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Dispute Settlement Body
29 August 2014

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 29 AUGUST 2014

Chairman: Mr. Fernando De Mateo (Mexico)

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1.1. The Chairman noted that there were six sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. He recalled that Article 21.6 of the DSU required that, "Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and shall remain on the DSB's Agenda until the issue is resolved". The Chairman invited delegations to provide up-to-date information about compliance efforts and to focus on new developments, suggestions and ideas on progress towards the resolution of disputes. In the context of this Agenda item, he also wished to remind delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record." With these introductory remarks he turned to the first status report under this Agenda item.

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.140)

1.2. The Chairman drew attention to document WT/DS176/11/Add.140, 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 18 August 2014, in accordance with Article 21.6 of the DSU. At least six bills had been introduced in the current Congress in relation to the DSB's recommendations and rulings in this dispute, some of which would repeal Section 211 while others would modify it. In prior meetings of the DSB, the United States had described the status of each of these bills. 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 resolve this matter very soon.

1.5. The representative of Cuba said that the 140th US status report merely confirmed that the United States had not taken any action to comply with its obligations in this dispute. Cuba noted that the United States had remained in the situation of non-compliance since February 2002. In Cuba's view, powerful political and economic interests were preventing the United States from implementing the DSB's recommendations and rulings. The laws governing the economic, commercial and financial blockade maintained by the United States against Cuba for more than 50 years was the basis for the US lack of compliance in this dispute. The Foreign Assistance Act, promulgated in September 1961, had authorized the US President to establish and maintain "a total embargo on trade between the United States and Cuba". Subsequently, the Helms-Burton Act was passed in 1996 joining the myriad of other laws seeking both to discourage foreign investment and to internationalize the blockade against Cuba. In 1997, against that backdrop, the Bacardi company had begun to market rum using a trademark belonging to Havana Club Holding, a Cuban joint venture. Havana Club Holding subsequently took legal action against Bacardi before the Court of the Southern District of New York. In order to prevent those legal proceedings from reaching a conclusion unfavourable to its interests, Bacardi, supported by anti-Cuban members of Congress, succeeded in introducing a legislative amendment to the budget bill that was under discussion at that time in the US Congress. On 21 October 1998, the US Congress passed, without discussion, Section 211, entering into force in 1999. The blockade and the corresponding illegal measures taken against Cuba constituted real violations of international law and were rejected by the UN General Assembly. In 2013, a total of 188 countries had voted in favour of the resolution entitled "Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States of America Against Cuba". Pursuant to the terms of the Declaration concerning the Laws of Naval War, adopted by the London Naval Conference in 1909, the blockade was an act of economic warfare. Moreover, it qualified as an act of genocide under Article 2(c) of the 1948 Geneva Convention on the Prevention and Punishment of the Crime of Genocide. Nevertheless, contrary to all the rules and regulations making up the current system of international law and to the rules of the WTO itself, the United States continued to apply a retrograde policy of economic asphyxiation against Cuba, which has led to this situation of long-standing non-compliance with the DSB's recommendations and rulings. Cuba, once again, reiterated that the lack of provisions in the DSU to ensure effective compliance with the DSB's recommendations and rulings provided an incentive for the United States to continue to ignore the DSB's decisions. The negative effects of unresolved disputes were not limited to the parties to a dispute. By failing to meet its obligations, the United States undermined a system that was founded on rules, procedures and practices developed by and for all. Reacting with indifference to long-standing violations such as this had serious implications for the functioning and credibility of the dispute settlement system. Cuba, once again, urged the United States to report on actual progress and to take the appropriate steps to put an end to this dispute.

1.6. The representative of the Plurinational State of Bolivia said that his country supported the concerns expressed by Cuba in its statement made at the present meeting. Bolivia noted that, for the past 12 years, the US status report had not contained any new development towards resolving this dispute. Therefore, Bolivia reiterated its concern about the systemic implications of the US failure to comply with the DSB's recommendations and rulings and the lack of political will to take the necessary steps to comply. Such non-compliance undermined the credibility of the multilateral trading system and affected the interests of a developing-country Member. Bolivia, once again, called on the United States to comply with the DSB's rulings and to remove the restrictions imposed under Section 211.

1.7. The representative of Ecuador said that his country supported the statement made by Cuba. Ecuador, once again, noted that Article 21 of the DSU referred to the 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 increase its efforts in order to ensure the prompt implementation of the DSB's rulings in this dispute. In Ecuador's view, non-compliance undermined the credibility of the dispute settlement system.

1.8. 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, once again, joined previous speakers in supporting Cuba in this matter. Viet Nam urged the United States to implement, without any further delay, the DSB's recommendations and rulings so as to maintain the multilateral trading discipline and to benefit Cuba, a developing-country Member.

1.9. The representative of Jamaica said that her country thanked Cuba for the update and the United States for its status report under this Agenda item. Jamaica noted that the circumstances of this dispute had not changed and that no progress had been reported since the previous DSB meeting. As it had done at previous DSB meetings, Jamaica joined other delegations in expressing its concern about the continued US failure to implement the DSB's recommendations adopted on 2 February 2002 with respect to Section 211. The protracted US failure to take the steps necessary to comply with its obligations under the DSU was incompatible with its requirement for prompt and effective implementation of decisions. This was of particular concern in cases such as this where the failure to honour an obligation had a negative impact on the economic interests of a developing-country Member. Jamaica reiterated its deep concern about the systemic implications of any disregard for DSB decisions. Such disregard could serve to undermine the overall integrity of the dispute settlement system, which remained a key pillar of the WTO. Jamaica, once again, joined others in urging the United States to take the required steps to promptly implement the relevant DSB decisions. After more than 12 years since the adoption of the DSB's recommendations in this case, it was more than reasonable for Members to expect that this matter should be resolved and removed from the DSB's Agenda.

1.10. The representative of Nicaragua said that his country supported Cuba's statement made at the present meeting with regard to Section 211 which disregarded the rights of Cuban owners of the Havana Club Rum trademark. The more than one hundred US status reports did not show any willingness to resolve this situation. As Nicaragua had stated on previous occasions, the lack of progress in this dispute undermined the credibility of the dispute settlement system and the multilateral trading system. It also set a precedent that could affect other Members, particularly developing-country Members. Nicaragua, once again, urged the United States to bring its legislation into conformity with the DSB's rulings and recommendations.

1.11. The representative of Mexico said that, as it had done in the past, Mexico once again urged the parties to this dispute to adopt the necessary measures to comply with the DSB's recommendations and rulings, in accordance with Article 21.1 of the DSU.

1.12. The representative of Argentina said that his country thanked the United States for its status report and its statement made at the present meeting. Argentina regretted that, once again, no substantive information had been provided on this matter. The status report only reiterated that relevant draft legislation had been introduced in the US Congress, as had already been mentioned in previous DSB meetings. As Argentina had said several times before, this lack of progress was inconsistent with the principle of prompt and effective compliance stipulated in the DSU provisions, in particular since the interests of a developing-country Member were concerned. Argentina joined Cuba and other previous speakers in calling on both parties to the dispute, in particular the United States, to take the necessary steps to remove this item from the DSB's Agenda.

1.13. The representative of China said that his country thanked the United States for its status report and its statement made at the present meeting. China noted that the United States had reported no substantial progress. The prolonged situation of non-compliance in this dispute was highly incompatible with the prompt 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 any further delay.

