RESTRICTED

WT/DSB/M/325

15 February 2013

(13-0842) Page: 1/18

Dispute Settlement Body
19 November 2012

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 19 NOVEMBER 2012

Chairman: Mr. Shahid Bashir (Pakistan)

Table of Contents

1 SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.120)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.120)

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.95)

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.58)

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.11)

F. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.7)

G. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.6)

H. Philippines – Taxes on distilled spirits: Status report by the Philippines (WT/DS396/15/Add.1 – WT/DS403/15/Add.1)

1.1. 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.120)

1.2. The Chairman drew attention to document WT/DS176/11/Add.120, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 8 November 2012, in accordance with Article 21.6 of the DSU. Legislative proposals had been introduced in the current 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.

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

1.5. The representative of Cuba said that, since 2002, her country had regularly denounced Section 211, which was in violation of the DSB's decision. As Members were aware, more than ten years had passed since the DSB had ruled that Section 211 was inconsistent with the provisions of the TRIPS Agreement and the Paris Convention. This situation undermined the effective functioning of the dispute settlement mechanism, created mistrust and encouraged further non-compliance. It also undermined the credibility of the multilateral trading system. The US justification for its lack of compliance was the alleged inability of the US institutions to make necessary legal adjustments. However, in reality, it was the US policy of hostility towards Cuba which ignored the US international obligations and reinforced the unilateral measures against Cuba. In that regard, Cuba wished to inform Members that, on 13 November 2012, for the 21st time at the UN, the Sixty-Seventh General Assembly had adopted by 188 votes in favour of the

resolution entitled "Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States of America against Cuba". However, the United States continued to ignore the demands of the international community. After more than 50 years of applying its blockade against Cuba, the United States failed to accept the reality that its policy had not worked and would not work. The United States should understand that Cuba would continue to denounce the US violations in the WTO and would assess developments in that context in order to take appropriate action.

1.6. The representative of Angola said that his country thanked the United States for its status report regarding the implementation of the DSB's decision and the Appellate Body's conclusion of 12 February 2002 on Section 211. This was a positive step forward towards finding a solution to this systemic issue. However, Angola wished to emphasize that prompt compliance with the DSB's recommendations and rulings was essential to ensuring an effective resolution of disputes to the benefit of all Members. As Members were aware, the Panel Report had concluded that Section 211 was inconsistent with Article 42 of the TRIPS Agreement. In February 2002, the Appellate Body Report had confirmed that paragraph A, Section 2 and paragraph B of Section 211 violated the national treatment and the most-favoured-nation principles under the TRIPS Agreement and the Paris Convention, and had requested the United States to bring Section 211 into conformity with its obligations under the TRIPS Agreement. The delay in the implementation of the DSB's decision affected a central element of the multilateral trading system, which provided security and predictability for all Members. It also set a negative precedent for other cases. Angola believed that concrete steps and actions by the parties in this dispute would reaffirm Members' respect for WTO rules.

1.7. 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 with the Paris Convention. Section 211 undermined the dispute settlement mechanism, 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 the 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. In Venezuela's view, this amounted to "actions without results". Venezuela requested that the United States show its willingness to comply with the DSB's recommendations through action rather than words and that it provide 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. Venezuela noted that, a week ago, the UN General Assembly had once again adopted, in a vote of 188 in favour, the resolution calling for an end to the economic, commercial and financial embargo against Cuba. Venezuela, once again, urged the United States to put an end to its policy of economic, commercial and financial blockade against Cuba and to comply with the DSB's recommendations.

1.8. The representative of China said that her country thanked the United States for its status report and its statement made at the present meeting. 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. With the new US Administration, China hoped that effective efforts would be made to bring the measure at issue into compliance with the DSB's rulings and recommendations in the near future.

1.9. The representative of Brazil said that her country thanked the United States for its status report on progress towards the implementation of the DSB's recommendations in this dispute. Brazil noted that, once again, the United States reported lack of progress in this dispute. 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.

1.10. The representative of Zimbabwe said that her country thanked the United States for its report. However, Zimbabwe noted that the United States continued to disregard the DSB's rulings and recommendations concerning Section 211 despite the numerous calls, in the DSB, for the United States to honour its obligations. Zimbabwe, therefore, supported the statements made by Cuba as well as other delegations and strongly urged the United States to comply with the DSB's recommendations and rulings.

1.11. The representative of Argentina said that his country thanked the United States for its status report and its statement made at the present meeting. However, Argentina noted that, once again, the United States reported lack of progress and non-compliance in this dispute. This situation was inconsistent with the principle of prompt and effective implementation stipulated in the DSU provisions and affected the interests of a developing-country Member. Argentina supported the statements made by Cuba and other delegations at the present meeting. Argentina urged the parties to this dispute, in particular the United States, to take all necessary measures in order to be able to put an end to this matter and to remove this item from the DSB's Agenda.

1.12. The representative of Jamaica said that his country thanked the United States for its status report and the statement made at the present meeting. Jamaica shared the concerns expressed by Cuba and other delegations about the continued non-compliance by the United States in implementing the DSB's recommendations and rulings with respect to Section 211. In Jamaica's view, the US failure to comply with its obligations under the DSU was incompatible with the requirement of prompt and effective compliance with the DSB's recommendations as stipulated in the DSU, in particular since the interests of a developing-country Member were affected. Jamaica was also concerned about the systemic implications of such non-compliance, as this affected the overall credibility of the dispute settlement system. Jamaica, therefore, joined others in urging the United States to take all necessary steps to implement the DSB's recommendations and rulings without further delay.

