefore, Norway supported Australia's right to introduce these types of measures in line with its WTO obligations, and in order to meet its obligations under the Framework Convention so as to protect public health.

72. The representative of Zimbabwe said that his country had continually expressed its concerns about Australia's measures ever since Australia had notified its intention to introduce the Tobacco Plain Packaging Act 2011 and the Trademarks Amendment Act 2011. Zimbabwe wished to reiterate its concerns about those measures and supported Ukraine in its request for panel establishment. Australia's measures, as much as they were aimed at reducing tobacco-related deaths, were not consistent with its obligations under WTO rules, as they nullified or impaired the benefits accruing to Members under the WTO Agreements. While Zimbabwe, like other delegations, appreciated the efforts by Australia to protect the health of its consumers, Zimbabwe was concerned that the measures were, in its view, more trade restrictive than necessary to achieve the stated policy objective. Zimbabwe took note of the WHO Framework Convention on Tobacco Control to reduce the consumption of tobacco. However, the measures that had been introduced by Australia were not supported by scientific evidence and were not consistent with the TRIPS and TBT Agreements. In particular, the Articles stated in Ukraine's panel request were relevant to Zimbabwe, in view of the trade restrictiveness of the legislation and likely adverse impact on exports. Zimbabwe believed that Australia should have adopted less restrictive alternative measures which struck a balance between public health and trade. Zimbabwe referred to Articles 12.3 of the TBT Agreement which required

Members to ensure that their technical regulations did not create unnecessary obstacles to exports from developing countries. In developing countries such as Zimbabwe, some 200,000 farmers and their families depended on tobacco production for their livelihood. Therefore, Zimbabwe would request to be joined as a third party in this dispute.

73. The representative of Honduras said that his country supported Members right to take necessary steps to protect human life in a manner that was consistent with WTO Agreements, in particular, the TRIPS and TBT Agreements. However, a Member could not be exempt from complying with its WTO obligations, simply because the specific product concerned was tobacco. Honduras was also party to the Framework Convention on Tobacco Control and had been involved in the work of its committees. Honduras wished to remind Members that the Framework was not legally binding. It was voluntary and was not intended to justify technical barriers to trade, established by Members, contrary to their WTO obligations. Honduras attached great importance to this dispute and hoped to participate as a third party in the Panel that would be established at the present meeting.

74. The representative of the Dominican Republic said that his country shared the concerns expressed by Zimbabwe and Honduras regarding the measure adopted by Australia. The Dominican Republic was also consulting with Australia and wished to participate as a third party in the Panel that would be established at the present meeting.

75. The representative of Zambia said that her country wished to participate as a third party in the Panel that would be established at the present meeting.

76. The representative of Nicaragua said that her country wished to participate as third party in the Panel that would be established to examine Ukraine's complaint in this dispute. Australia's Plain Packaging Act would affect trade in one of Nicaragua's most important exports and would reduce its ability to compete in the global marketplace, all of which would have a negative impact on production and employment in Nicaragua's tobacco industry.

77. The representative of Indonesia said that, as with other countries like Honduras and the Dominican Republic, her country was concerned about the measure taken by Australia. Indonesia respected a Member's sovereign right to adopt necessary measures to protect public health but such measures must be in line with WTO rules.

78. 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.

79. The representatives of Argentina, Brazil, Canada, the Dominican Republic, Ecuador, the European Union, Guatemala, Honduras, India, Indonesia, Japan, Korea, New Zealand, Nicaragua, Norway, Oman, the Philippines, Singapore, Chinese Taipei, Turkey, the United States, Uruguay, Zambia and Zimbabwe reserved their third-party rights to participate in the Panel's proceedings.

**5. United States – Countervailing duty measures on certain products from China**

(a) Request for the establishment of a panel by China (WT/DS437/2)

80. The Chairman recalled that the DSB had considered this matter at its meeting on 31 August 2012 and had agreed to revert to it. He drew attention to the communication from China contained in document WT/DS437/2, and invited the representative of China to speak.