1.14. The representative of India said that his country took note of the US status report and its statement made at the present meeting. India noted that Article 21.1 of the DSU reiterated that prompt compliance with the DSB's recommendations or rulings was essential in order to ensure effective resolution of disputes to the benefit of all Members. The United States had informed the DSB in 2002 of its intention to implement the DSB's recommendations and rulings in connection with this matter. However, India noted with concern that there was a lack of progress in the implementation of the DSB's recommendations. India joined other delegations in renewing its systemic concerns about the continuation of non-compliance. Non-compliance undermined the

confidence Members reposed in a predictable, rules-based multilateral system, in particular since the interests of a developing-country Member were concerned. India urged the United States to report compliance in this regard without further delay.

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

1.16. The representative of the Bolivarian Republic of Venezuela said that her country supported Cuba's statement made at the present meeting. Venezuela noted that Members had, at DSB meetings, called on the United States to comply with the DSB's rulings and recommendations in this dispute. Venezuela found it shameful that this matter was still pending. Venezuela was concerned about the US status report, which did not contain any new information regarding any progress towards compliance with the DSB's recommendations and rulings as required under Article 21.6 of the DSU. The US non-compliance in this dispute adversely affected the interests of a developing-country Member, undermined the credibility of the WTO and the multilateral trading system, and sent a negative message to the public. In Venezuela's view, the US non-compliance was part of the US economic and financial blockade against Cuba, a developing-country Member. Venezuela found this situation unacceptable not only because it affected the interests of a developing-country Member, but also because it was inconsistent with the DSB's recommendations and rulings. Venezuela urged the United States to listen to the concerns expressed by Members and to repeal Section 211.

1.17. The representative of Zimbabwe said that his country thanked Cuba for yet another comprehensive briefing regarding the US non-compliance with the DSB's recommendations and rulings in this dispute. Zimbabwe thanked Cuba for the additional useful and compelling information provided. Zimbabwe, once again, was disappointed and regretted that the US status report did not provide any new information. Zimbabwe noted that, at each DSB meeting, the United States reported no progress in this dispute. The United States continued to disregard the DSB's rulings and recommendations. The continued US failure to comply seriously undermined the integrity and the credibility of the rules-based multilateral trading system and the WTO dispute settlement system. Zimbabwe urged the United States to comply with the relevant DSB's recommendations and rulings without further delay.

1.18. The representative of Uruguay said that his country thanked the United States for its status report. However, Uruguay noted that there had been no change in this dispute. Uruguay urged the United States to adopt the necessary measures to resolve this matter and remove this item from the DSB's Agenda.

1.19. The representative of Antigua and Barbuda, speaking on behalf of the OECS countries, said that the OECS countries thanked the United States and Cuba for their respective statements on this issue. The OECS countries supported Cuba and remained concerned about the lack of progress and continued non-compliance with the DSB's rulings and recommendations in this dispute. In particular, non-compliance in this dispute had a negative economic impact on the economy of a small developing-country Member. This protracted non-compliance seriously undermined the dispute settlement system and the WTO's integrity in its capacity as the custodian to the multilateral trading system. In that context, the OECS countries urged prompt compliance with the DSB's rulings and recommendations so as to resolve this dispute.

1.20. The representative of South Africa said that her country wished to refer to its previous statements stressing its systemic concerns that non-compliance with the DSB's recommendations and rulings undermined the integrity of the enforcement pillar of the WTO, as well as the credibility and legitimacy of the multilateral trading system as a whole. South Africa was also concerned that protracted non-compliance with the DSB's recommendations and rulings would eventually entail significant adverse implications for access to, and participation in, the dispute settlement as a whole by the lesser-resourced developing-country Members. South Africa remained particularly concerned that non-compliance with the DSB's recommendations and rulings perpetuated significant negative economic consequences to economic interests of a particular developing-country Member. South Africa, therefore, urged the United States to bring its legislation into compliance with the DSB's rulings and recommendations.

1.21. The representative of the Russian Federation said that her country believed that the dispute settlement system provided stability to the multilateral trading system. However, Russia noted that this situation of non-compliance undermined Members' confidence in the DSB and the WTO as a whole. Therefore, Russia urged the parties to this dispute to find a solution through the instruments available under the WTO Agreement.

1.22. The representative of the Dominican Republic said that his country noted that the lack of compliance with the DSB's recommendations and rulings in this dispute undermined the credibility of the multilateral trading system and affected the economic interests of a small and vulnerable developing-country Member. The Dominican Republic hoped that the parties to this dispute would soon find a satisfactory resolution of the matter.

1.23. The representative of El Salvador said that her country thanked the United States for its status report and Cuba for its update on this dispute. El Salvador, like other delegations, was concerned about the lack of compliance in this dispute which adversely affected the multilateral trading system. El Salvador urged the parties to this dispute to find a way to comply with the DSB's recommendations and rulings.

1.24. The representative of Kenya said that his country fully supported the statement made by Cuba at the present meeting. Kenya was concerned that there had been no progress on the part of the United States to implement the DSB's recommendations and rulings in this dispute. Therefore, Kenya urged the United States to take the necessary measures to expeditiously implement the DSB's recommendations and rulings.

1.25. The representative of the United States said that his country regretted that some Members had suggested that the US Administration was not providing sufficient details of US implementation efforts. The United States had, in its status report and at past DSB meetings, cited the various legislative proposals that had been introduced by Members of the current US Congress. Further, the Administration continued to work with Congress to implement the recommendations and rulings in this dispute. As the United States had explained at previous DSB meetings, it was not always possible or appropriate to recount internal governmental conversations or efforts to pass legislation. The fact that internal deliberations may not be appropriate for public discussion should not be misconstrued as meaning that no steps were being taken. To the contrary, the United States had heard similar criticisms about the level of detail of US status reports in other disputes in which Congress had ultimately passed legislation or had taken other measures to come into compliance. In response to the statements by some Members that this dispute raised concerns for the dispute settlement system, as it had noted on several occasions, the United States did not believe that those concerns were well-founded. Finally, the United States noted that Members had heard certain inflammatory language at the present meeting; the flippant use of certain terms diminished the significance of those terms.

1.26. The representative of the European Union said that with regard to the very last point that the United States had just mentioned, in order to report back correctly, the EU sought confirmation as to whether Cuba had indeed stated that the situation was an act of genocide.

1.27. The representative of Cuba said that, with regard to the statements made by the EU and the United States, her country was of the view that the US blockade against Cuba was akin to genocide, in accordance with the relevant Article of the Geneva Convention. Cuba invited delegations to read this Article of the Geneva Convention and to determine that this act against Cuba by the United States was an act of genocide. With regard to other comments, Cuba had heard statements that had been repeated in the past, not just by Cuba. Cuba had noted that 19 interventions had been made at the present meeting on this matter. Article 21.6 of the DSU clearly stated that status reports should be provided in writing and should report on progress in the implementation of the DSB's recommendations and rulings. Therefore, the United States was obliged to provide a transparent report, in accordance with the DSU requirements, regarding the facts and actions that had been taken in order to comply with the DSB's recommendations and rulings in this particular case. Furthermore, Cuba wished to reiterate that this matter was before the US Congress. The position of the US Congress with regard to Section 211 had remained unchanged over the past years. In other words, the United States had introduced drafts that had been favourable or not to repealing Section 211 but no progress had been made. The matter had been referred to various committees but had not been submitted to any discussion or vote. It had not been given the priority attention of the Congress or the US Executive. In conclusion, Cuba had

heard the United States say that it rejected the argument that this long-standing dispute had systemic implications for the WTO dispute settlement system. Cuba wished to hear concrete arguments from the United States refuting the positions advanced by Cuba and other delegations with respect to the systemic implications of non-compliance. Compliance with international rules is obligatory for all WTO Members. The United States does not have the option or the prerogative to choose on which matters it would comply. The United States must comply in this case, as in other cases, with the DSB's recommendations and rulings based on a legally binding document that the United States and Members had accepted.