1.13. The representative of India said that his country thanked the United States for its status report and its statement made at the present meeting. India noted with regret that there was no substantive change in the situation, and was compelled, yet again, to stress that the principle of prompt compliance was missing in this dispute. India reiterated its systemic concerns about the continuation of non-compliance, as this undermined the credibility and confidence the Members reposed in the system. India urged the United States to report compliance in this dispute without any further delay.

1.14. 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 hoped that the United States would step up its efforts in order to promptly comply with the DSB's recommendations and rulings by repealing Section 211.

1.15. The representative of Nicaragua said that her country, once again, supported Cuba's concerns in this dispute regarding the rights of Cuban owners of the Havana Club trademark. Nicaragua noted that, in its status reports over the past ten years, the United States had continued to inform Members that it was working on the implementation of the DSB's recommendations in this dispute. However, no solution had yet been reached. Nicaragua hoped that with the newly elected US Administration, the United States would finally repeal Section 211 and put an end to the economic blockade against Cuba, which had caused adverse effects on Cuba's population. Nicaragua was concerned that the failure of the United States to comply with its obligations undermined the credibility of the DSB and the multilateral trading system. It also 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.

1.16. The representative of Mexico said that his country thanked the United States for its status report and supported the statements made by previous speakers concerning the requirement of prompt compliance under Article 21.1 of the DSU. Mexico urged the United States to take decisive steps to ensure compliance with the DSB's recommendations and rulings.

1.17. The representative of the Dominican Republic said that his country thanked the United States for its status report on the implementation of the DSB's recommendations and rulings 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, in particular now at the beginning of the new Administration, to step up internal procedures so as to comply with the DSB's rulings. The long period of time that had passed with no implementation undermined the DSB's credibility.

1.18. The representative of South Africa said that her country supported Cuba's statement and joined the previous speakers who had expressed their concerns about the fact that no concrete progress had been made in the implementation of the DSB's recommendations with regard to Section 211. South Africa believed that Members should implement the DSB's recommendations and rulings and comply with their obligations so as to safeguard the legitimacy and integrity of the multilateral system as a whole, in particular since in this case the US non-compliance directly and adversely affected the economic interests of a developing-country Member. South Africa, therefore, urged the United States to bring its legislation into compliance with the DSB's recommendations and rulings.

1.19. 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.120)

1.20. The Chairman drew attention to document WT/DS184/15/Add.120, 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.

1.21. The representative of the United States said that his country had provided a status report in this dispute on 8 November 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.

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

1.23. 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.95)

1.24. The Chairman drew attention to document WT/DS160/24/Add.95, 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.

1.25. The representative of the United States said that his country had provided a status report in this dispute on 8 November 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.

1.26. 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 on its wish to resolve this case as soon as possible.

1.27. 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.58)

1.28. The Chairman drew attention to document WT/DS291/37/Add.58, 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.

1.29. The representative of the European Union said that the EU wished to express its hope that it would continue on the constructive path of dialogue with the United States. The EU authorization system continued to function normally. In 2012, the Commission had authorized five new GMOs[1] and had renewed the authorization of a sixth one.[2] Three of those decisions[3] had been adopted only six months after the relevant EFSA opinions had been published, while the recent decision on MIR162 had been adopted less than four months after the EFSA opinion.[4] Moreover, on 30 October 2012, EFSA had published its opinion on soybean MON87705 concluding that its intended use was safe and unlikely to have any adverse effect on human and animal health and the environment. EFSA had also published its opinion on Maize 87460 on 15 November 2012 with a similar conclusion. 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.

1.30. The representative of the United States said that his country thanked the EU for its status report and for its statement made at the present meeting. As the United States had explained at past meetings of the DSB, the United States continued to have serious concerns regarding EU measures affecting the approval of biotech products. For example, as a result of delays in the EU approval system, the time taken by the EU to consider biotech product applications was far longer than the time taken by other Members, and the United States was concerned that this problem was getting worse, not better. The adoption of the technology continued to grow around the world, and the pace of new product development was accelerating. Unless the EU took steps to address delays in its biotech approval system, the EU would continue to face a growing number of products that were approved by and produced in other Members, but that were still awaiting approval in the EU system. The EU's failure to reach decisions on biotech varieties produced by other Members resulted in substantial restrictions on international trade in agricultural products. One source of delay was the frequent failure of the EU to adhere to the time-lines for regulatory action under the EU's own regulations. For example, under EU law, a draft decision on product approval should be submitted to a regulatory committee within three months of the safety assessment by the European Food Safety Authority (EFSA). The EU rarely met that time-line. The United States noted, as noted by the EU at the present meeting, that since the last meeting of the DSB, EFSA had published positive safety opinions on a new biotech soybean product and a new biotech corn product. The United States urged the EU to ensure that these product applications were passed on to the regulatory committee without delay, and within the time frame set out in the EU's own regulations.

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

[1] A5547-127 soybean, 356043 soybean, MON87701 soybean, MON87701 X MON89788 soybean, MIR162 maize.
[2] 40-3-2 soybean.
[3] Authorization decision for 356043 and MON87701 soybeans, MON87701 X MON89788 soybean.
[4] EFSA opinion: 21 June 2012; decision on authorization: 18 October 2012.

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.11)

1.32. The Chairman drew attention to document WT/DS382/10/Add.11, 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.

1.33. The representative of the United States said that his country had provided a status report in this dispute on 8 November 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.

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

1.35. 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.7)

1.36. The Chairman drew attention to document WT/DS371/15/Add.7, 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.

1.37. The representative of Thailand said that her country wished to refer Members to its most recent status report in this dispute, which had been circulated on 9 November 2012. As noted in that report, the sole outstanding issue appeared to be Thailand's Customs Board of Appeals consideration of outstanding appeals of certain entries of cigarettes. Following a request for further information from the Board, the importer had submitted extensive documentation on 12 October 2012. The Board of Appeals was reviewing this documentation and hoped to issue its ruling as soon as possible. Thailand also continued its discussions with the Philippines in an effort to reach a solution to this dispute. Thailand looked forward to the continuation of those discussions.

