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Chairperson: Mrs. Elin Østebø Johansen (Norway)

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1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.109)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.109)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.84)

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.47)

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(i) European Communities and Certain member States – Measures affecting trade in large civil aircraft: Status report by the European Union (WT/DS316/17)

(j) 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)

1. The Chairperson 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. She proposed that the ten 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.109)

2. The Chairperson drew attention to document WT/DS176/11/Add.109, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

3. The representative of the United States said that his country had provided a status report in this dispute on 8 December 2011, in accordance with Article 21.6 of the DSU. Legislative proposals had been introduced in the current 112th US Congress that would implement the recommendations and rulings of the DSB. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

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

5. The representative of Cuba said that, following the conclusion of the Eighth Ministerial Conference, Members now had to meet their WTO obligations and, more importantly, to strike the right balance in the negotiations and future work. This would reaffirm the effectiveness of the WTO. In that regard, one should not underestimate the role of the dispute settlement system towards safeguarding the credibility of the multilateral trading system, which entailed more commitments than benefits, more restrictions than opportunities and more discrimination than equality. Cuba regretted to note that, once again, the US status report confirmed the US failure to implement the DSB's rulings and recommendations regarding Section 211. Cuba continued to denounce trade and economic effects of Section 211. Under Section 211, the Cuban company CUBAEXPORT had been prevented from renewing the "Havana Club" rum trademark in the United States so that the Bacardi Company could market its rum under that name, even though it was not of Cuban origin. The US authorities encouraged unfair trade practices, which had been found to be inconsistent with the TRIPS Agreement and the Paris Convention. At this point, there was no evidence to suggest that the United States would meet its legal responsibility to comply with the DSB's decision, which must not be circumvented.

6. As Cuba had already explained, Section 211 was part of the illegal economic, financial and trade embargo policy imposed by the United States against Cuba, which had been rejected by the vast majority of the international community for the past 20 years. The recently formed Community of Latin American and Caribbean States (CELAC), consisting of 33 countries that were also WTO Members, had just reiterated, in an official statement, "firm rejection of the economic blockade that Cuba has endured for more than five decades at the hands of the United States". They had also asked that the United States "put an end to its economic, trade and financial embargo against Cuba, in accordance with the successive resolutions adopted by the United Nations General Assembly and in response to repeated calls from the Latin American and Caribbean countries". The Fourth Summit of Heads of State and Government of the member countries of the Caribbean Community (CARICOM) and Cuba, held in Trinidad and Tobago on 8 December 2011, had also requested that this unfair blockade against Cuba be lifted immediately. The arguments for demanding the repeal of Section 211 were overwhelming, as Section 211 had been found to be inconsistent with the WTO rules almost a decade ago. Cuba urged all Members to adhere to and respect WTO principles, rules and decisions, which were the very essence of the multilateral trading system. Cuba preserved its rights and urged Members to respect their obligations.

7. The representative of Nicaragua said that his country was disappointed that, once again, the US status report before the DSB at the present meeting contained the same information as the previous reports submitted by the United States for a number of years. The only change was the date

of the circulation of the report. As had been stated at previous DSB meetings, Nicaragua was concerned that this matter had been on the DSB's Agenda for such a long time, with no indication as to when a solution would be found. Nicaragua strongly supported Cuba's arguments and believed that the US non-compliance with the DSB's recommendations undermined the credibility of the multilateral trading system and the DSB. Once again, Nicaragua urged the United States to comply with its obligations, to bring its measures into conformity with the DSB's recommendations and rulings and to seek a mutually satisfactory solution to this dispute by taking urgent and necessary measures so as to end the violations.

8. The representative of the Plurinational State of Bolivia said that his country noted that the US status report did not contain any new information and demonstrated the continued lack of political will by the United States to resolve this dispute. Therefore, Bolivia wished to reiterate its concern about the US failure to comply with its obligations. As Bolivia had previously stated, this situation undermined the credibility and integrity of the multilateral trading system and caused serious harm to a developing-country Member. Once again, Bolivia urged the United States to comply with the DSB's rulings and to take steps to remove the restrictions imposed under Section 211. Finally, he said that Bolivia supported Cuba's concerns.

9. The representative of the Bolivarian Republic of Venezuela said that, once again, her delegation noted that the information contained in the US status report amounted to "action without results". Venezuela regretted that Section 211 remained in place regardless of the fact that it was contrary to the TRIPS Agreement, that it was inconsistent with the principles of national treatment and most favoured-nation treatment, and undermined the dispute settlement system. For almost ten years Venezuela had witnessed the US failure to implement the DSB's ruling. As had already been done on previous occasions, Venezuela urged the United States to put an end to its economic, commercial and financial blockade against Cuba and to respect its WTO obligations by implementing the DSB's recommendations.

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

11. The representative of China said that her country thanked the United States for its status report and statement made at the present meeting. China regretted that the United States had, once again, reported non-compliance. This prolonged situation of non-compliance 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. Thus, China urged the United States to implement the DSB's rulings and recommendations without any further delay.

12. The representative of Angola said that her country thanked the United States for its status report. Angola recalled that prompt compliance with the DSB's recommendations and rulings was fundamental to ensuring an effective resolution of disputes to the benefit of all Members. The delay in the implementation of the DSB's decision and the Appellate Body's findings of 12 February 2002 on Section 211 was clearly incompatible with the DSU provisions and affected the security and predictability of the multilateral trading system. Angola believed that concrete signs and actions by the parties in this dispute would send a positive signal of respect for WTO rules.