1.28. 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.140)

1.29. The Chairman drew attention to document WT/DS184/15/Add.140, 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.

1.30. The representative of the United States said that his country had provided a status report in this dispute on 18 August 2014, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.31. The representative of Japan said that his country thanked the United States for its statement and status report submitted on 18 August 2014. Japan referred to its previous statements in which it had indicated its wish that this issue should be resolved as soon as possible.

1.32. 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.115)

1.33. The Chairman drew attention to document WT/DS160/24/Add.115, 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.

1.34. The representative of the United States said that his country had provided a status report in this dispute on 18 August 2014, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

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

1.36. 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.78)

1.37. The Chairman drew attention to document WT/DS291/37/Add.78, 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.

1.38. The representative of the European Union said that, in recent meetings, the EU had already reported on authorization decisions taken up to June 2014. The EU Standing Committee on the food chain and animal health of 23 June 2014 had voted on a draft decision for authorization of a maize[1], for food and feed uses. The Committee had rendered no opinion on either of the draft decisions. The draft decisions had been presented to the Appeal Committee for vote on 10 July 2014, which also rendered no opinion. The European Commission would initiate the last stage of the procedure. As had been stated many times before, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings. The GMO regulatory regime was working normally as evidenced by the approval decisions and other actions towards approval decisions just mentioned. The details on the relevant products were set out in the EU's written statement.

1.39. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. At recent DSB meetings, the United States had provided examples of ongoing, substantial delays in the EU's measures affecting the approval of biotech products. As a result, the EU measures were causing serious disruption of trade in agricultural products. Indeed, even the EU's own animal-feed manufacturers were expressing concern about the impact of these delays on the availability of protein feeds for European livestock. As the United States had noted previously, and as was still the case, the EU had not approved a single new biotech product in 2014. The applications delayed from the beginning of 2014 included a number of pending applications for which the EU's scientific authority (the European Food Safety Authority, or EFSA) had completed its work and had issued positive safety assessments. These included three applications for approval of new biotech products, two applications for approval of new uses for biotech products, and six applications for the renewal of biotech product approvals. Furthermore, over the last nine months, the European Food Safety Authority had issued final positive safety assessments for eight additional products. The Commission also had failed to take final decisions on these products. As a result, at least 19 pending applications were currently awaiting Commission action. The United States urged the EU to take steps to address these matters.

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

E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.26)

1.41. The Chairman drew attention to document WT/DS404/11/Add.26, 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.

1.42. The representative of the United States said that his country had provided a status report in this dispute on 18 August 2014, in accordance with Article 21.6 of the DSU. As the United States had noted at past DSB meetings, the US Department of Commerce had published a modification to its procedures in February 2012 in order to implement the DSB's recommendations and rulings regarding the use of "zeroing" in anti-dumping reviews. That modification addressed certain findings in this dispute. The United States would continue to consult with interested parties as it worked to address the recommendations and rulings of the DSB.

[1] NK603 maize.

1.43. The representative of Viet Nam said that his country thanked the United States for its status report and the statement made at the present meeting. Viet Nam noted that the reasonable period of time mutually agreed by the parties had expired 14 months ago. However, the US Administration had not taken any action to recalculate the anti-dumping duty for the second and third administrative review, which was inconsistent with the DSB's recommendations. Viet Nam, once again, requested the United States to fully comply with the DSB's recommendations and rulings without any further delay so as to maintain the multilateral trading system disciplines and to the benefit of Viet Nam, a developing-country Member.

1.44. The representative of Cuba said that, at each DSB meeting, various Members had referred to the importance of effective compliance. Cuba noted that this was another case of non-compliance by the United States, a major economic power. Non-compliance in this dispute affected the interests of Viet Nam, a developing-country Member. There had been no progress in terms of compliance in this case. Therefore, Cuba urged the United States to take necessary measures in order to comply with the DSB's recommendations and rulings.

1.45. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Viet Nam. Venezuela shared the concerns expressed by Cuba regarding the importance of effective compliance with the DSB's recommendations and rulings. Venezuela urged the United States to take the necessary measures to resolve this dispute.

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

2 UNITED STATES – COUNTERVAILING AND ANTI-DUMPING MEASURES ON CERTAIN PRODUCTS FROM CHINA

A. Implementation of the recommendations of the DSB

2.1. The Chairman recalled that, in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. 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 22 July 2014, the DSB had adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, pertaining to the dispute on: "United States – Countervailing and Anti-Dumping Measures on Certain Products from China". The 30-day time-period in this case expired on 21 August 2014. In order to comply with the requirements of Article 21.3 of the DSU, on 21 August 2014, the United States informed the DSB in writing of its intentions in respect of implementation of the DSB's recommendations. The relevant communication was contained in document WT/DS449/11. He invited the United States to inform the DSB of its intentions in respect of implementation of the DSB's recommendations and rulings.

2.2. The representative of the United States said that on 22 July 2014, the DSB had adopted the Reports of the Panel and the Appellate Body in the dispute, "United States – Countervailing and Anti-Dumping Measures on Certain Products from China" (DS449). In this dispute, the 30-day period of time described in Article 21.3 of the DSU had expired before the next regularly scheduled DSB meeting. In those circumstances, China had agreed with the United States that it was appropriate for the United States to inform the DSB of US intentions by letter, rather than at a special meeting of the DSB. Accordingly, on 21 August 2014, the United States had informed the DSB by letter that it intended to implement the recommendations and rulings of the DSB in a manner that respected US WTO-obligations. The letter had been circulated to the DSB in document WT/DS449/11. As it had noted in its letter, the United States would need a reasonable period of time in which to implement the DSB's recommendations and rulings. In accordance with Article 21.3(b) of the DSU, the United States would seek to reach agreement with China on the period of time for implementation.

2.3. The representative of China said that, in its communication to the DSB dated 21 August 2014 and in its statement made at the present meeting, the United States had indicated that it intended to implement the DSB's recommendations and rulings in this dispute. China welcomed the US intention to comply and was ready to enter into discussion with the United States concerning a reasonable period of time for implementation. China expected the United States to implement the DSB's recommendations and rulings as soon as possible.

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

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

A. Statements by the European Union and Japan

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

3.2. The representative of the European Union said that, once again, the EU requested that the United States stop transferring anti-dumping and countervailing duties to the US industry. Every disbursement that still takes place is 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 to submit status reports in this dispute.

3.3. The representative of Japan said that, since the distributions under the CDSOA had continued, Japan, once again, urged the United States to stop the illegal distributions in order to resolve this long-standing dispute. As stated in previous meetings, Japan was of the view that the United States was under obligation to provide the DSB with a status report in this dispute in accordance with Article 21.6 of the DSU. As mentioned in its communication (WT/DS217/66) on 18 August 2014, Japan would not continue the suspension of concessions or other obligations in the form of the imposition of additional import duties from 1 September 2014, since Japan's level of authorization established through arbitration under Article 22.6 of the DSU for 2014 was found to be marginal. Japan acknowledged that the considerable amount remained undisbursed, and that the United States might execute another round of disbursements to its domestic companies under the CDSOA after 2014. Therefore, Japan retained its rights under Article 22.7 of the DSU. Further, Japan's decision not to suspend concessions and related obligations from 1 September 2014 did not mean that Japan accepted the contention of the United States that the measure found to be inconsistent with the covered agreements had been removed within the meaning of Article 22.8 of the DSU.