1.38. The representative of the Philippines said that his country thanked Thailand for its status report and its statement made at the present meeting. In its status report and statement, Thailand had noted that the Customs Board of Appeals would shortly issue its determination in a series of administrative appeals that had been covered by the Panel's findings under Article X:3 of the GATT 1994. Thailand had reported exactly the same information in its last status report in October 2012 as well as in its previous status report of September 2012. The Philippines recalled that this was an appeal that had been pending for more than ten years, a fact that had led the Panel to conclude that the Board of Appeals late decision-making had constituted unreasonable administration and had proved a systemic failure by Thailand to provide for prompt review and correction of customs valuation decisions. The Philippines further recalled that Thailand had until 15 May 2012 to address those violations. When Thailand had neglected to do so, the Philippines had sought to give Thailand additional time to address the violations, rather than resort immediately to its rights under the DSU. Unfortunately, Thailand had, thus far, failed to grasp the opportunity to settle the dispute amicably. Furthermore, several other issues were also outstanding, including important customs valuation issues relating to the same import entries that had been the subject of the original proceedings. In such circumstances, although the Philippines continued to pursue bilateral discussions, it may be compelled to pursue its rights under the DSU provisions.

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

[5] WT/DS382/11.

G. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.6)

1.40. The Chairman drew attention to document WT/DS404/11/Add.6, 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.

1.41. The representative of the United States said that his country had provided a status report in this dispute on 8 November 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.

1.42. The representative of Viet Nam said that his country thanked the United States for its most recent status report. Viet Nam was concerned about the lack of compliance by the United States in this dispute and noted that the reasonable period of time to implement the DSB's recommendations had expired more than four months ago. In that regard, Viet Nam requested the United States to implement, without any further delay, the DSB's recommendations and ruling pertaining to this dispute. Viet Nam was ready to have bilateral discussions with the United States so as to resolve this dispute.

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

H. Philippines – Taxes on distilled spirits: Status report by the Philippines (WT/DS396/15/Add.1 – WT/DS403/15/Add.1)

1.44. The Chairman drew attention to document WT/DS396/15/Add.1 – WT/DS403/15/Add.1, which contained the status report by the Philippines on progress in the implementation of the DSB's recommendations in the case concerning the Philippines taxes on distilled spirits.

1.45. The representative of the Philippines said that his country wished to refer Members to its status report on DS396 and DS403 which had been circulated on 9 November 2012. Since the circulation of the first status report on 12 October 2012, the Philippine Congress continued to deliberate on certain legislative proposals with a view to amending the excise tax law. This legislation remained a priority for the Administration. In particular, the Senate expected to conclude its deliberations soon so that a Senate version of the Excise Tax Law could be presented at a Bicameral Conference for further discussion by the Members of Congress. Thus, the Philippines expected the legislative process to be completed by the end of the reasonable period of time: by 8 March 2013. The Philippines would continue to provide Members with further details in future status reports and hoped that the United States and the EU would continue to be constructive partners towards the full implementation of the DSB's recommendations in DS396 and DS403.

1.46. The representative of the European Union said that the EU thanked the Philippines for its status report and its statement made at the present meeting. As stated at the DSB meeting upon the adoption of the Panel and Appellate Body Reports, the EU was pleased with the relevant findings in this dispute. In light of those clear findings, the EU had previously stated that it would trust that the Philippines would promptly take the necessary steps to remedy this long-standing discrimination and re-establish WTO-compatibility. During the past months, the EU had been closely following the Philippines' internal discussion to reform its current tax legislation for spirits, which had been found to be incompatible with WTO law. The draft Bill on the reform of the tax legislation for spirits, so called Abaya 2, which had recently been discussed in the Congress, would not bring the spirits taxation law into conformity with WTO obligations. The EU was closely following the current discussions and the modifications to the draft Bill, which was currently under close scrutiny. During the current stage of the reform process, the EU once again urged the Philippines to ensure that any legislation on taxation of spirits removed, de jure and de facto, the

violation of the national treatment principle and hence the discrimination of imported spirits, in line with the Philippines' international commitments.

1.47. The representative of the United States said that his country thanked the Philippines for its status report and its statement made at the present meeting. The United States welcomed the Philippines' statement that it was continuing to work to implement the DSB's recommendations and rulings regarding the Philippine tax system for distilled spirits. Nonetheless, the United States recalled the serious concerns the United States and others had raised regarding some of the legislative proposals, which appeared to perpetuate the current situation where imported distilled spirits were taxed at significantly higher rates than domestic Philippine spirits. To comply with the DSB's recommendations and rulings, any new system must be non-discriminatory, both on its face and in application. The United States looked forward to progress on this matter, keeping in mind the expiration of the reasonable period of time to comply on 8 March 2013.

1.48. 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 European Union and Japan. He then invited the respective representatives to speak.

2.2. The representative of the European Union said that, once again, the EU requested that the United States stop transferring anti-dumping and countervailing duties to the US industry. Every disbursement that still took place was clearly an act of non-compliance 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 and to submit status reports pertaining to this dispute.

2.3. The representative of Japan said that the fact that the CDSOA continued to be operational showed clear non-compliance with the DSB's recommendations and rulings. Japan, once again, 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. Pursuant to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report in this dispute.