13. The representative of Ecuador said that his country supported the statement made by Cuba and, once again, wished to stress that Article 21 of the DSU referred specifically to prompt compliance with the DSB's recommendations and rulings, in particular with regard to issues affecting the interests of a developing-country Member. Ecuador regretted the US lack of commitment towards prompt compliance with the DSB's recommendations and rulings by repealing Section 211. In

Ecuador's view, the non-compliance of the DSB's recommendations and rulings in this long-standing dispute demonstrated the main shortcoming of the WTO dispute settlement system.

14. The representative of Mexico said that his country thanked the United States for its status report and urged the parties to settle this dispute through the legal remedies provided under the DSU provisions. Mexico noted that, if a dispute was not resolved, any Member could initiate its own dispute if it considered that its rights were being impaired or nullified. Mexico also noted that the discussion under this Agenda item could provide useful input for the on-going discussions carried out in the context of the DSU negotiations, in particular with regard to the issue of effective compliance.

15. The representative of Argentina said that his country thanked the United States for its status report and, once again, wished to express its concern about the lack of progress in this dispute. Argentina was particularly concerned about the effect of non-compliance with the DSB's recommendations and rulings on the credibility of the multilateral trading system. Argentina, once again, urged the parties, in particular the United States, to take all necessary steps to ensure implementation and compliance with the DSB's recommendations and rulings pertaining to this dispute.

16. The representative of Viet Nam urged the United States to implement fully, and without any delay, the DSB's recommendations in this dispute as well as in other disputes.

17. The representative of Uruguay said that, once again, his country wished to express its systemic concern about the length of time that had passed without any compliance in this case. Uruguay urged the parties to find a prompt solution through the remedies provided under the DSU provisions.

18. 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.109)

19. The Chairperson drew attention to document WT/DS184/15/Add.109, 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.

20. The representative of the United States said that his country had provided a status report in this dispute on 8 December 2011, 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 DSB's recommendations and rulings 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.

21. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan took note of the US report that the United States had taken certain measures to implement part of the DSB's recommendations in November 2002. Japan hoped that the United States would soon be in a position to report to the DSB on more tangible progress with respect to the implementation of the remaining part of the DSB's recommendations. Full and prompt implementation of the DSB's recommendations and rulings was "essential to the effective functioning of the WTO and the maintenance of a proper balance of the rights and obligations of Members".[1]

[1] Article 3.3 of the DSU.

Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

22. 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.84)

23. The Chairperson drew attention to document WT/DS160/24/Add.84, 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.

24. The representative of the United States said that his country had provided a status report in this dispute on 8 December 2011, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the EU, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

25. The representative of the European Union said that the EU thanked the United States for its status report. The EU took note of the status report and remained keen to resolve this dispute.

26. 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.47)

27. The Chairperson drew attention to document WT/DS291/37/Add.47, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning its measures affecting the approval and marketing of biotech products.

28. The representative of the European Union said that his delegation hoped that the EU and the United States would continue on the constructive path of dialogue. The last technical meeting held on 27 September 2011 had given the parties another opportunity to discuss directly issues of concern on both sides and to follow up closely on developments in the biotech field. Since the last DSB meeting, four authorization decisions would be up for adoption by the Commission following a vote in the Council on 15 December 2011. In addition, four more draft decisions may be adopted soon in 2012, following their submission to the appeal Committee in January 2012, after the vote in the meetings of the relevant Committee held on 14 November and 12 December 2011. Furthermore, since September 2011, EFSA had adopted four scientific opinions for food and feed authorizations and two opinions for cultivation.

29. 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 this last regular DSB meeting in 2011, the United States wished to take a moment to compare the record of the EU's biotech approval system in 2011 as compared to the record in 2010. The United States said that Members may recall that, at the November DSB meeting, the EU had stated that it had made 11 biotech approvals during 2010. Unfortunately, the record for 2011 indicated growing problems in the operation of the EU's biotech approval system. In 2011, the EU had made final decisions on only two of the dozens of pending biotech product applications. As compared to 2010, this represented a substantial decline of over 80 per cent in the number of final decisions. This decline in final decisions did not result from a reduction in the number of pending applications. To the contrary, the backlog in the EU's biotech

approval pipeline continued to grow. At present, over 70 applications were awaiting a decision. The United States said that it would also emphasize that delays in making decisions on biotech product applications had real world implications, resulting in substantial barriers to international trade in products derived from modern biotechnology that had been scientifically reviewed and found to be safe. The United States urged the EU to address the on-going problems in the operation of its approval system for biotech products.

30. The representative of the European Union said that the EU approval system continued to operate normally and that delays were frequently due to incomplete files or insufficient information from applicants. The Commission would continue processing authorizations in line with the legislation. Eleven decisions on GMO authorizations had been adopted in 2010 and seven more in 2011, which demonstrated that the approval procedure continued to operate at a normal pace. The GMO regulatory regime was not the subject of the original Panel's findings and neither its "operation" nor the status of specific applications not dealt with in the original Panel was covered by this Agenda item.

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

(e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.27)

32. The Chairperson drew attention to document WT/DS322/36/Add.27, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US measures relating to zeroing and sunset reviews.

33. The representative of the United States said that his country had provided a status report in this dispute on 8 December 2011, in accordance with Article 21.6 of the DSU. In December 2010, the Arbitrator in the proceeding under Article 22.6 of the DSU in this dispute had issued a communication stating that it had accepted a joint request by the parties to the dispute to suspend its work. On 30 November 2011, in response to a joint request of the United States and Japan, the Arbitrator had issued a communication stating that it had decided to continue further the suspension. The communication of the Arbitrator had been circulated to the DSB in document WT/DS322/41. As the United States had explained in its status report, in December 2010 the US Department of Commerce had announced a proposal to change the calculation of weighted average dumping margins and assessment rates in certain anti-dumping proceedings. At the present time, the US Department of Commerce was continuing with its ongoing work on the proposal.

34. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan took note of the report that "the United States is continuing its ongoing work on the proposal" that had been announced on 28 December 2010 by the US Department of Commerce. As stated in previous meetings, Japan took the US implementation effort as a positive step forward and urged the United States to complete its work on the proposal without any further delay. Japan, however, continued to seek prompt and full compliance by the United States with respect to all of the measures at issue that were subject to the DSB's recommendations in this dispute. As the United States had stated, upon request by the parties, the Article 22.6 arbitrator in this dispute "has decided to continue the suspension of its work" but it would automatically resume the work on 9 January 2012.[2] Japan called on the United States to fully comply by then. Japan hoped that its continued dialogue with the United States and the US implementation efforts would lead to a final resolution of this dispute that would address all aspects of the DSB's recommendations. Japan reserved its rights under the DSU to take appropriate action.

[2] WT/DS322/41.

35. The representative of China said that her country thanked the United States for its status report and its statement made at the present meeting. China welcomed the steps taken by the United States towards the implementation of the DSB's rulings and recommendations on zeroing matters. However, China remained very concerned as to how the United States would implement the DSB's decision on zeroing matters. China would monitor the US implementation steps and urged the United States to take actions to fully comply with the DSB's rulings and recommendations without further delay.

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

(f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.24)

37. The Chairperson drew attention to document WT/DS350/18/Add.24, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the existence and application of zeroing methodology by the United States.

38. The representative of the United States said that his country had addressed the issue of compliance with the recommendations in this dispute in the status report provided on 8 December 2011, and earlier in the present meeting's discussion of Agenda item 1(e). The United States referred Members to that report and statement for further details.

39. The representative of the European Union said that the EU thanked the United States for its status report. Since the United States had not reported on any steps taken to address the concerns raised by the EU in the DSB, the EU referred Members to its statements made at the DSB meetings in January and February 2011. As it had already stated several times before, the EU remained ready to engage with the United States in discussions in the WTO and bilaterally in order to ensure that its concerns were addressed by the United States.

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

(g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/38/Add.18)

41. The Chairperson drew attention to document WT/DS294/38/Add.18, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US laws, regulations and methodology for calculating dumping margins.

42. The representative of the United States said that his country had addressed the issue of compliance with the findings in this dispute in the status report provided on 8 December 2011, and earlier in the discussion of Agenda item 1(e). The United States referred Members to that report and statement for further details.

43. The representative of the European Union said that the EU thanked the United States for its status report and referred Members to its statement made under Agenda item 1(f) of the present meeting.

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

(h) China – Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products: Status report by China (WT/DS363/17/Add.11)

45. The Chairperson drew attention to document WT/DS363/17/Add.11, which contained the status report by China on progress in the implementation of the DSB's recommendations in the case concerning China's measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products.

46. The representative of China said that her country had provided a status report in this dispute on 8 December 2011, in accordance with Article 21.6 of the DSU. China had made tremendous efforts to implement the DSB's rulings and recommendations and had, thus far, completed amendments to most measures at issue. China believed that this matter would be properly resolved through joint efforts and mutual cooperation by relevant parties.

47. The representative of the United States said that his country thanked China for its status report and its statement made at the present meeting. As it had previously noted, the United States remained concerned by the lack of progress by China in bringing its measures relating to films for theatrical release into compliance with the DSB's recommendations and rulings. The United States also had significant concerns about the incomplete progress relative to China's measures relating to audiovisual home entertainment products, reading materials, and sound recordings. The United States was conferring with China on these matters and hoped that China would take steps to resolve this matter soon.

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

(i) European Communities and Certain member States – Measures affecting trade in large civil aircraft: Status report by the European Union (WT/DS316/17)

49. The Chairperson drew attention to the communication from the European Union contained in document WT/DS316/17 concerning the dispute with regard to the EU's measures affecting trade in large civil aircraft.

50. The representative of the European Union said that, with regard to the DSB's recommendations and rulings pertaining to this dispute, the EU had, on 17 June 2011, informed the DSB that it intended to implement the DSB's recommendations and rulings in a manner that respected its WTO obligations. Pursuant to the final sentence of Article 21.6 of the DSU, the EU had provided a report on 1 December 2011 to address "its progress in the implementation of the recommendations or rulings" of the DSB. With that report and its statement at the present meeting, the EU wished to inform the DSB that it had taken appropriate steps to bring its measures into full compliance with its WTO obligations and with the DSB's recommendations and rulings. The EU had provided this report on 1 December 2011, rather than 10 days before the regular DSB meeting following the six-month deadline established by Article 21.6 of the DSU, to communicate to the DSB full implementation of the DSB's recommendations and rulings by the deadline of 1 December 2011, established under Article 7.9 of the SCM Agreement. The EU recalled that the DSB's recommendations and rulings in this dispute addressed various forms of adverse effects, resulting from various categories of subsidies benefiting various models of Airbus Large Civil Aircraft (LCA). Specifically, the subsidies that had been found by the Panel and confirmed by the Appellate Body were: (i) Member State Financing (MSF) for the development of Airbus LCA; (ii) certain capital contributions provided by the French and German governments; (iii) elements of a lease for an Airbus facility in Hamburg; (iv) fees for use of the extended portion of a runway at Bremen airport; and, (iv) regional aid support in Spain and Germany.