3.4. The representative of India said that his country thanked the EU and Japan for bringing this issue before the DSB. India shared their concerns and supported their views. The WTO-inconsistent disbursements continued unabated to the US domestic industry. The most recent data available[2] in the CDSOA Annual Report of the US Customs and Border Protection for the fiscal year 2013 indicated that about US$60 million had been disbursed to the US domestic industry. India was concerned that non-compliance by Members led to a growing lack of credibility of the WTO dispute settlement system. In India's view, this item should continue to remain on the DSB's Agenda until full compliance was achieved in this dispute.

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

[2] See: http://www.cbp.gov/sites/default/files/documents/2013%20Annual%20Disbursement%20Report_updated.pdf

3.6. The representative of Canada said that her country thanked the EU and Japan for including this item on the DSB's Agenda. Canada shared their view that the Byrd Amendment should continue to be observed and monitored by the DSB, until the United States complied with the DSB's recommendations.

3.7. The representative of the United States said that, as his country had noted at previous DSB meetings, the Deficit Reduction Act, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000, had been enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that Members, including the EU and Japan, had acknowledged during previous DSB meetings that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, which was nearly seven years ago. The United States therefore did not understand the purpose for which the EU and Japan had inscribed this item on the Agenda of the present meeting. With respect to comments regarding further status reports in this matter, as it had also already explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports which would repeat, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Indeed, as the United States had expressed at past DSB meetings, there was no obligation under the DSU to provide further status reports once a Member announced that it had implemented the DSB's recommendations and rulings. The United States had in the past noted that Members speaking under this item had followed the same approach in disputes where they had been the responding party and had not continued to provide status reports where the complaining party had disagreed over compliance. The United States agreed, and for the same reason, the United States was not required to provide status reports in relation to this dispute in which the necessary action had been taken nearly seven years ago. With respect to Japan's statement at the present meeting that it would not apply the suspension of concessions in the coming year, the United States viewed this as a positive development. At the same time, the United States regretted Japan's statement indicating that it may renew the suspension of concessions in the future.

3.8. The DSB took note of the statements.

4 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. Statement by the United States

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

4.2. The representative of the United States said that his country continued to have serious concerns that China had failed to bring its measures into conformity with its WTO obligations. The situation had not changed since the previous month or since the United States had first begun raising this matter in the DSB. China continued to maintain a ban on foreign suppliers of electronic payment services ("EPS") by imposing a licensing requirement on them while providing no procedures for them to obtain that license. As a result, China's own domestic champion, China Union Pay, remained the only EPS supplier that could operate in China's domestic market. China's measures could not be reconciled with the DSB's findings that China's WTO obligations included both market access and national treatment commitments concerning Mode 3 for EPS.[3] The United States took note of China's statements that it was working on the necessary regulations to allow for the licensing of foreign EPS suppliers. The United States called on China to move forward with these regulations swiftly and to allow the licensing of foreign EPS suppliers in China, consistent with its WTO obligations.

4.3. The representative of China said that his country regretted that the United States had, once again, brought this matter before the DSB. China referred to its statements made at previous DSB meetings. China had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute. China had also further explained that the actions being sought by the United States were beyond the scope of China's compliance obligations. With respect to the regulation to which the United States referred, China reiterated that this matter was

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

not relevant to the implementation of the DSB's recommendations and rulings in this dispute. China hoped that the United States would reconsider the systemic implications of its position.

4.4. The representative of the United States said that, as his country had stated before, the United States strongly disagreed with China's statement. The DSB's rulings and recommendations clearly stated that "China has made a commitment on market access concerning mode 3"[4] and that "China has made a commitment on national treatment concerning mode 3".[5] Currently, China did not allow foreign EPS suppliers access to the market under mode 3 due to a licensing restriction that set forth no criteria and no procedure under which to obtain the license. Meanwhile, China Union Pay, the only domestic supplier, continued to operate while foreign EPS suppliers could not. China knew, as all Members knew, that China had WTO commitments here. In fact, China's explanation that it was working on regulations was a recognition that it must take action to provide access to foreign EPS suppliers. The United States urged China to move forward with these regulations and allow the licensing of foreign EPS suppliers in China consistent with China's WTO obligations.

4.5. The representative of China said that, in the present dispute, the Panel had rejected the US claims under Article XVI with respect to all but one of the measures identified by the United States. The measure that the Panel had found to be inconsistent with Article XVI:2(a) of the GATS was a measure that concerned the provision of certain services in Hong Kong and Macao. China had brought that measure into conformity with the DSB's recommendations and rulings. Having brought that measure into conformity with the DSB's recommendations and rulings, China had no further implementation obligations in respect of the Panel's market access findings. There were no other measures that had been the subject of the DSB's recommendations and rulings under Article XVI of the GATS. Based on the Panel's finding concerning the classification of the services at issue, the United States appeared to be arguing that China's compliance obligation extended beyond the measure that the Panel had found to be inconsistent with China's market access commitments. But the Panel's classification finding, and its identification of corresponding market access commitments, was merely a precursor to its evaluation of whether the measures identified by the United States were inconsistent with China's obligations under Article XVI. These findings had not given rise to independent compliance obligations, as the United States appeared to suggest. In all events, the DSB's recommendations and rulings pertained to the specific measure that had been found to be inconsistent with the covered agreements. A responding Member fully discharged its compliance obligations when it brought that measure into conformity with the covered agreements, as China had done in this case.

4.6. The representative of the United States said that China had repeatedly stated that it did not have any further obligations with which to comply. In that context, China had characterized the report language clarifying China's commitments (e.g., that "China has made a commitment on market access concerning mode 3" and that "China has made a commitment on national treatment concerning mode 3") as mere "precursors" and not really DSB findings. This was extremely troubling. It would be a significant repudiation of China's WTO obligations for China to disagree with the findings in the Panel Report adopted by the DSB that clarified China's WTO commitments and were at the core of the dispute.

4.7. The representative of China said that it was well established that the dispute settlement process focused on the consistency of specific, identified measures with the relevant provisions of the covered agreements. As an active participant in the dispute settlement process, the United States could certainly appreciate the systemic importance of properly defining the scope of a dispute. The United States could likewise appreciate the fact that the identification of the measures at issue necessarily defined the scope of any recommendations and rulings that the DSB may adopt. The United States was aware, and in any other context would likely agree, that the dispute settlement process was not meant to result in declaratory findings that were unrelated to specific, identified measures.

4.8. The DSB took note of the statements.

[4] Idem, at para. 7.575.
[5] Idem, at para. 7.678.