2.4. The representative of India said that his country thanked Japan and the EU for regularly bringing this issue before the DSB. India shared their concerns and endorsed their views. India agreed that this item should continue to remain under the surveillance of the DSB until full compliance was achieved.

2.5. The representative of Brazil said that her country thanked the EU and Japan for keeping this item on the DSB's Agenda. As had been stated at previous DSB meetings, Brazil was of the view that the United States was under obligation to submit status reports in this dispute until such time that 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 in this dispute.

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

2.7. The representative of Thailand said that her country thanked the EU and Japan for continuing to inscribe this item on the DSB's Agenda. Thailand supported the statements made by other delegations and referred Members to its previous statements made under this Agenda item. Thailand's position on this matter had not changed.

2.8. 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 the United States 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.

2.9. The DSB took note of the statements.

3 EUROPEAN COMMUNITIES – EXPORT SUBSIDIES ON SUGAR

A. Statements by Brazil, Australia and Thailand

3.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Brazil, Australia and Thailand. He then invited the respective representatives to speak.

3.2. The representative of Brazil said that her country, together with Australia and Thailand, had requested the inclusion of this item on the Agenda of the present meeting in order to share with Members their strong concern about the fact that the EU had, once again, exceeded its annual WTO export-subsidy quantity commitment for sugar. Unfortunately, this issue was not new. In the last three crop years alone, the EU had exceeded its WTO limits in at least two of them. Brazil had drawn Members' attention to this issue since 2010. At the regular DSB meetings held in February, March and April 2010 and in the Committee on Agriculture meeting in March 2010, Brazil, together with Australia and Thailand, had expressed its concern about the EU's decision to export out-of-quota sugar in excess of its WTO limits. More recently, at the General Council meeting held on 30 November 2011[6], Brazil had argued that if the licenses for exports of out-of-quota sugar that had been issued by the EU were to be used in market year 2011-2012, as they had been intended to, that would result in exports in excess of the EU's WTO scheduled commitments. Now that the partial data for the crop year 2011-2012 was made available, Brazil could confirm that, as had been predicted, the EU's exports of out-of-quota sugar did exceed the EU's WTO export subsidy commitment of 1,273 million tons per year. Brazil was convinced that the EU's WTO obligations were not complied by simply guaranteeing that the number of export licenses issued with reference to a particular year was not above the EU's scheduled commitments.

3.3. As it was the case with imports, it was not the licenses issued, but the actual quantities imported that were to be counted for the purposes of the WTO commitments. In the present case, it was not the export licenses issued, but the actual subsidized exports that affected the international market. Whenever the EU-subsidized sugar exports were in excess of its WTO limits, Brazilians and world sugar producers were worse off. Brazil was concerned about this situation, especially in light of the DSB's rulings and recommendations in the "EC-Sugar" dispute. Therefore, Brazil would appreciate if the EU could indicate the legal basis underpinning the practice of accounting the licenses issued and not the physical exports of sugar for purposes of complying with WTO schedule commitments. Brazil further urged the EU to promptly address the matter to ensure that the yearly quantities of sugar export complied with its WTO obligations. Moreover, by calling attention to the fact that the EU had exceeded its quantitative commitments, Brazil was in no way implying that the EU had complied with its value commitments. Brazil had just decided to focus on one issue at a time. The EU had both quantitative and value commitments and neither of them could be disregarded.

3.4. The representative of Australia said that, at the January 2012 DSB meeting, his country had raised its concern that the EU's out-of-quota sugar exports for the 2011-12 marketing year appeared likely to exceed the EU's scheduled export subsidy commitment on sugar. With the 2011-12 sugar marketing year having ended on 31 October 2012, it appeared that Australia's concerns may have been realised. The EU's actual exports of out-of-quota sugar for that marketing year were projected to have exceeded 2 million tonnes. This was clearly in excess of the EU's scheduled commitment. Most recently, Australia had held informal consultations with the EU to discuss this issue. Australia and others had also raised the matter in the Committee on Agriculture on 14 November 2012. Australia regretted to have again put this item on the DSB's Agenda but

[6] WT/GC/M/134.

there was a continuing clear difference between Australia and the EU as to what constituted compliance. The EU appeared to be of the view that it was able to meet its substantive obligations on sugar export subsidies in each marketing year by notifying the number of licenses issued for those exports, irrespective of the actual quantities of sugar exported in that year. Australia did not consider reporting sugar on the basis of licences issued to be sufficient to constitute compliance with the EU's scheduled commitments. Australia reiterated its fundamental concern that the EU's actual exports of out-of-quota sugar for the past marketing year appeared to exceed its WTO commitments. Australia rejected the notion that the EU could adjust its commitments on sugar via a unilateral administrative decision on licenses. Australia recalled that the "EC-Sugar" dispute had determined that all of the EU's out-of-quota sugar exports had been in receipt of export subsidies and that the EU had exceeded its WTO scheduled export subsidy commitment levels for sugar over a number of years. Australia requested the EU to respect its WTO export subsidy commitments and the DSB rulings in full and to ensure that its actual exports of out-of-quota sugar do not exceed its scheduled export subsidy commitments in any one year.

3.5. The representative of Thailand said that her country was joining Brazil and Australia to express its concern about the statistics which showed that the first ten months of the EU's export of out-of-quota sugar in the marketing year 2011-2012 had reached 1.881million tons. This amount exceeded the EU's WTO export subsidy quantity commitment of 1.3744 million tons. Thailand recalled that in the "EC-Sugar" dispute, all EU sugar exports were found to be subsidized, rendering the EU in violation of its WTO export subsidy commitment. Thailand was of the view that the statistics recently reported indicated the risk of the EU's violation of its obligations. Thailand would welcome the clarification on the data and information on export subsidies and domestic support and any information from the EU in the Committee of Agriculture, the DSB or in other relevant fora. Together with Australia and Brazil, Thailand would monitor the situation closely, and hoped that the EU would adhere to its export subsidies commitments.