81. The representative of China said that, regrettably, her country had no choice but to make a second request for the establishment of a panel in this dispute. As had been explained in the panel request and in China's statement made at the 31 August 2012 DSB meeting, this dispute concerned the

preliminary and final countervailing duty measures imposed by the US Department of Commerce (USDOC), as well as the "rebuttable presumption" that had been established and applied by the USDOC in its public body determinations. Although some of the measures at issue had been adopted after the issuance of the Appellate Body Report in a previous dispute (DS379), in which the Appellate Body had clearly ruled that a similar set of measures were WTO-inconsistent, China regretted that the USDOC had not modified its conduct in the subsequent trade remedy investigations. Furthermore, the USDOC had made Chinese respondents worse off in some instances. The USDOC's trade remedy practices at issue had significantly impaired the legitimate interests of Chinese enterprises under the covered agreements. The measures at issue had not only deprived the Chinese enterprises of the procedural fairness envisioned by WTO rules, but had also undermined their substantive rights. China recognized Members' legitimate rights to adopt trade remedy measures, but such rights must be exercised in accordance with WTO rules and not be subject to any form of abuse. Therefore, China respectfully requested, pursuant to Article 6 of the DSU, that the DSB establish a panel to examine this matter, with standard terms of reference as set out in Article 7.1 of the DSU.

82. The representative of the United States said that, as his country had noted at the August 2012 DSB meeting, the WTO Agreements permit Members to levy a countervailing duty in order to offset injurious subsidies bestowed by another Member on the manufacture, production, or export of goods in or from the other Member's jurisdiction. With respect to the countervailing duty proceedings at issue in this dispute, the United States had conducted the proceedings transparently and with all the procedural safeguards provided for under the WTO Agreement. The United States also recalled its concern that China's panel request appeared to include measures about which consultations had neither been requested nor held. For these reasons, the United States remained disappointed that China had decided to request a panel on this matter at the present meeting. The United States understood that a panel would likely be established at the present meeting, and would defend its use of countervailing duties which were necessary to counteract the injury caused by China's subsidies. The United Sates said that it would like to respond to certain statements made by China in its intervention. First, China had complained that the United States had not modified its conduct, despite the Appellate Body's rulings on a similar set of measures. The final determinations in the majority of the investigations cited in China's panel request had been made prior to the adoption of the Appellate Body Report in DS379, a dispute about which the United States understood that it may hear more about later at the present meeting. The Department of Commerce had implemented the DSB's ruling and recommendations in that dispute. With respect to whether or not Chinese respondents were "worse off" in one proceeding than they were in another, that was not material to whether a countervailing duty proceeding complied with the WTO Agreement. The obligations were based on adherence to requirements and standards set out in the Agreement, and not on whether a respondent received a favourable outcome. Finally, as to China's assertion that US trade remedies were an "abuse" of the right to adopt trade remedy measures, if China had concerns about the abuse of trade remedies, the United States would suggest that it may wish to look closer to home. In that regard, the United States said that it would like to draw China's attention to the next item on the Agenda of the present DSB meeting. Furthermore, the United States did not abuse its rights to adopt trade remedy measures. Rather, it conducted its countervailing duty proceedings in compliance with the procedural rules provided for in the WTO agreements and in a highly transparent manner.

83. The representative of China said that the matter raised by the United States would be considered under the next Agenda item as well as in the panel's proceedings once the panel was established.

84. 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.

85. The representatives of Australia, Brazil, Canada, the European Union, India, Japan, Korea, Norway, the Russian Federation, Turkey and Viet Nam reserved their third-party right to participate in the Panel's proceedings.

## 6. China – Anti-dumping and countervailing duties on certain automobiles from the United States

(a) Request for the establishment of a panel by the United States (WT/DS440/2)

86. The Chairman drew attention to the communication from the United States contained in document WT/DS440/2, and invited the representative of the United States to speak.