51. The Appellate Body had found that those subsidies covered by its findings were incompatible with Article 5(c) of the SCM Agreement because they had caused serious prejudice to US interests. Specifically, the Appellate Body had found that the effect of the subsidies was to displace exports of Boeing single-aisle and twin-aisle LCA from the EU, Chinese, and Korean markets, and Boeing single-aisle LCA from the Australian market. Moreover, the Appellate Body had confirmed the Panel's determination that the subsidies caused Boeing to lose sales of LCA in the campaigns involving the A320 (Air Asia, Air Berlin, Czech Airlines, and easyJet), A340 (Iberia, South African Airways, and Thai Airways International), and A380 (Emirates, Qantas, and Singapore Airlines) aircraft.

52. However, by reversing the Panel, the Appellate Body had excluded several measures from the scope of its serious prejudice findings: (i) a 1998 capital contribution by the French government; (ii) the lease of special purpose facilities at an Airbus facility in Hamburg; (iii) the sale to Airbus of a site in Toulouse; the lease of special purpose facilities at an Airbus facility in Toulouse; (iv) all research and technology development funding from the French government; (v) research and technology development funding under the Spanish PROFIT Programme; (vi) research and technology development funding under the German Luftfahrtforschungsprogramm I, II and III; (vii) research and technology development funding by the Bavarian, Bremen, and Hamburg authorities; (viii) research and technology development funding under civil and aeronautics programmes maintained by the UK government; and, (ix) research and technology development funding under the Second, Third, Fourth, Fifth and Sixth EC Framework Programmes. Furthermore, the Appellate Body had reversed the Panel's findings of displacement in Brazil, Mexico, Singapore, and Chinese Taipei, and of threat of displacement in India. Moreover, the Appellate Body had reversed the Panel's findings, under Articles 3.1(a) and 3.2 of the SCM Agreement, that member State Financing for the development of Airbus LCA was contingent on export performance. With respect to the actionable subsidies found to cause adverse effects to US interests, the Appellate Body had let stand the Panel's recommendation that the EU "take appropriate steps to remove the adverse effects or … withdraw the subsidy". The Appellate Body had recommended that the DSB request the EU to bring its WTO-inconsistent measures into conformity with its WTO obligations.

53. In considering appropriate steps to bring its measures into conformity with its WTO obligations, the EU had taken note of all elements of the DSB's recommendations and rulings, including, in particular, the Appellate Body's guidance on the way in which subsidies and adverse effects expired, dissipated, terminated or were otherwise removed or withdrawn. In undertaking this review, the EU had consulted, among others, independent experts in financial economics; investor behaviour; financial and cost auditing, accounting and controlling; product engineering; and LCA fleet management. The EU had also closely monitored and assessed LCA product and market developments in the months and years following the period covered by the Panel's review. As a result of this review, the EU had adopted a course of action that addressed all forms of adverse effects, all categories of subsidies, and all models of Airbus aircraft covered by the DSB's recommendations and rulings. Specifically, in bringing its measures into conformity with its WTO obligations, the EU had addressed all categories of subsidies covered by the DSB's recommendations and rulings: MSF loans, capital contributions, infrastructure support and regional aid. Amongst others, the EU had secured repayment of MSF loans and had terminated MSF agreements, had increased fees and lease payments on infrastructure support to accord with market principles, and had ensured that capital contributions and regional aid subsidies had, in the Appellate Body's words, "come to an end" so that they were no longer capable of causing adverse effects. Additionally, the course of action adopted by the EU affected Airbus' A300, A310, A320, A330, A340 and A380 aircraft, as well as derivatives thereof, as implicated by the DSB's recommendations and rulings. Finally, as a result of these steps and other intervening market events, the EU had addressed the forms of adverse effects covered by the DSB's rulings.

54. In short, by having taken appropriate steps to bring its measures into conformity with its WTO obligations, as required by Article 7.8 of the SCM Agreement and Article 19.1 of the DSU, the EU had ensured full implementation of the DSB's recommendations and rulings. The EU looked forward to working with the United States to ensure a similar result in the companion dispute concerning adverse effects caused by US subsidies to Boeing. The EU wished to express its serious systemic concern that despite its compliance report, the United States had already made a request under Article 22.2 of the DSU to authorize the suspension of concessions. Following that request, the United States had also initiated consultations under Article 21.5 of the DSU. There was, therefore, necessarily not only a determination by the United States that the conditions set out in Article 22.2 of the DSU were already fulfilled, but also a disagreement as to the existence or consistency with a covered agreement of measures taken to comply. The EU was puzzled and naturally reserved its right to address this sequence of events in any future proceedings. The EU remained ready to secure an orderly conduct of any future procedural steps in this case but was, at least for the time being, awaiting the response of the United States.

55. The representative of the United States said that the EU had made a long statement with a number of points that his country would need to address. First, the United States said that it would like to start by thanking the EU for its written notification and for its statement made at the present meeting. The United States had carefully reviewed the EU's notification enumerating steps taken in relation to the DSB's recommendations. Regrettably, the US review indicated that these steps did not, in fact, bring the EU into compliance with the DSB's recommendations and rulings. The areas of deficiency in the EU's assertion of compliance were too large to present in the statement at the present meeting. Therefore, the United States would mention but a few examples. First, the largest and most recent subsidy at the time of the Panel Report was launch aid for the A380, the largest and most recent aircraft produced by the EU's subsidized large civil aircraft industry. Although the EU claimed to have terminated launch aid agreements for certain older models, the EU had not indicated any changes to its financing of the A380. This fact alone called into serious question any EU claim of compliance with the DSB's recommendations and rulings. Second, with respect to subsequent large civil aircraft programs, the United States understood that EU member States had continued to grant the same form of financing covered by the DSB's recommendations and rulings, and nothing in the EU's notification indicated otherwise. In light of its serious questions regarding the EU's compliance, and the many areas of deficiency in the EU's notification, the United States had requested consultations with the EU and EU member States, as the EU representative had already mentioned. That request had been circulated to the DSB in document WT/DS316/19.