5 CANADA – CERTAIN MEASURES AFFECTING THE RENEWABLE ENERGY GENERATION SECTOR/CANADA – MEASURES RELATING TO THE FEED-IN TARIFF PROGRAM: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

A. Statements by Japan and the European Union

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

5.2. The representative of Japan said that, on 24 July 2014, the Ontario Legislative Assembly had passed legislative Bill 14, which contained a provision repealing the sub-section of the Electricity Act regarding the domestic content requirement of the FIT program. The repeal of the impugned domestic content requirements went into force on the same day. Following the legislative act, the Minister of Energy of Ontario further directed the Ontario Power Authority (OPA) not to include any domestic content requirement in any FIT or micro FIT contracts signed by the OPA after 25 July 2014. Thus, Japan welcomed these measures taken by Canada to comply with the DSB's recommendations and rulings and appreciated that Canada had taken these compliance measures, albeit belatedly. This was a victory for the WTO's rules-based multilateral trading system which condemned discrimination on protective measures. Canada's compliance action reaffirmed the WTO Members' recognition that the local content requirements of the kind adopted by Canada would have no place in the WTO and should have never been introduced in the first place. Nevertheless, Japan wished to reiterate its concern with the process towards the achievement of the above-mentioned amendments, in particular with Canada's notification of its full compliance on 5 June 2014 after Bill 153 to amend the Electricity Act had been abandoned due to the dissolution of the Parliament of Ontario on 2 May 2014. Japan had never been convinced by Canada's explanations that Bill 153 was not necessary for Canada's full compliance, despite the fact that Canada had requested an extension of the reasonable period of time. In fact, Ontario's previously described compliance measures confirmed Canada's understanding to the contrary. Japan wished to express its regret on this issue. Pursuant to Article 21.6 of the DSU, Canada should have continued to provide the DSB with a status report. Japan invited Canada to report its latest compliance actions at the present DSB meeting. Japan would closely monitor Canada's implementation after the amendment of the above-mentioned law, and in particular, how the Ontario Government would administer and operate the FIT program without a domestic content requirement in the future. Japan would continue to follow developments in Ontario's renewable energy sector to ensure that any further programs would not contain any discriminatory or protective aspects. Japan reserved its rights under the DSU in this case.

5.3. The representative of the European Union said that, at the previous DSB meeting, the EU had recalled the history of this dispute and had expressed its concerns about Canada's contention that compliance with the DSB's recommendations and rulings had already been achieved in August 2013, by virtue of certain executive actions of the Ontario authorities. That contention was in plain contradiction to Canada's behaviour over the past year, in particular the agreed extension of the reasonable period of time in March 2014. While restating the EU's concern about Canada's unexpected and unjustifiable position, the EU welcomed the constructive approach demonstrated by the Ontario authorities with regard to the derogation of the domestic content provisions in the 1998 Ontario Electricity Act. Ontario Bill 14, which contained a clause derogating the problematic legislative provision, had been adopted by the Ontario Parliament and had received Royal Assent on 24 July 2014. Following this development, FIT contracts in Ontario would no longer include domestic content requirements. As stated in the formal instructions issued by Ontario's Minister of Energy, this step had been intended to bring the FIT program into compliance with the DSB's rulings. The EU wished to express its satisfaction concerning the legislative amendment, which had indeed been an essential element to ensure a positive solution to the matter under dispute. The EU further recalled that the FIT program had been discontinued for large projects since July 2013, and was being replaced with a new competitive process through requests for proposals. This was a legitimate policy option. Irrespective of the approach followed to foster new renewable energy generation, it was important to ensure that domestic content requirements were not imposed. Therefore, the EU trusted that the new system, which was at its initial implementation stages, would ensure fair competition between domestic and imported generation equipment. The EU would continue monitoring developments in Ontario and, if necessary, may again raise the issue of the implementation of the DSB's recommendations and rulings in this dispute at a future point in time.

5.4. The representative of Canada said that as his country had indicated on previous occasions, the actions that had brought Canada into compliance with the DSB's recommendations and rulings had been outlined in the status reports submitted in these disputes and in the notification of compliance submitted on 5 June 2014. As had been pointed out by Japan and the EU, on 24 July 2014, Bill 14 received royal assent in the 41st Parliament of Ontario. The new legislation had finalized amendments to the Electricity Act of Ontario that had originally been proposed under Bill 153, which had been previously mentioned in Canada's status reports. It had been followed immediately by a Ministerial Direction instructing the Ontario Power Authority not to include domestic content requirements in any future contracts. However, Canada considered that those amendments, either as proposed in Bill 153 or as adopted in Bill 14, had not been strictly necessary to comply with the DSB's recommendations and rulings in these disputes. Canada was nonetheless pleased to hear that Japan and the EU agreed at the present meeting that Canada had complied with the DSB's recommendations and rulings, and that the parties had been able to achieve the settlement of this dispute.

5.5. The DSB took note of the statements.

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

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

6.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Antigua and Barbuda. He then invited the representative of Antigua and Barbuda to speak.

6.2. The representative of Antigua and Barbuda said that her country wished to inform the DSB that, since its most recent statement made at the DSB meeting of June 2014, Antigua and Barbuda had not received any settlement proposal or any other communication from the United States that might be conducive to a settlement of this dispute. Nor, in fact, had Antigua and Barbuda received any formal response to, or critique of, the settlement position outlined by the Antiguan government to the USTR in late 2013. Nonetheless, Antigua and Barbuda was pleased to announce that its newly elected government had, after considerable deliberation and with a view towards a prompt and final resolution of this long-standing matter, formulated yet another comprehensive and realistic proposal that had within the past few days been formally presented to the United States. Antigua and Barbuda wanted Members to know that this latest proposal represented a significant concession to the United States from earlier proposals. Without going into any details, in truth it represented but the slightest fraction of the harm that had been done to the Antiguan economy by the failure of the United States to observe its obligations under the GATS and to comply with the DSB's decision of over a decade ago. Accordingly, Antigua and Barbuda urged the United States to receive the settlement proposal with just as much conciliation and good faith as with which it had been offered. Antigua and Barbuda trusted that its most recent effort would see the United States for the first time thoroughly and comprehensively engage with Antigua and Barbuda to put an end to this difficult saga which had brought little credit to the WTO dispute settlement system and had left so many troubling questions regarding the fairness and efficacy of the multilateral trading system created with such high expectations by Members such as Antigua and Barbuda almost 20 years ago.

6.3. The representative of the United States said that, as his country had noted at past DSB meetings where Antigua and Barbuda had placed this item on the Agenda, the United States remained committed to resolving this matter. The United States noted that as of June 2014, Antigua and Barbuda had a new government. The United States looked forward to working with the new government in a spirit of cooperation on resolving this issue and the process pending under Article XXI of the GATS. However, the United States was disappointed that Antigua characterized the United States as not making any serious settlement offer when the United States had taken a constructive approach to resolving this matter in a way that would bring benefits to Antigua's economy and its citizens. It was notable that the United States had worked for months with Antigua on a settlement package in 2008 and thought that the parties had reached agreement, only to have Antigua subsequently repudiate it. The United States had also offered Antigua a broad range of useful suggestions to settle this dispute in November 2013, only to have Antigua ignore the US offer for a long period of time before just the previous month indicating that it was not acceptable. It was clear that the United States had tried repeatedly to resolve this

dispute with Antigua, and considered its suggestions to the contrary to be not based on any facts. The United States also had put forth, pursuant to Article XXI of the GATS, a generous package of services concessions as compensation for removing internet gambling from the US schedule. Antigua was the only Member to block the United States from completing that process. It was US policy not to comment publicly on ongoing negotiations. The United States had had numerous discussions with Antigua's new government in the past several months, and it looked forward to future engagement. The United States was reviewing this most recent communication, which it had only recently received, and would continue to work expeditiously toward finding a realistic settlement.

6.4. The representative of Dominica, speaking on behalf of the OECS countries, said that the OECS fully supported Antigua and Barbuda, a member of the OECS and the OECS Economic Union. The OECS countries continued to be greatly concerned about the continued delay in the resolution of this dispute and in the implementation of the DSB's recommendations and rulings. The OECS countries took note of the fact that the new government of Antigua and Barbuda had formulated another proposal that had been formally presented to the United States. Like Antigua and Barbuda, the OECS countries strongly encouraged the US Government to engage with Antigua and Barbuda on this latest proposal so that the long overdue resolution could be finally found to this dispute.