3.6. The representative of the European Union said that the EU thanked Brazil, Australia and Thailand for their statements made at the present meeting. The EU had already had the opportunity in previous DSB meetings to confirm that it had always monitored its export subsidy commitments on the basis of licences issued, and not on the basis of physical exports. This concerned not only sugar but also other agricultural products. The EU was convinced that its approach was in full compliance with WTO rules. In that context, the EU stood ready, for the sake of transparency, to provide all interested parties with the data on physical exports of sugar for the 2011-12 marketing year once that data became available from Eurostat, the EU statistical services, irrespective of the fact that the timing of the actual physical sugar exports could not affect the EU's compliance with its export subsidies commitments on the basis of licences issued.

3.7. The representative of Argentina said that his country thanked the EU for its explanation. Like Brazil, Australia and Thailand, Argentina also wished to express its concern regarding this matter. Argentina was constantly concerned about export subsidies in the agricultural sector in general, and would therefore continue to monitor the situation carefully.

3.8. The DSB took note of the statements.

4 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 Honduras (WT/DS435/16)

4.1. The Chairman drew attention to the communication from Honduras contained in document WT/DS435/16, and invited the representative of Honduras to speak.

4.2. The representative of Honduras said that, pursuant to Article 6.2 of the DSU, his country had submitted before the DSB a request for the establishment of a panel to examine Australia's measures that required plain packaging for the sale of tobacco products and reduced the protection for geographical indications. As outlined in its panel request, Honduras considered that the measures imposed by Australia were in breach of a number of obligations under both the TRIPS Agreement and the TBT Agreement. In May 2012, Honduras had held consultations with Australia regarding this matter which, unfortunately, failed to resolve the dispute. The plain

packaging provisions eliminated all distinctive design features from the packaging of cigarettes and cigars with a view to reducing their consumption. In fact, the measures undermined the essential function of a trademark, which was to draw a clear distinction between different tobacco products sold legally in Australia. This, in turn, seriously undermined the geographical indications applicable to certain tobacco products, like cigars, which had a special reputation for high quality as a hand-made product. At the same time, the measures violated the provisions of the TBT Agreement by excessively restricting trade to achieve their objective. In Honduras' view, plain packaging did not, in any way, contribute to attaining the objective of protecting human health as put forward by Australia. Honduras had repeatedly stated that, like Australia, it supported the adoption of tobacco control measures aimed at protecting human health. However, when adopting such measures, WTO Members could not disregard their obligations under the WTO Agreements. This meant that measures that limited intellectual property rights and/or trade must be supported by sufficient evidence and appropriate conclusions. Unfortunately, Australia's plain packaging measures did not meet that requirement. For those reasons, Honduras requested the establishment of a panel in order to determine that the implementation of Australia's plain packaging measures violated various WTO rules.

4.3. The representative of Australia said that his country was a world leader in effective tobacco control strategies. Since at least the early 1970s, the Australian Government, in conjunction with the Governments of the Australian States and Territories, had implemented progressively more comprehensive and stringent tobacco control regulation. This approach was consistent with trends in countries around the world and with international steps to combat the global health epidemic posed by tobacco smoking through the World Health Organization Framework Convention on Tobacco Control. All WTO Members had to confront the global tobacco epidemic. According to the World Health Organization, tobacco killed nearly six million people a year and was the only legal product that killed up to half of those who used it as intended. The most recent Australian Health Survey reported that, while the number of smokers in Australia continued to decline, 2.8 million, or 16.3%, of Australians aged 18 years and over continued to smoke daily. Smoking was one of the leading preventable causes of death in Australia. It resulted in the death of approximately 15,000 Australians every year and cost the Australian society and economy billions of dollars. That was why the Australian Government had decided to introduce tobacco plain packaging as part of a balanced package of tobacco control measures that would contribute to the reduction of smoking rates in Australia. Tobacco plain packaging was a sound, well-considered measure designed to achieve a legitimate objective, the protection of public health. As a matter of key systemic importance, the WTO Agreements recognized the fundamental right of Members to implement measures necessary for the achievement of that objective. The tobacco plain packaging measure was endorsed by leading Australian and international public health experts as well as the World Health Organization and was supported by extensive research reports and studies. In developing and implementing the measure, Australia had undertaken an extensive domestic and international consultation process and had provided a substantial amount of information to WTO Members in relevant WTO fora. Australia had also provided comprehensive responses to Honduras' questions about the measure during consultations held on 1 May 2012.

4.4. Both Australia and Honduras were parties to the WHO Framework Convention on Tobacco Control. Tobacco plain packaging was recommended in the guidelines for implementation of Articles 11 and 13 of the Convention. Both Australia and Honduras had endorsed those Guidelines. Indeed, Honduras was a member of the Working Group that had developed those Guidelines in relation to Article 11. Australia recognized that Honduras also confronted the significant public health challenge of tobacco use and acknowledged the important steps that had been taken by Honduras in relation to tobacco advertising, sponsorship and promotion. Australia was, therefore, surprised at Honduras' decision to challenge Australia's measure. The tobacco plain packaging legislation did not undermine the protection afforded to trademarks and geographical indications as required 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 on its face and even-handed in its application. It was clearly non-discriminatory. It applied to all tobacco products, regardless of type or origin, and as such represented best practice in tobacco control. As a result, Australia was at a loss to understand the basis of Honduras' claim that the measure treated imported tobacco products less favourably than like domestic products. Australia's tobacco plain packaging measure was a world first and was the next logical step in Australia's long history of tobacco control efforts. In adopting the measure, Australia had acted consistently with its WTO obligations. For those reasons, Australia was disappointed that Honduras

had requested the DSB to establish a panel in relation to tobacco plain packaging and could not agree to that request.

