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20 July 2009

MINUTES OF MEETING

Held in the Centre William Rappard
on 20 July 2009

Chairman: Mr. John Gero (Canada)

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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.80)

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(f) Brazil – Measures affecting imports of retreaded tyres: Status report by Brazil (WT/DS332/19/Add.4)

1. The Chairman recalled that Article 21.6 of the DSU required that unless the DSB decided otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and shall remain on the DSB's Agenda until the issue was resolved. He proposed that the six 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.80)

2. The Chairman drew attention to document WT/DS176/11/Add.80, 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 9 July 2009, in accordance with Article 21.6 of the DSU. As had been noted in that status report, a number of legislative proposals that would implement the DSB's recommendations and rulings in this dispute had been introduced in the current Congress, which had convened in January 2009. The US administration was working with the US Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Communities said that, at the present meeting, the United States was presenting its eightieth status report on its lack of progress in the implementation of the DSB's ruling in this dispute. The EC understood that there were various bills before the House of Representatives and the Senate that could lead to a solution to this long-standing dispute. The EC hoped that the new US authorities would now take steps to finally implement the DSB's ruling.

5. The representative of Cuba said that, like the US statement, the eightieth brief status report before the DSB at the present meeting provided no information and was meaningless to delegations who had been awaiting something concrete for more than seven years. He noted that four years ago, the EC and the United States had reached an Understanding regarding this dispute, which was vague and imprecise, and had been agreed without Cuba's knowledge. That Understanding had imposed no

deadline on the infringer for compliance with its obligations and the EC had undertaken not to seek authorization from the DSB to suspend concessions "at this stage", until the EC "at some future date decided to request the DSB authorization to suspend concessions". In other words, the July 2005 Understanding had removed the pressure exerted on the United States by eliminating reasonable periods of time for compliance, making it easier to postpone indefinitely the implementation of the DSB's rulings and recommendations in this dispute. In the absence of an independent supervisory body in the WTO, which would be responsible for enforcing the recommendations of panels and the Appellate Body, the DSB had to oversee the implementation of rulings. Hence, Members were exercising their rights at each DSB meeting and had called on the United States to comply with those rulings and to repeal Section 211. All Members bore that responsibility and must be concerned about cases such as the one under consideration, in which the compliance was being postponed indefinitely.

6. Like on previous occasions, at the present meeting, Cuba would inform Members of the state of play of legislative proposals related to Section 211. In this regard, he noted that no change had taken place during the first half of 2009. Bills aimed at lifting the blockade against Cuba, and thus repealing Section 211, had been tabled in January, March and May 2009. However, those proposals had not even been discussed, which indicated that this matter was not a priority. Therefore, the United States should explain to other Members the nature of the US administration's work with the US Congress, to which the United States had referred in its status reports and statements. Cuba noted with regret that, in March and June 2009, Bills had been tabled for the purpose of disguising and perpetuating Section 211 by means of cosmetic adjustments, which would allegedly bring the United States into line with the rulings of the Appellate Body. Those bills had been tabled by anti-Cuban members of the US Congress who, in appealing for support, had relied on the idea that "property rights must be respected". Cuba recalled that the HAVANA CLUB trademark had been registered on US territory until 1973 by the company Arechavala, which had then abandoned it and had failed to renew it. The application by CUBAEXPORT to register the trademark had not been opposed by third parties, and it had been granted to that Cuban company in 1976, together with exclusive rights. However, when Bacardí had shown a strong interest in usurping this Cuban trademark of international renown, the US Congress had decided arbitrarily to approve legislation, which had retroactively branded these intangible assets as illegitimate.

7. He pointed out that the US blockade against Cuba, together with Section 211, constituted a unilateral sanction of extraterritorial character, which violated fundamental principles and rights under international law, such as: the principles of national and most-favoured-nation treatment under the WTO Agreements; the independence and sovereign equality of States; the right of peoples to self-determination; non-interference; the right of States to dispose freely of their natural wealth and resources; and the right of nationalization. The United States should not expect any concession or gesture on Cuba's part in exchange for eliminating its arbitrary, illegal and failed policies and legislations, which had been condemned by the international community. To-date, Cuba had respected the registration of US trademarks, despite the fact that most of them were not used in Cuba due to the US blockade, and that they could have lapsed for non-use, in accordance with the legislation in force. Nor had Cuba enacted laws providing for non-recognition of trademarks originating in the United States, despite the illegal US blockade. Cuba urged the parties to this dispute to take immediate action to repeal Section 211, rather than to promote another disguised illegal Act. Cuba hoped that both the EC and the United States would provide details, at the next DSB meeting, on steps, progress and a time-table for compliance, as required under the DSU provisions.