56. As the EU had also mentioned, pursuant to Article 7.9 of the SCM Agreement and Article 22.2 of the DSU, the United States had requested the DSB's authorization to take commensurate countermeasures. That request, which had been circulated in document WT/DS316/18 was on the Agenda of a DSB meeting scheduled for 22 December 2011, the present week. In relation to the EU's expression of systemic concern regarding this request, the EU's concern did not appear to be consistent with the clear text of relevant provisions of the DSU or with past practice. Under Article 22.6 of the DSU, the negative consensus rule applied within 30 days of the end of the period for compliance. By submitting the Article 22.2 request, the United States was preserving its negative consensus rights. Taking this step was neither surprising nor unusual, and similar actions had been taken by other Members in other disputes. In particular, the United States said that it would draw Members' attention to the EU's own actions in the Foreign Sales Corporation (FSC) dispute. In that dispute, the United States had claimed that it had fully complied on 17 November 2000. On that same date, the EU had filed both a request for consultations pursuant to Article 21.5 of the DSU and a request for authorization to take countermeasures. The United States had objected on 27 November 2000, automatically referring the matter to arbitration, and the EU had left its request on the Agenda of the DSB meeting on 28 November 2000. The parties had subsequently requested that the arbitration be suspended. Thus, the EU as the complaining party in the FSC dispute had made the same request for authorization as the United States had made in this dispute. Presumably, the EU had

done so to preserve its rights under the DSU in a dispute that was important to it. There was, of course, one difference between these two disputes. In FSC, the EU had requested authorization to take approximately US$4 billion in countermeasures whereas, in this dispute, the United States had requested authorization to take countermeasures that it estimated could range between US$7-10 billion. Thus, this dispute was up to 250 per cent the size of the FSC dispute. As the EU had noted in its statement, it had proposed a sequencing agreement to the United States. The United States was considering this proposal and would respond shortly. In conclusion, as it had long said, the United States remained prepared to engage in any meaningful efforts, including through the formal consultations it had requested, that would lead to the goal of ending subsidized financing of large civil aircraft at the earliest possible date.

57. The representative of the European Union said that it was clear that there was a disagreement and the EU looked forward to addressing that disagreement under the appropriate procedures under Article 21.5 of the DSU.

58. The DSB took note of the statements.

(j) 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)

59. The Chairperson drew attention to document WT/DS382/10, 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.

60. The representative of the United States said that his country had provided a status report in this dispute on 8 December 2011, in accordance with Article 21.6 of the DSU. As noted in the status report, the United States had informed the DSB on 17 June 2011, of its intention to implement the DSB's recommendations and rulings in this dispute. Brazil and the United States had agreed that the reasonable period of time to implement would expire on 17 March 2012. As the United States had explained in its status report, in December 2010 the US Department of Commerce had announced a proposal to change the calculation of weighted average dumping margins and assessment rates in certain anti-dumping proceedings. At the present time, the US Department of Commerce was continuing with its on-going work on the proposal.

61. The representative of Brazil said that his country thanked the United States for its status report on this dispute. However, Brazil was disappointed with the content of the status report, which limited itself to report that the US Department of Commerce (USDOC) had announced a proposal to change the methodology for calculating weighted-average dumping margins and assessment rates in certain anti-dumping proceedings, including administrative reviews. This proposal, published almost a year ago, was still to be made final, and although it indicated a willingness of the US Government to change the calculation of the margin of dumping in administrative reviews, it still contained a number of gaps that did not allow for a clear understanding of the extent of the proposed modifications. In that regard, Brazil recalled that the USDOC had retained the possibility, pursuant to the proposal, to use a different approach in reviews besides the weighted average-to-weighted-average method in some instances, i.e. "where the Department determines that applications of a different comparison method is more appropriate". Brazil wished that the United States clarify which "alternative method" that was, when it would be used and, mainly, whether "zeroing" would be permitted in connection with this new "alternative method".

62. Brazil was also concerned about the temporal applicability of the proposed changes. The proposal indicated that the changes in calculation would apply only in relation to new entries of merchandise occurring on or after the date of the Section 129 determination. In order to implement

the DSB's recommendations and rulings in the "Orange Juice" dispute, the United States would also be required to revise its calculations, without "zeroing", in relation to past entries that remained unliquidated at the end of the reasonable period of time. However, the proposal, as currently drafted, did not suggest that the United States was planning to take any steps to comply with this aspect of the DSB's recommendations and rulings.

63. As Members were aware, the issue of "zeroing" was not a new one, after 14 disputes and 14 findings of WTO-inconsistency. With regard specifically to the use of "zeroing" in administrative reviews, one of the main issues of the "Orange Juice" dispute, the Appellate Body had, already in 2006, declared that this methodology was inconsistent with the GATT 1994 and the Anti-Dumping Agreement. After so many decisions over so many years reaffirming the prohibition of "zeroing" and after an explicit characterization of this methodology as being "inherently unfair", it would be reasonable for Brazil to expect more from the United States at the present meeting. The United States still had some time to meet its WTO obligations in the "Orange Juice" dispute. Although progress in terms of implementation should have been much more expressive at the present juncture, Brazil remained confident that the United States would adjust its internal rules and practices so as to comply fully with the DSB's recommendations and rulings by the end of the agreed reasonable period of time.