4.5. The representative of Nicaragua said that her country shared Honduras' concerns about Australia's plain packaging legislation, which would affect one of Nicaragua's most important exports and would reduce Nicaragua's ability to compete in the world market. It would also have a negative impact on production and employment in Nicaragua's tobacco industry.

4.6. The representative of New Zealand said that, as it had stated at previous DSB meetings on this issue, New Zealand welcomed Australia's decision to legislate for the plain packaging of tobacco products. New Zealand thanked Australia and Honduras for the opportunity to participate as a third party in the consultations on this matter held on 1 May 2012. While New Zealand was not a significant exporter of tobacco products, as an importer this dispute was of direct trade interest to it, 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 underlining intent of the measures in question, as well as in better understanding the precise nature of Honduras' concerns. New Zealand shared Australia's disappointment at Honduras' decision to request the establishment of a panel in this dispute.

4.7. The representative of Zimbabwe said that her country welcomed the fact that the DSB had before it Honduras' request for the establishment of a panel to examine Honduras' concerns about Australia's laws and regulations that imposed restrictions on trademarks, geographical indications as well as other plain packaging requirements on tobacco products and packaging. Zimbabwe supported the panel request by Honduras on the grounds that the measures by Australia, as much as they were aimed at reducing tobacco-related deaths, were inconsistent with Australia's obligations under the TRIPS Agreement and the TBT Agreement. Australia's violation of the WTO rules nullified and impaired the benefits accruing to Members. Australia's measures would adversely affect the economies of tobacco-producing countries such as Zimbabwe. Over 200,000 tobacco growers with 5.67 million dependents depended on tobacco production for their livelihoods. Therefore, apart from being inconsistent with WTO rules, Australia's measures would have a negative impact on the livelihood of millions of people in tobacco-growing countries such as Zimbabwe. The panel would provide an opportunity to demonstrate the inconsistencies of the plain packaging measures with WTO rules. In that regard, Zimbabwe wished to participate as a third party in this dispute.

4.8. The representative of Norway said that, as previously mentioned, public health and tobacco control were topics of particular interest to her country. In Norway's view, it was within the right of each WTO Member to adopt measures necessary to protect public health, as long as the measures chosen 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 this type of measure in line with its WTO obligations, in order to fulfil its obligations under the Framework Convention so as to protect public health.

4.9. 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 acted 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 millions of people who died annually from active and passive smoking and to their families. Uruguay regretted that Honduras, Ukraine and more recently the Dominican Republic, had chosen to proceed with this dispute, thus giving the false impression that WTO Members were not legally 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.

4.10. The representative of the Dominican Republic said that the discussion on this issue should be technical rather than emotional. In this regard, one should note that 300,000 families in the Dominican Republic depended on the production of tobacco for their livelihoods. From the outset and for the past 500 years, tobacco had been indigenous to the Dominican Republic. The Dominican Republic had taken all possible measures to try to reduce smoking, because of its effect on health. The Dominican Republic noted that there were many other legally manufactured products that affected health, such as alcoholic beverages and fast-food products. Unfortunately, the Dominican Republic would also have to request the DSB, at its next regular meeting, to establish a panel on this matter, as set out in its panel request, dated 9 November 2012. The Dominican Republic supported Honduras' concerns about the harmful effects on trade caused by the excessively restrictive measures that had been imposed by Australia, in violation of WTO rules.

4.11. The representative of Honduras said that his country wished to make a few comments regarding Australia's statement. First, Honduras noted that the scope of different institutions should not be confused. Tobacco was a legal product, and as such came under the WTO's scope and regulations. Second, Honduras, like Australia, was part of the Working Group of the Framework Convention. Thus, Australia would agree with Honduras that the provisions of that Convention were indicative, and did not justify the violation of rights under the WTO Agreement, to which both Australia and Honduras were Members. Regarding the health-related measures introduced by Honduras to reduce tobacco, they were in fact fairly aggressive. However, Honduras had respected the rights of WTO Members, and in particular, the TRIPS and TBT Agreements.

4.12. The representative of Ukraine said that his country supported Honduras' concerns and referred Members to Ukraine's position on this matter as expressed in its statements made at previous DSB meetings on this matter.

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

5 ADOPTION OF THE 2012 DRAFT ANNUAL REPORT OF THE DISPUTE SETTLEMENT BODY (WT/DSB/W/489 AND WT/DSB/W/489/ADD.1)

5.1. The Chairman said that, in pursuance of the procedures for an annual overview of WTO activities and for reporting under the WTO contained in document WT/L/105, he was submitting for adoption the draft text of the 2012 Annual Report of the DSB contained in document WT/DSB/W/489 and WT/DSB/W/489/Add.1. This report covered the work of the DSB since the previous annual report contained in document WT/DSB/54 and WT/DSB/54/Add.1. For practical purposes, the overview of the state of play of WTO disputes covering the period from 1 January 1995 to 31 October 2012, prepared by the Secretariat on its own responsibility, was included in the addendum to that report. He proposed that, after the adoption of the Annual Report at the present meeting, the Secretariat be authorized to update the Report under its own responsibility in order to include actions that had been taken by the DSB at its meeting on 16 November 2012 as well as the action taken at the present meeting. The updated Annual Report of the DSB would then be submitted for consideration by the General Council at its meeting scheduled for 11 December 2012.