87. The representative of the United States said that on 5 July 2012, his country had requested consultations with China regarding China's imposition of anti-dumping and countervailing duties on certain automobiles from the United States. As had been noted in the US request for consultations, China's dumping and subsidy determinations appeared to be inconsistent with China's obligations under the GATT 1994, the Anti-Dumping Agreement, and the Subsidies Agreement. The United States had attempted to resolve its concerns through dialogue with China both during and after the investigation at issue. Formal WTO consultations had been held on 23 August 2012. Unfortunately, those efforts had failed to resolve the dispute. Accordingly, the United States was proceeding to request that the DSB establish a dispute settlement panel. As had been set out in the request for the establishment of a panel, as a result of profound procedural and substantive deficiencies in the autos investigations, China's dumping and subsidy determinations appeared to breach a number of its obligations under the GATT 1994, the Anti-Dumping Agreement, and the Subsidies Agreement. Many of the matters at issue in this dispute should by now be familiar to WTO Members. This was the third time that the United States had brought a dispute relating to China's multiple failures to apply the appropriate procedures and legal standards in its injury determination, and to adhere to transparency and basic procedural requirements set out in the Anti-Dumping Agreement and the Subsidies Agreement. This dispute, together with DS414, which concerned anti-dumping and countervailing duties that China had imposed on grain-oriented electrical steel, as well as DS427, concerning anti-dumping and countervailing duties China had imposed on broiler products, once again suggested systemic issues in the way China was applying its trade remedy laws. The United States requested that the DSB establish a panel to examine the matter set out in the US panel request, with standard terms of reference.

88. The representative of China said that her country regretted that the United States requested the establishment of a panel in this dispute. During the consultation held on 23 August 2012, China had introduced the relevant facts, had provided explanations to the United States and had answered the US questions. It was China's wish that the dispute could be resolved through consultation. Nonetheless, China regretted that the United States was requesting the establishment of a panel. In the investigations concerned, the Chinese Investigating Authority had determined that the imports of the product concerned originating in the United States constituted dumping and benefited from the US government's subsidizations, and that the dumped and subsidized imports caused material injury to the domestic industry of China. As a result, an anti-dumping measure and a countervailing measure had been imposed by the Chinese Investigating Authority after investigations. The impositions of the anti-dumping measure and the countervailing measure were consistent with China's obligations under the WTO rules. Therefore, pursuant to the DSU, China was not in a position to agree to the establishment of a panel at the present meeting.

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

## 7. United States – Definitive anti-dumping and countervailing duties on certain products from China

(a) Statement by China

90. The representative of China, speaking under "Other Business", said that her country wished to express its concerns about the US implementation of the DSB's recommendations and rulings in the dispute: "United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China" (DS379). As had been stated at the previous DSB meetings, China had strong concerns about the procedural matters regarding the US implementation, and did not agree with the US assertion that it had brought the measures at issue into full compliance with the DSB's recommendations and rulings. China noted that the United States had not provided a status report at the present meeting. China also noted that the United States had stated at the 31 August 2012 DSB meeting that it stood ready to discuss with China any questions or concerns it may have about the actions taken by the United States and it looked forward to doing so. China welcomed the US promise, and looked forward to discussing its concerns in the future. China recalled that the sequencing agreement agreed by China and the United States had been circulated to Members on 16 May 2012 in document WT/DS379/14. China reserved its right to take any further steps, pursuant to the DSU provisions.

91. The representative of the United States said that, first, his country would note that China had notified the United States prior to the meeting that it would raise this issue under "Other Business" and the United States appreciated that notification. As the United States had reported to the DSB the previous month, the United States had brought the measures at issue in this dispute into full compliance with the DSB's recommendations and rulings. Accordingly, the United States disagreed with China's assertion otherwise at the present meeting. As indicated in the previous DSB meeting, the United States would be pleased to discuss these matters with China, and looked forward to doing so.

92. The DSB took note of the statements.