64. The representative of the United States said that his country had taken note of Brazil's questions and would refer them to capital.

65. 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

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

67. The representative of Japan said that, on 5 December 2011, US Customs and Border Protection had published its CDSOA Annual Report for FY 2011 which contained information on disbursements made under the CDSOA for FY 2011.[3] This latest action showed that the CDSOA remained operational. As the US Customs and Border Protection had explained, "the distribution process will continue for an undetermined period".[4] Japan urged the United States to stop the illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report pertaining to this dispute.

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

[3] See US Customs and Border Protection's website at:
http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cdsoa_11/2011_annual_report/

[4] See US Customs and Border Protection's website at:
http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cont_dump_faq.xml

69. The representative of Canada said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. Canada agreed with the EU and Japan that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

70. The representative of India said that his country thanked the EU and Japan for regularly bringing this issue before the DSB. The continuation of the CDSOA was affecting the rights of Members and undermining the credibility of the WTO. India requested the United States to report full compliance without any further delay.

71. The representative of Thailand said that her country thanked the EU and Japan for continuing to bring this item before the DSB. Thailand supported the statements made by previous speakers and urged the United States to cease the disbursements and fully implement the DSB's rulings and recommendations on this matter.

72. 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 an obligation to submit status reports pertaining to this dispute until such time as no more disbursements were made pursuant to the Byrd Amendment. Only then the issue would be "resolved" within the meaning of the DSU and the United States would be released from its obligation to provide status reports pertaining to this dispute.

73. The representative of the United States said that, as his country had already explained at previous DSB meetings, the US 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. Therefore, the United States 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 previously explained numerous times, the United States failed to see what purpose would be served by further submission of status reports repeating, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Finally, in light of the EU's statement at the present meeting, the United States said that it would expect to see the EU submit a further status report in DS316, the dispute on EU subsidies for large civil aircraft, at the January 2012 DSB meeting.

74. The DSB took note of the statements.

3. European Communities - Export subsidies on sugar

(a) Statements by Australia, Brazil and Thailand

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

76. The representative of Australia said that, together with Brazil and Thailand, her country had, once again, put this item on the DSB's Agenda due to growing concerns over recent EU action with regard to out-of-quota sugar exports. Australia recalled that, along with Brazil and Thailand, it had taken successful WTO action against the EU in respect of its subsidized sugar exports in the "EC - Sugar" dispute. The dispute outcome had determined that all EU out-of-quota sugar exports were in receipt of export subsidies and that the EU had exceeded its WTO scheduled export subsidy quantity commitment levels for sugar over a number of years. But the EU's recent decision to authorize a

further 700,000 tonnes of out-of-quota sugar exports in marketing year 2011/2012 meant that EU out-of-quota sugar exports in that marketing year, which ran from 1 October 2011 to 30 September 2012, were likely to exceed the EU's scheduled WTO export subsidy quantity commitment level for sugar. Such limit had also been exceeded in 2009/10. This was because the EU had already authorized separate exports of 650,000 tonnes of out-of-quota sugar for export in MY 2011/2012 and 700,000 tonnes of out-of-quota sugar for export in the period 1 September to 31 December 2011. Three months of this period, namely October to December 2011, fell in the 2011/12 marketing year. In that context, Australia noted that Commission Regulation 461/2011 which had authorized these exports stipulated that the measure covered "only sugar produced under the new, September harvest". It therefore seemed unlikely to Australia that all 700,000 tonnes of this sugar or, even, a majority of that amount, could have been produced and exported in September 2011. It was more likely that such exports had in fact taken place after commencement of the 2011/12 marketing year. However, Australia would welcome data from the EU that demonstrated otherwise, and appreciated the recent dialogue that had taken place on this issue. Australia was also concerned that these additional exports would depress the world sugar price to the detriment of unsubsidized Australian and other sugar producers and would encourage continued over-production in the EU, thereby unwinding the important reforms the EU had undertaken to its sugar industry since the WTO dispute. Australia was closely examining the action taken by the EU and requested the EU to respect its WTO export subsidy commitments.

77. The representative of Brazil said that his country had learned with concern that the EU had recently authorized exports of 700,000 tons of out-of-quota sugar for marketing year 2011-2012. In Brazil's view, these exports of EU out-of-quota sugar were possibly in breach of the EU's WTO obligations. Brazil recalled that the EU decision to allow exports of 650,000 tons of out-of-quota sugar for marketing year 2011-2012 had been published in April 2011. Another decision to allow exports of 700,000 tons, from September to December 2011, had been published in May 2011. Despite the fact that the period of reference for these 700,000 tons of out-of-quota sugar exports was marketing year 2010-2011, a large majority of such exports would take place during marketing year 2011-2012, which began in October 2011. The EU had thus authorized exports of two million and fifty thousand (2,050,000) tons of sugar, most of it taking place during marketing year 2011-2012, exceeding by far its export subsidies reduction commitments. It was not the first time that this had happened. These decisions that had been taken by the EU in respect to exports of sugar were particularly troubling in light of the findings of the Panel and the Appellate Body in the "EC-Sugar" dispute. The EU could not simply authorize the exports of subsidized sugar in excess of its WTO commitments every time its production overshot the relevant regulatory targets. Brazil valued the constructive dialogue that it had had with the EU on those issues. Nevertheless, Brazil, as well as other concerned Members, were monitoring the situation of sugar overproduction and increased exports in the European market closely and urged the EU to take actions to rectify this situation.