5.2. The DSB took note of the statement and adopted the draft Annual Report of the DSB contained in WT/DSB/W/489 and WT/DSB/W/489/Add.1 on the understanding that it would be further updated by the Secretariat.[7]

6 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/492)

6.1. The Chairman drew attention to document WT/DSB/W/492, which contained additional names proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/492.

6.2. The DSB so agreed.

7 EUROPEAN COMMUNITIES – REGIME FOR THE IMPORTATION, SALE AND DISTRIBUTION OF BANANAS

A. Statement by the European Union

7.1. The representative of the European Union, speaking under "Other Business", said that the EU was pleased to inform Members that on 8 November 2012, the EU and ten Latin-American countries had signed a mutually agreed solution under which they had agreed to end eight pending banana dispute settlement proceedings. The text of the mutually agreed solution had been handed over to the DSB Chairman on that same day. The EU thanked the Chairman of the DSB for his assistance during the historic event. The event marked the end of the 20-year long banana war between the EU and Latin-American banana producing countries. The signature and notification of the mutually agreed solution put past disagreements fully and formally to rest and allowed the EU to open a fresh chapter in its relations with its Latin-American partners in the WTO context and elsewhere. Notification of the mutually agreed solution had concluded the series of proceedings in the WTO as foreseen in the Geneva Agreement on Trade in Bananas that the EU and the Latin American countries had initialled in December 2009. The EU expected that the last element of the banana dispute still to be settled, a pending dispute settlement proceeding brought by the United States, would be laid to rest in the coming weeks. The EU counted on the United States to inform the EU in due course of the completion of their internal procedures concerning the EU-US banana agreement, signed in June 2010, so that the EU and the United States could jointly notify the DSB of a mutually agreed solution on that dispute. On its part, the EU had informed the United States on the EU's completion of the internal procedures necessary for the entry into force of this Agreement in March 2011.

7.2. The representative of Ecuador said that banana production in his country involved more than 10,000 producers, around 80% of which were small-scale producers with farms of less than 20 hectares. Total production covered around 208,000 hectares. According to the FAO, in 2010, Ecuadorian exports had accounted for 35% of world exports. In that same year, according to the FAO and the COMTRADE, the EU was the world's leading importer, accounting for around 36% of total imports. In 2010, Ecuador had continued to be the leading supplier of bananas to the EU, despite a gradual decrease in its share due to the discriminatory import regime in force in the EU at that time. In February 1996, Ecuador had requested consultations with the EC in accordance with the DSU provisions. In the following 14 years after the initiation of dispute proceedings, this dispute gave rise to, *inter alia*, one Panel Report, two Article 21.5 Panel Reports, one Article 22.6 Arbitration Decision, two Appellate Body Reports, two Arbitral Decisions, one Article 5 mediation procedure, and one Article 5 good offices procedure. Finally, in May 2010, the Geneva Agreement on Trade in Bananas was signed. Under that agreement, which was being notified to the DSB, the EU had undertaken to gradually reduce its tariff for banana imports from €176/metric tonne to €114/metric tonne by 2017. The text reflected a balance of the parties' rights and obligations and clearly established the various measures to be taken. Furthermore, the Geneva Agreement, as required by the EU, formed part of a package that also included a modalities agreement on the Doha Round mandates relating to the broader liberalization of tropical products and the question of preference erosion. In Ecuador's view, those two agricultural issues must form part of any future solution regarding the multilateral trade negotiations under the DDA.

[7] Subsequently, the Annual Report was circulated in documents WT/DSB/58 and WT/DSB/58/Add.1.

7.3. Relations with the EU were of particular importance to Ecuador. Not only was the EU Ecuador's second largest trading partner (its first in terms of non-oil trade), it was also one of its main sources of cooperation. For that reason, Ecuador sought to strengthen that relationship, not in a traditional way, which limited countries to being mere commercial customers, but by becoming development partners with the EU. In that context, Ecuador hoped that relations with the EU would be marked by the strengthening of development objectives, through fair and complementary trade, which took into account social, environmental and inter-generational responsibility as well as the major challenges currently facing the world. The aim was to enjoy a relationship that was beneficial to both parties and helped to reduce asymmetries in a manner favourable to Ecuador as a developing country.

7.4. In March 2000, at the time of the arbitration under Article 22.6 of the DSU, the banana sector had been the main source of employment and foreign earnings. Around 11% of the Ecuadorian population had been entirely dependent on that sector. Banana exports had accounted for 25.4% of Ecuador's total merchandise exports, and banana production had accounted for almost 5.2% of the GDP. In other words, as was the case in the majority of developing-country Members, a small number of products formed the mainstay of Ecuador's exportable supply, and, like in most developing countries, exports accounted for a large and growing share of the GDP. Such factors, namely the high concentration of and growing dependence on exports, defined and characterized a situation in which developing countries in general were highly vulnerable, not only to fluctuations in the international economy, but in particular to any discriminatory and/or restrictive trade measures adopted by trading partners in violation of multilateral rules. In Ecuador's view, a discriminatory and/or restrictive trade measure applied to a product from a developing country would not only generate a certain level of nullification or impairment that could be quantified by its trade effects; it also had the potential to create a significant impact on the economy of the developing country concerned. The intensity of that impact would vary in each case, depending on the nature and size of the sector and its relationship with the rest of the domestic economy. Such an impact was objectively quantifiable. In that respect, Article 21.8 of the DSU stated that "If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned".