6.5. The representative of Jamaica said that her country supported the statement made by Antigua and Barbuda under this Agenda item. Jamaica took note of the updates provided by both the United States and Antigua and Barbuda. Jamaica emphasised that this was a matter of particular concern to the member States of the Caribbean community. Jamaica had been consistent in calling for a timely conclusion to this protracted dispute, especially in light of the clear DSB ruling in favour of Antigua and Barbuda. Jamaica reiterated its call to all WTO Members to fully comply with their obligations, including the DSB's recommendations and rulings. Jamaica emphasized that, for small vulnerable economies in particular, it was important that the integrity of the dispute settlement mechanism be preserved as a vital element within a rules-based system regulating international trade. Therefore, Jamaica trusted that renewed efforts would be made to bring about a speedy, just and equitable solution to this dispute. In Jamaica's view, resolution of this dispute was critical to safeguarding the legitimacy of the multilateral trading system.

6.6. The representative of Trinidad and Tobago said that his country thanked Antigua and Barbuda for its statement which provided an update on this Agenda item. Trinidad and Tobago also thanked the United States for its response and update. As Jamaica had said, this matter was indeed of concern to the Caribbean community. Trinidad and Tobago was pleased to learn that the recently elected government of Antigua and Barbuda had extended an olive branch in the form of a proposal for final settlement of this long-standing dispute. Although Trinidad and Tobago was not privy to the full contents of that proposal, it had taken due note of Antigua and Barbuda's statement that such a proposal was indeed comprehensive and realistic. Given the amount of time that had elapsed thus far, and also to restore the confidence in the WTO dispute settlement system, Trinidad and Tobago urged the United States to seriously reflect and consider the contents of the latest proposal with a view to arriving at a final settlement of this decade-old dispute.

6.7. The representative of Cuba said that her country supported the statement made by Antigua and Barbuda. Cuba noted that this was not only a case of non-compliance that affected one of the smallest economies in the world. This case also showed the importance of maintaining the balance and stability of the dispute settlement system. Cuba noted that Antigua and Barbuda was making efforts to arrive at solutions that would enable the United States to comply with its obligations in accordance with the DSU provisions. Cuba, once again, urged the United States to comply with its obligations and to seriously look at the new proposal from Antigua and Barbuda so that this matter could be resolved without further delay.

6.8. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Antigua and Barbuda and the statements made by other delegations. As it had previously stated, Venezuela was concerned that the prolonged situation of non-compliance in this dispute had an impact on a developing-country Member whose economy was mostly based on the provision of services. Thus, any restriction in the area of services had a negative impact on

Antigua and Barbuda's economy. Venezuela took note of the new proposal put forward by Antigua and Barbuda. In that regard, Venezuela urged the United States to examine the proposal and adopt the necessary measures so as to bring this non-compliance to an end.

6.9. The DSB took note of the statements.

7 THAILAND – CUSTOMS AND FISCAL MEASURES ON CIGARETTES FROM THE PHILIPPINES

A. Statement by the Philippines

7.1. The Chairman said that this item was on the Agenda of the present meeting at the request of the Philippines. He then invited the representative of the Philippines to speak.

7.2. The representative of the Philippines said that her country had requested that this item be placed on the Agenda in order to allow the DSB to continue surveillance of the implementation of the recommendations and rulings adopted in this dispute. As Members would recall, beginning at the previous DSB meeting, Thailand had chosen to discontinue filing status reports, on the expressed view that it had already achieved compliance. However, as the Philippines had consistently and clearly indicated to the DSB, there remained a number of outstanding issues that called into question Thailand's compliance with the DSB's recommendations and rulings. In particular, the Philippines had repeatedly raised its concerns about the Thai Attorney General's decision to prosecute an importer of Philippine cigarettes for declaring customs values that, first, the WTO Panel had ruled Thailand enjoyed no legitimate grounds to reject and, second, that Thai Customs' Board of Appeals had explicitly accepted in a separate ruling heralded by Thailand itself as a measure taken to comply. The Philippines had also repeatedly addressed its concerns about the WTO-consistency of another ruling by the Board of Appeals regarding entries subject to the DSB's recommendations and rulings. As the Philippines had stated previously, as long as these and other issues remained outstanding, there were only two options: (i) to continue surveillance in this forum; or (ii) return to dispute settlement.

7.3. The representative of Thailand said that her country took note of the Philippines' statement made at the present meeting. In this dispute, Thailand had provided the outstanding responses to the Philippines' requests for information with respect to Thailand's implementation in March 2014. Accordingly, Thailand had taken all actions necessary to implement the DSB's recommendations and rulings in this dispute, as stated in its recent status reports and at the previous DSB meetings. In these circumstances, Thailand did not see the need to submit a status report that would simply repeat that Thailand had no further pending actions to implement the DSB's recommendations and rulings. This was without prejudice to any other rights of the Philippines under the DSU provisions. Thailand remained available to discuss the specific concerns of the Philippines on a bilateral basis, including those not addressed in the Panel proceedings.

7.4. The representative of the United States said that his country would like to briefly comment on one procedural issue raised in the statement made by the Philippines. As this matter was not subject to another WTO proceeding, the Philippines was of course free to bring the item to the attention of the DSB. However, with respect to the issue of whether further status reports were required in this dispute, the United States noted that Thailand had stated that it had taken all necessary actions to implement the recommendations and rulings of the DSB. In these circumstances, the United States would agree with Thailand that no further status reports in this dispute were required.

7.5. The DSB took note of the statements.

8 CHINA – MEASURES RELATED TO THE EXPORTATION OF RARE EARTHS, TUNGSTEN, AND MOLYBDENUM

A. Report of the Appellate Body (WT/DS431/AB/R) and Report of the Panel (WT/DS431/R and WT/DS431/R/Add.1)

B. Report of the Appellate Body (WT/DS432/AB/R) and Report of the Panel (WT/DS432/R and WT/DS432/R/Add.1)

C. Report of the Appellate Body (WT/DS433/AB/R) and Report of the Panel (WT/DS433/R and WT/DS433/R/Add.1)

8.1. The Chairman proposed that the three sub-items under this Agenda item be taken up together. He drew attention to the communication from the Appellate Body contained in documents WT/DS431/13 – WT/DS432/11– WT/DS433/11 transmitting the Appellate Body Reports on: "China – Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum", which had been circulated on 7 August 2014 in documents WT/DS431/AB/R – WT/DS432/AB/R– WT/DS433/AB/R. He reminded delegations that the Appellate Body Reports and the Panel Reports pertaining to these disputes had been circulated as unrestricted documents. As Members were aware, Article 17.14 of the DSU required that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report".

8.2. The representative of the United States said that his country was pleased to support the adoption of the Panel and Appellate Body Reports in DS431, as well as the Reports in the disputes brought by Japan and the EU. The outcome of this dispute was important for the United States, as well as for the WTO system as a whole. The United States thanked the Panel, the Appellate Body, and the Secretariat assisting them for their hard work on this matter. The United States also acknowledged and appreciated the cooperation of the European Union and Japan as co-complainants in these disputes, as well as the active support of a number of other WTO Members as third parties. This was, regrettably, the second WTO dispute the United States and other Members had brought to address China's export restraints on industrial raw material inputs.[6] The export restraints at issue, imposed in the form of export duties, export quotas, and export quota licensing, provided significant unfair advantages for Chinese users as compared to the industries of other Members. China's export restraints put economic pressure on foreign downstream producers to move their operations, jobs, and technologies to China. The United States had repeatedly raised its concerns regarding these export restraints through bilateral and multilateral engagement, including in China's annual Transitional Review Mechanism. However, China had been unwilling to address its concerns. The Panel and the Appellate Body Reports being adopted at the present meeting upheld the claims of the United States, and its co-complainants, on every major issue in this dispute. The Reports were significant for a number of reasons. First, the Reports confirmed that China's imposition of export duties on rare earths, tungsten, and molybdenum was not consistent with China's WTO obligations. Second, the Reports made clear that such duties may not be justified pursuant to the exceptions provided in Article XX of the GATT 1994. The United States welcomed these findings. The limitations on export duties in China's Accession Protocol had been an important commitment negotiated between WTO Members and China, and the application of duties on products where China had committed to eliminate them was clearly contrary to China's Protocol. In addition to the products covered in this dispute, China currently maintained export duties on a number of other products where it had committed not to apply export duties. The United States looked forward to China's elimination of these duties.