78. The representative of Thailand said that her country, along with Australia and Brazil, believed that the EU's authorization of its out-of-quota sugar exports for the "marketing year" 2011-2012 was likely to exceed the EU's WTO export subsidy quantity commitment level for sugar. Thailand wished to recall that in the "EC - Sugar" dispute, all EU out-of-quota sugar exports had been found to be subsidized, rendering the EU in violation of its WTO export subsidy commitment. Commission Regulation 461/2011 allowed for additional 700,000 tons of sugar to be exported from 1 September until 31 December 2011. Since the "marketing year", as described in the Annex to the EU WTO schedule, ran from October to the end of September, the majority, if not all, of 700,000 tons, would likely fall into the MY 2011/2012, where the EU had already authorized 650,000 tons of out-of-quota sugar. Thailand believed that such authorization by the EU ran the risk of exceeding its MY 2011/2012 obligations and Thailand would welcome any information from the EU that suggested otherwise. Thailand would monitor the situation very closely, and requested the EU to respect its WTO export subsidy commitments for sugar.

79. The representative of the European Union said that the EU had carefully listened to the statements made by delegations on this matter. He said that the EU abided by its international commitments on export subsidies for sugar. The recent EU decision led to an increase of 650,000 tonnes up to 1,350,000 tonnes of export for out-of-quota exports during the marketing year 2011/12. The quantity of 1,350,000 tonnes remained well within the EU's WTO quantitative commitment on export subsidies (i.e. 1,374,000 tonnes). However, the EU would study the points raised by delegations at the present meeting and would respond at a technical level, if necessary.

80. The DSB took note of the statements.

4. United States – Use of zeroing in anti-dumping measures involving products from Korea

(a) Statement by the United States on implementation of the recommendations adopted by the DSB

81. The Chairperson said that this item was on the Agenda of the present meeting at the request of the United States. She then invited the representative of the United States to speak.

82. The representative of the United States said that his country was pleased to report that it had implemented the recommendations and rulings of the DSB in this dispute within the reasonable period of time agreed by the United States and Korea. The parties had agreed that the reasonable period of time with respect to the diamond sawblades investigation at issue in this dispute would end on 24 October 2011. With respect to this investigation, the US Department of Commerce had issued a revised determination in which it had calculated the anti-dumping duty margins with offsets, effective 24 October 2011. The order with respect to diamond sawblades and parts thereof from Korea had been revoked. The parties had also agreed that the reasonable period of time with respect to the investigations on stainless steel plate in coils and stainless steel sheet and strip in coils at issue in this dispute would end on 24 November 2011. With respect to these investigations, the Department had issued a revised determination in which it had calculated the anti-dumping duty margins with offsets, effective 16 November 2011. The order with respect to stainless steel plate in coils from Korea had been revoked, and the order with respect to stainless sheet and strip in coils from Korea had been revoked with respect to two respondents. Therefore, the United States had fully implemented the recommendations and rulings of the DSB in this dispute within the reasonable period of time agreed by the parties. The United States had circulated further information to Members in a written communication contained in document WT/DS402/7.

83. The representative of Korea said that his country thanked the United States for its statement regarding the implementation of the DSB's recommendations and rulings in this dispute. Korea welcomed the implementation by the United States and looked forward to a prompt solution with regard to other zeroing disputes.

84. The DSB took note of the statements.

5. China – Definitive anti-dumping duties on x-ray security inspection equipment from the European Union

(a) Request for the establishment of a panel by the European Union (WT/DS425/2)

85. The Chairperson drew attention to the communication from the European Union contained in document WT/DS425/2, and invited the representative of the European Union to speak.

86. The representative of the European Union said that the EU was seriously concerned that China's imposition of definitive anti-dumping duties on x-ray scanners from the EU was inconsistent

with the WTO Anti-Dumping Agreement both on procedural and substantive grounds. The EU wished to stress that it had a systemic interest in some of the issues indicated in its request for the establishment of a panel, in particular regarding the interpretation of the obligations concerning transparency, the right of defence and the determination of injury and causal link, including notably the analysis of the effects of the alleged dumped imports on the price of domestic products. The EU had requested WTO consultations with China on 25 July 2011. Although China had participated in those consultations in a constructive spirit, the consultations had unfortunately failed to resolve the dispute. Therefore the EU requested the establishment of a panel to rule on the WTO compatibility of China's relevant measures as set out in more detail in the panel request. The EU was confident that this would lead to China's removal of the anti-dumping duties that the EU considered to be in violation of WTO rules and, as a consequence, to the re-establishment of fair conditions of operation for the EU industry on the Chinese market.

87. The representative of China said that her country regretted that the EU had chosen to request the establishment of a panel at the present meeting instead of continuing consultations in this dispute. China had shown great sincerity by responding to many questions and clarifying facts and its views in the two consultations it had with the EU on 19 September and 18 October 2011, respectively. China had always been willing to pursue further consultations in order to settle the dispute in a mutually satisfactory manner. China reiterated that the relevant measure identified by the complainant was fully consistent with WTO anti-dumping rules. In carrying out the anti-dumping investigation and adopting remedy measures, the Ministry of Commerce of China had aimed to offset the adverse effect produced by dumping imports to domestic industry and restore a fair trading environment. Both the investigation and the measure were fully based on solid facts and evidence. Therefore, China was puzzled by the EU's intention of initiating a panel process. At the present meeting, China was not in a position to accept the establishment of a panel.

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

6. China – Anti-dumping and countervailing duty measures on broiler products from the United States

(a) Request for the establishment of a panel by the United States (WT/DS427/2)

89. The Chairperson drew attention to the communication from the United States contained in document WT/DS427/2, and invited the representative of the United States to speak.