7.5. Given that provisions for special and differential treatment were an integral part of the WTO Agreements, and given the special vulnerability of developing countries, Ecuador believed that it was important and necessary to operationalize Article 21.8 of the DSU. To that end, Article 22.4 of the DSU should be supplemented by a provision on special and differential treatment, so as to ensure that if the case was brought by a developing country, the level of nullification or impairment also included an estimate of the impact of the measure on the economy of the developing-country Member concerned. From a broader perspective, Ecuador believed that prompt compliance with the DSB's recommendations and rulings was essential to ensuring the functioning and credibility of the dispute settlement system. In that respect, the remedies provided for in the DSU provisions should effectively induce compliance, i.e. in the absence of a mutually agreed solution, it should be ensured that the Member withdrew the illegal measure. At present, the effectiveness of the remedies provided for in the DSU varied, depending, for example, on the economic-commercial significance of the parties to a dispute. The observation made by the Arbitrators in 2000 remained valid: given the fact that a small developing country only accounted for a negligible proportion of other countries' exports, the suspension of concessions was unlikely to have any significant effect on demand for those exports and therefore, in such cases, suspension was also not likely to induce compliance. In Ecuador's view, in order to rectify this situation, additional remedies must be incorporated into the DSU provisions.

7.6. The representative of Guatemala said that his country expressed satisfaction that this long-standing dispute had now been brought to an end. It took more than 20 years to settle this dispute and this was not the best example of the effective functioning of the WTO dispute settlement system. Fortunately, not just for the parties concerned but also for the multilateral system *per se*, this dispute was now part of history. Guatemala was optimistic about the future and saw the agreement as an opportunity to strengthen bilateral relations with the EU. To comply with the Geneva Agreement on Trade in Bananas would be the first step towards building a long and prosperous relationship of confidence with the EU.

7.7. The representative of Nicaragua said that her country also welcomed the fact that a mutually agreed solution between the EU and the Latin-American banana-producing countries had been signed. This long-standing dispute had distorted trade relations between the two regions for a long period of time. Nicaragua hoped that with the entry into force of the Geneva Agreement on Trade in Bananas, the marked-access conditions to the EU market would improve. Nicaragua thanked the WTO Director-General for his efforts in reaching the Banana Agreement.

7.8. The representative of Panama said that his country was pleased to inform Members that it had reached an important landmark in the settlement of the banana dispute with the EU. First, Panama was pleased that the EU had certified its commitments under the Banana Agreement, and second that a mutually agreed solution had been notified. This had been a long-standing dispute. Panama welcomed the progress made, but noted that a number of issues remained to be finalized. For example, the status of the Doha Round negotiations could have repercussions on collateral issues. Under the Banana Agreement, if Members were unable to agree on modalities in agriculture, the tariff reduction process on bananas exported to the EU would be suspended for up to 12 years. If such a situation were to occur, the EU would have to resume the tariff reduction process as soon as Members reached an agreement on modalities or at the beginning of 2016, whichever would be first. Panama had informed the EU of its position as to how things should be regulated. At the present meeting, Panama wished to remind the EU of its obligation assumed in that respect. In other words, Panama wished to reiterate that the tariff reduction must resume immediately after any of those eventualities. Panama was confident that the process would continue smoothly and thanked those who had worked towards bringing the parties to this stage of the dispute proceedings.

7.9. The representative of Honduras said that his country welcomed the fact that a mutually agreed solution had been signed, as outlined in the Geneva Agreement on Trade in Bananas. Now that certification had been circulated by the EU, Honduras hoped that the implementation contained therein would follow the spirit and the objectives of the Geneva Agreement on Trade in Bananas. The signature of that Agreement also underscored the good faith that prevailed in the bilateral relations. Honduras thanked the Secretariat for its work over the past 20 years and felt honoured to be part of the WTO and the DSB.

7.10. The representative of Costa Rica said that his country supported the statements made by the previous speakers who had expressed satisfaction that a solution had been reached in the banana dispute, which had been on the DSB's Agenda for many years, as well as in other WTO fora. Costa Rica thanked all those who had contributed to the achievement of the mutually agreed solution, in particular Latin-American countries, the EU, the WTO Secretariat, Panel members and others who had participated in the arbitration proceedings.

7.11. The representative of Colombia said that his country was pleased that a mutually agreed solution had been reached in this long and complex dispute. Colombia recognized the active and constructive participation of the parties concerned, and in particular the positive contribution by the Director-General. Like others, despite the delay in reaching this Agreement, Colombia wished to underscore the importance of the dispute settlement system in resolving disputes amongst Members.

7.12. The representative of Mexico said that his country welcomed the solution to this long-standing dispute which demonstrated that, despite its shortcomings, the dispute settlement system was effective and that there was a need for better compliance with the DSB's recommendations and rulings in other ongoing disputes.

7.13. The representative of Cuba said that her country was pleased that this long-standing dispute in the WTO had resulted in a mutually agreed solution. Cuba supported the statement made by Ecuador, in particular with regard to the need to improve prompt compliance with the DSB's recommendations and rulings.

7.14. The representative of the United States said that his country would like to join others in welcoming the certification of the EU's bananas commitments and the resolution of the disputes between the EU and the Latin-American banana-producing countries. This was a significant and very welcomed development. The United States said that it would also like to note that it had been, and would continue to be, in contact with the EU regarding the US-EU Bananas Agreement.

7.15. The representative of Brazil said that her country had also signed a mutually agreed solution on 8 November 2012. As had already been expressed by previous speakers, Brazil was also pleased that the parties had managed to put an end to the banana saga. Brazil thanked all those that had been involved in the dispute and hoped that other issues in the WTO would not become sagas.

7.16. The representative of China said that her country congratulated the EU and ten Latin-American countries for bringing an end to the long-standing trade dispute, which had been carried over from the GATT to the WTO. China was pleased to see a successful conclusion of the banana issue and encouraged Members to act in the same spirit and to settle other important disputes.

7.17. The DSB took note of the statements.

_____