8.3. Third, the Reports had properly rejected China's assertions that its export quotas on rare earths, tungsten, and molybdenum were justified under Article XX of the GATT 1994. In making these findings, the Reports made clear that any measures sought to be justified pursuant to Article XX(b) and XX(g) must be measures legitimately aimed at protecting health and the environment or at conserving exhaustible natural resources, rather than measures aimed at providing economic advantages to domestic users of raw materials. The United States welcomed these findings as well. Of minor note, and perhaps arising from a ministerial error, at one point in

[6] See "China - Raw Materials" (DS394; DS395; DS398).

its Report, the Appellate Body referred to the appeal by the United States as "made on a conditional basis".[7] The appeal by the United States was not, however, "conditional", as the Appellate Body Report itself made clear at paragraph 2.9 of Annex 4. The US appeal had simply noted a circumstance in which the Appellate Body "need not" reach the claim of error – that was, where the Appellate Body could validly exercise judicial economy. In closing, the United States said it would like to emphasize that all WTO Members were bound together through a global interdependence in the trade of raw materials. The policies of China, as reflected in the measures covered in this dispute, had caused massive distortions and harmful disruptions in supply chains throughout the global marketplace. For that reason, China's implementation of the recommendations and rulings in these disputes would benefit all Members, and would contribute to global growth and prosperity. Accordingly, the United States looked forward to prompt action by China to address its export restraints on rare earths, tungsten, and molybdenum at issue in this dispute, and more broadly, to meet its WTO obligations in light of these Reports.

8.4. The representative of Japan said that his country appreciated the time and effort devoted to this case by the Panel, the Appellate Body and the respective secretariats. Japan also thanked the co-complainants for their collaboration in the proceedings. Japan welcomed the findings and rulings by the Appellate Body and the Panel in their Reports that China's measures at issue were in clear breach of its WTO obligations. Therefore, Japan was pleased to request the DSB to adopt the Reports at the present meeting. Throughout the proceedings of this dispute, it had not been Japan's intention to challenge China's right to protect the environment or to conserve their natural resources *per se*. However, Japan had serious concerns with China's export restrictions which in effect gave preferential treatment to domestic industries under the stated purpose of environmental protection or natural resources conservation. Specifically, China's expansive interpretation of Article XX(g) of the GATT 1994 would seriously disadvantage countries which lacked China's rich endowment of natural resources and huge industrial capacity - meaning nearly every WTO Member, developed and developing, exporters and importers alike. Japan was seriously concerned that such protectionist policies related to natural resources would become widespread among other countries that owned abundant natural resources. Japan found it significant that the Appellate Body had clearly ruled that under the WTO rules, export restrictions imposed by China that would favour Chinese domestic industries for the use of exhaustible natural resources could not be justified, under the guise of protecting the environment or conserving natural resources. Japan believed and hoped that these findings and rulings in the Reports would not only provide a definitive resolution of the matter in this dispute, but also would contribute to stabilizing global trade in natural resources and energy and restrain the proliferation of protectionism observed in some resource-endowed countries.

8.5. Japan also welcomed the Panel's finding and conclusion, which had not been appealed, that GATT Article XX was not available to China to justify its export duties imposed, which were inconsistent with paragraph 11.3 of China's Accession Protocol. Likewise, the Appellate Body had correctly rejected China's narrow and novel appeal with respect to the relationship between paragraph 1.2 of China's Accession Protocol and Article XII:1 of the WTO Agreement. The Appellate Body had usefully clarified in this regard that the question of the availability of an exception in the multilateral trade agreements to justify a breach of the Protocol's provisions "must be answered through a thorough analysis of the relevant provisions on the basis of the customary rules of treaty interpretation and the circumstances of the dispute".[8] In conclusion, Japan urged China to eliminate promptly the export restrictions at issue in full compliance with the DSB's recommendations and rulings. Japan noted that Article 21 of the DSU provided that "[p]rompt compliance with the recommendations and rulings of the DSB is essential in order to ensure effective resolution of disputes" and directed Members to "comply immediately with the recommendations and rulings". Japan expressed its readiness to engage in a dialogue with China in a constructive manner in the coming weeks, with a view to achieving the prompt and full compliance by China and the positive resolution of this dispute.

8.6. The representative of the European Union said that the EU thanked the Appellate Body, the Panel, and their respective secretariats for the work in this dispute. The EU welcomed the findings of the Panel and of the Appellate Body, according to which China's export restrictions on rare earths, tungsten and molybdenum were in breach of China's WTO obligations and not justified under the exceptions foreseen in the GATT 1994. The EU welcomed the fact that the Appellate

[7] Appellate Body Report at para. 5.255.
[8] Appellate Body Report, paras. 5.67, 5.74 and 6.1(d).

Body had reaffirmed that China had committed unconditionally in its Accession Protocol to the WTO not to levy export duties, and that this commitment could not be reduced by reverting to the general exceptions of the GATT 1994. The EU supported and encouraged all countries to promote conservation of natural resources and a cleaner and sustainable production of raw materials. Conservation, sustainable resource management, and environmental protection were legitimate objectives, recognized and fully achievable within WTO rules. However, the EU considered that such objectives could not be used by WTO Members to justify industrial policies that aimed at protecting domestic industry from foreign competition, or forcing the relocation of the business of foreign users. Furthermore, the EU strongly believed that export restrictions such as those imposed by China were not the appropriate tool to promote the genuine objectives of conservation and environmental protection. Therefore, the EU, therefore, welcomed the clear findings of the Panel and of the Appellate Body.

8.7. The representative of China said that his country thanked the Appellate Body, the Panel and the Secretariat for the effort devoted to these disputes. China was pleased that both the Appellate Body and the Panel had recognized that China had in place a comprehensive programme to conserve China's limited supplies of rare earths, tungsten and molybdenum and to protect China's environment. The Panel had found that the Chinese Government had continuously reinforced and improved its comprehensive management on highly polluting, highly energy-wasting and highly resource-consuming products. This policy was essential for China's sustainable development and for ensuring a sustainable world supply of these essential natural resources. Similarly, China was pleased that both the Panel and the Appellate Body had recognized that the WTO trade rules permitted Members to exercise their sovereign right to conserve their natural resources, consistent with WTO obligations. The Appellate Body had underscored that export quotas were not *per se* incapable of justification under Article XX(g) of the GATT 1994. China would carefully assess this ruling with a view to continuing to improve the sustainable management of its resources in a WTO-consistent manner. China also welcomed the Appellate Body's acceptance of several key aspects of China's appeal regarding the interpretation of Article XX(g). These included the finding that the Panel had erred, to the extent that it had interpreted this provision as imposing a separate requirement of "even-handedness" that must be fulfilled in addition to the conditions specified in the treaty text itself. They also included the finding that the Panel had erred, to the extent that it interpreted Article XX(g) as requiring Members to prove that the burden of conservation was evenly distributed, for example between foreign consumers and domestic producers or consumers. China was pleased to see that its carefully focused appeal had contributed to clarifying the requirements for WTO Members to invoke an exception for conservation purposes. This benefitted the WTO Membership as a whole.