90. The representative of the United States said that on 20 September 2011, the United States had requested consultations with China regarding China's imposition of anti-dumping and countervailing duties on chicken broiler products from the United States. As noted in the US request for consultations, China's dumping and subsidy determinations appeared to be inconsistent with China's obligations under the GATT 1994, the Anti-Dumping Agreement, and the Subsidies Agreement. The United States had attempted to resolve its concerns through dialogue with China both during and after the investigation at issue. Formal WTO consultations had been held on 28 October. Unfortunately these efforts failed to resolve the dispute. Accordingly, the United States was proceeding to request that the DSB establish a dispute settlement panel. As set out in the request for the establishment of a panel, US concerns related to every aspect of China's investigation. It appeared that China had failed to apply the appropriate procedures and legal standards, including in finding injury to China's domestic industry without objectively examining the evidence. It appeared that China had improperly calculated dumping margins and subsidization rates and it appeared that China had failed to adhere to transparency and basic procedural requirements set out in the Anti-Dumping Agreement and the Subsidies Agreement.

91. The United States said that Members may recall that similar issues were involved in DS414, another dispute the United States had brought, which concerned anti-dumping and countervailing duties that China had imposed on a different product (grain-oriented electrical steel or GOES). This raised the concern that, not only may there be profound procedural and substantive deficiencies in these specific investigations, but there may be systemic issues in the way China was applying its trade remedy laws. The United States requested that the DSB establish a panel to examine the matter set out in the US panel request, with standard terms of reference.

92. The representative of China said that her country regretted that the United States had requested the establishment of a panel to examine this dispute. In the investigations concerned, the Chinese Investigating Authority had determined that the imports of the product concerned, originating in the United States, constituted dumping and benefited from the US Government's subsidizations and that the dumped and subsidized imports had caused material injury to China's domestic industry. As a result, the Chinese Investigating Authority had imposed an anti-dumping measure and a countervailing measure. China regretted that the United States had come forward with its request, regardless of the facts and explanations that China had provided in the consultations. In China's view, the impositions of the anti-dumping measure and the countervailing measure were consistent with China's obligations under the WTO rules. China wished to point out that the US request for the establishment of a panel contained claims which had not been listed in the request for consultations. Therefore, pursuant to the DSU, China could not agree to the establishment of a panel at the present meeting.

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

7. European Union – Anti-dumping measures on certain footwear from China

(a) Joint request by China and the European Union for a decision by the DSB (WT/DS405/5)

94. The Chairperson drew attention to the joint communication from China and the European Union contained in document WT/DS405/5 and invited the representative of China to speak.

95. The representative of China said that, as had been stated in the procedural agreement between the EU and China, the two parties, taking into account the current workload of the Appellate Body, had agreed that the 60-day time period in Article 16.4 of the DSU, as applicable to the dispute: "EU – Anti-dumping Measures on Certain Footwear from China" would be extended to 22 February 2012. China believed that a DSB decision for this purpose would provide greater flexibility in scheduling, given the current workload of the Appellate Body. China requested the DSB to adopt the draft decision contained in document WT/DS405/5.

96. The representative of the European Union said that, in order to take into account the current workload of the Appellate Body, China and the EU had concluded a procedural agreement regarding the time period under Article 16.4 of the DSU. With respect to the dispute: "EU – Anti-Dumping Measures on Certain Footwear from China", the EU, therefore, joined China in requesting that the DSB adopt the draft decision contained in document WT/DS405/5.

97. The representative of the United States said that his country thanked China and the EU for their communication to the DSB as well as their statements made at the present meeting. The United States was pleased that the Appellate Body had consulted with the parties regarding its scheduling concerns and that the parties had cooperated to propose the draft decision at the present meeting. As had been noted in several previous DSB meetings, the United States agreed that such a proposal should remain exceptional and made in response to the unusual circumstances in which Members and the Appellate Body found themselves presently. The United States said that it also would like to express its understanding that the procedural agreement between the parties that was

appended to their communication to the DSB did not form any part of the DSB's decision, which was limited to the draft text set out in the parties' communication.

98. The representative of Japan said that his country wished to refer to Japan's statements made at the previous DSB meetings of 21 April, 27 September and 11 November 2011, where the DSB had taken similar decisions regarding the 60-day time-period under Article 16.4 of the DSU. Japan wished to emphasize that: (i) the DSB decision would give greater transparency and legal certainty as to the procedures for adoption and appeals of the Panel Report subject to the decision; and that (ii) the circumstances to be addressed by the DSB decision at the present meeting were exceptional in nature and a decision of this kind must remain as an exception.

99. The DSB took note of the statements.

100. The Chairperson proposed that: "The DSB agree that, upon a request by China or the European Union, the DSB shall, no later than 22 February 2012, adopt the Report of the Panel in the dispute: *European Union – Anti-Dumping Measures on Certain Footwear from China*, contained in document WT/DS405/R, unless (i) the DSB decides by consensus not to do so or (ii) China or the European Union notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU."

101. The DSB so agreed.

102. The representative of China said that, as a result of the adoption by the DSB of the draft decision contained in WT/DS405/5 to extend the time period for the adoption or appeal of the Panel Report, China wished to request that the DSB meeting scheduled for this afternoon to consider the adoption of the Panel Report in document WT/DS405/R be cancelled.

103. The Chairperson said that, in light of China's request, the special DSB meeting scheduled for 19 December 2011 at 3 p.m. to consider the Panel Report in WT/DS405/R for adoption would be cancelled.

104. The DSB took note of the statements.