8.8. Having said that, China was disappointed that the Appellate Body had not agreed with the dissenting member of the Panel regarding the availability of defences under the GATT 1994 for certain *prima facie* violations of intrinsically GATT-related "WTO-plus" commitments in post-1994 accession protocols. China noted that the dissenting panellist had found that China had not given up its rights to assert Article XX defences with respect to its export-duty commitments. China appreciated that, in disagreeing with that view, the Appellate Body had conducted a detailed textual analysis of the terms of both Article XII:1 of the Marrakesh Agreement and of paragraph 1.2, second sentence, of China's Accession Protocol. However, the Appellate Body had failed properly to address the key argument that China had put before it. This argument was that, taking into account the precise nature of post-1994 accession protocols under public international law, such protocols may not be treated as if they were additional multilateral trade agreements annexed to the Marrakesh Agreement. Rather, the "terms of accession" enshrined in post-1994 accession protocols were subsequent agreements under Article 30(3) of the Vienna Convention. They thus served to stipulate, including by the means of "WTO-plus" provisions, how an acceding Member could take up the rights and obligations under the WTO's "single undertaking". In practical terms, this required an interpreter to find a home for each accession commitment under either the Marrakesh Agreement or one of the multilateral trade agreements annexed thereto. China found it unfortunate that the Appellate Body had failed to clarify the precise legal status of the accession commitments undertaken by acceding Members. Such clarification should have confirmed that all Members enjoyed an equal right to invoke the public policy exceptions under the GATT 1994, even in relation to "GATT-plus" accession commitments on trade in goods. While China regretted that the Appellate Body had missed the opportunity to provide important systemic clarification, China welcomed the Appellate Body's finding that the availability of exception provisions for violations of accession commitments must be conducted on a case-by-case basis. It was indeed essential to consider the circumstances of each dispute, including the measure at issue and the nature of the

alleged violation. These findings preserved the fundamental right of China, and indeed all other acceding Members, to assert general exceptions in connection with respect to accession commitments that did not explicitly reference the exceptions of one or several multilateral trade agreements. China reserved its right to invoke such exceptions in any future disputes about China's accession commitments.

8.9. The representative of the Russian Federation said that her country thanked the Appellate Body, the Panel and the Secretariat for their work on this dispute. However, the Russian Federation regretted the Appellate Body's rulings in relation to an issue of systemic importance raised by Russia as a third party to this dispute. Russia believed that this issue remained unresolved and that this may create room for concern from a legal perspective.

8.10. The representative of Canada said that his country, a third party to these disputes, thanked the Panel, the Appellate Body, and the Secretariat for their work in these proceedings. Canada was pleased with the findings of the Panel and the Appellate Body that, together with the Reports in "China - Raw Materials", constituted a major contribution to the development of the jurisprudence related to export restrictions such as export quotas and export duties. These Reports also provided helpful guidance on the relationship between the WTO Agreement and Accession Protocols, and on designing natural resource conservation measures that adhered to global trade rules. First, Canada considered it important that the Reports confirmed again that other than in specific circumstances, GATT Article XX exceptions were not available to justify a breach of any provision of Accession Protocols, in this case an explicit prohibition on export duties. In doing so, the Appellate Body had clarified that the specific relationship between individual provisions of an Accession Protocol and individual provisions of the WTO agreements such as GATT Article XX must be ascertained through a thorough analysis of the relevant provisions, on the basis of customary rules of treaty interpretation and the circumstances of each dispute. Second, Canada welcomed the Appellate Body's clarification of the requirements for a WTO Member to invoke the GATT Article XX(b) exception for conservation purposes. Canada also supported the Appellate Body's findings that Article XX(g) did not impose a separate requirement of even-handedness in addition to the conditions expressly set out in this provision and that effective restrictions, namely real restrictions, must also be imposed on the domestic side. Finally, and more systemically, recalling the consultations on the Appellate Body workload conducted by the DSB Chair in the Spring of 2013, Canada noted with favour the guidance that had been provided by the Appellate Body on recourse to Article 11 of the DSU in appeals. One of the several causes of the increasing workload of the Appellate Body had been the frequent, and often unsuccessful, use of such claims. As Members headed into another busy period of dispute settlement, in their search for prompt settlement in future disputes, all Members would gain by considering closely the encouragement provided by the Appellate Body in these Reports (at paragraph 5.228) to consider whether Article 11 claims would be "fruitful". On that point, keeping in mind that the workload issue had not been fully addressed, Canada stood ready to engage further, either formally or informally, with other delegations to find additional solutions. In conclusion, although circulated beyond the time prescribed by the DSU, for reasons beyond the control of the Appellate Body, the Reports to be adopted at the present meeting made a valuable contribution to Members' understanding of their WTO obligations, and hopefully would also allow the parties to resolve their disputes in a timely manner.

8.11. The DSB took note of the statements and adopted the Appellate Body Report contained in WT/DS431/AB/R and the Panel Report contained in WT/DS431/R and Add.1, as upheld by the Appellate Body Report; and the DSB adopted the Appellate Body Report contained in WT/DS432/AB/R and the Panel Report contained in WT/DS432/R and Add.1, as upheld by the Appellate Body Report; and the DSB adopted the Appellate Body Report contained in WT/DS433/AB/R and the Panel Report contained in WT/DS433/R and Add.1, as upheld by the Appellate Body Report.

9 STATEMENT BY THE CHAIRMAN REGARDING THE AB SELECTION PROCESS

9.1. The Chairman, speaking under "Other Business" said that, as he had announced at the outset of the meeting, he wished to make a short statement regarding the Appellate Body selection process. As Members were aware, on 22 and 23 July 2014, the Selection Committee had interviewed the seven candidates proposed for the vacant position in the Appellate Body. As Members were also aware, on 9 and 10 September 2014, the Selection Committee would meet, upon request, with interested delegations who wished to express views on the candidates.

Delegations wishing to meet with the Selection Committee were invited to contact the Secretariat, Council/TNC Division, to make an appointment. He said that he was aware that many delegations had already done so. Alternatively, delegations may send comments in writing to the Chair of the DSB, in care of the Council/TNC Division, by no later than 10 September 2014. He wished to emphasise on the importance for delegations to provide constructive comments on the candidates during the consultations to be held on 9 and 10 September, or in their written comments should they decide to proceed that way. As in the past, delegations were welcome to provide the Committee with their preferences regarding the seven candidates. He nevertheless pointed out that it would assist the Selection Committee if delegations were to provide only the name of the candidate they wished to see as the next member of the Appellate Body. Proceeding in that way would ensure that the Committee would be in a good position to make a recommendation to the DSB on this highly important matter within the agreed time-frame of 26 September 2014.

9.2. The DSB took note of the statement.

10 STATEMENT BY THE CHAIRMAN REGARDING THE DIRECTOR-GENERAL'S PRESENTATION AT THE NEXT MEETING ON DISPUTE SETTLEMENT ACTIVITIES

10.1. The Chairman, speaking under "Other Business", informed delegations that, at the next DSB meeting scheduled for 26 September 2014, the Director-General would make a presentation on the current dispute settlement situation. He said that the Director-General would take the opportunity to brief delegations on the steps he was taking to address the unprecedented increase in the number of disputes before the system. Accordingly, the matter would be placed on the Agenda of the 26 September 2014 DSB meeting.

10.2. The DSB took note of the statement.

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