8. The representative of India said that his country thanked the United States for its status report and its statement. As stated on previous occasions, India remained concerned about the continued non-compliance situation in this dispute, which undermined the credibility of the WTO dispute settlement system. India urged the United States to fully and expeditiously implement the DSB's recommendations in this dispute.

9. The representative of the Bolivarian Republic of Venezuela said that her country noted the US status report, and thanked Cuba for its statement with which it wished to be associated. Much had been stated about the protracted non-compliance by the United States with the DSU provisions and the TRIPS Agreement. This case had been under discussion in the DSB for more than seven years. It was regrettable that, in spite of the DSB's condemnation of Section 211 as being contrary to the TRIPS Agreement, the measure remained in force. Like other Members, Venezuela noticed that the US status reports contained no new information. Those reports provided no evidence of any change nor did they indicate when compliance would take place. There was not even a change in drafting style. Thus, Venezuela wondered what the United States sought to demonstrate with such an attitude. In this connection, Venezuela would wish to raise some questions: "Does the United States believe that the dispute settlement mechanism is one of the most important elements in a rules-based multilateral trading system? Does the United States believe that the system established by Members to ensure compliance with the Agreements guaranteed integrity and fairness in the WTO dispute settlement process?". Venezuela had serious systemic concerns since the United States had shown no willingness to meet its obligations. In 2009, two proposals had been introduced in the United States with the aim of perpetuating Section 211. They contained only a few cosmetic amendments, and proposals for the repeal of Section 211 had not even been discussed. Venezuela wondered as to why the DSB had not been informed by the United States about those developments. The main reason why the DSB functioned reasonably well was due to some Members' actions, both through their active participation in the system and their compliance with the DSB's decisions. Venezuela, therefore, urged the United States, once again, to finally take action in order to redress the situation.

10. The representative of Ecuador said that his country thanked the United States for its status report and supported the statement made by Cuba. Once again, Ecuador recalled that Article 21 of the DSU referred to prompt compliance with the DSB's recommendations and rulings, in particular with regard to issues affecting the interests of developing countries. Ecuador noted that the United States closely monitored compliance by all WTO Members with their obligations and had expressed, in different WTO Councils and Committees, its systemic concerns with regard to some of the commitments undertaken. Thus, if the United States wished to promote coherence in the WTO, it should be setting an example. Ecuador, once again, urged the US administration and the US Congress to speed up their compliance with the DSB's recommendations and rulings by repealing Section 211.

11. The representative of Costa Rica said that his country had noted the US status report. As had been pointed out on other occasions, Costa Rica wished to underline the importance of complying with Article 21.1 of the DSU, which referred to essential elements for prompt compliance with the DSB's recommendations and rulings. Costa Rica hoped that, in the near future, the US administration would find a solution with the US Congress to this issue, as indicated in the US status report.

12. The representative of China said that his country thanked the United States for its status report. However, China noted that nothing new had been reported and that there was no indication when the matter would be resolved. As China had emphasized many times, the issue of non-compliance seriously damaged the authority of the TRIPS Agreement and the credibility of the WTO dispute settlement system. China, therefore, supported the statements made the EC and Cuba, and urged the United States to implement the DSB's decision without further delay.

13. The representative of Chile said that, as mentioned at previous meetings and taking note of the new status report presented by the United States, his country wished to express its deep systemic concern with the lack of compliance in this dispute. Chile believed that this situation seriously undermined the multilateral trading system and that the attempts to modify the DSU provisions could fail if disputes were prolonged for years. Chile, once again, urged the United States to take measures to comply with the DSB's recommendations.

14. The representative of Brazil said that his country thanked the United States for its status report in the Section 211 dispute. Brazil joined previous speakers who had expressed systemic concerns about the prolonged non-compliance situation in this dispute. Brazil urged the United States to take steps necessary to bring its measures into conformity with the DSB's recommendations and rulings.

15. The representative of Nicaragua said that her country wished to urge the United States to provide more information on the work of the US administration with the Congress with regard to appropriate legislative measures to resolve this issue, which dated back to January 2003. Nicaragua also thanked Cuba for its statement. Nicaragua regretted that substantive issues had not been discussed and that the US status reports contained the same information. Nicaragua reiterated the need for Members to comply with the DSB's recommendations and rulings and to respect their commitments.

16. The representative of Argentina recalled that Article 21 of the DSU required Members to comply with the DSB's recommendations for the benefit of the system. Paragraph 6 of the above-mentioned Article was fundamental in this regard. Argentina urged both parties, especially the United States, to implement the DSB's recommendations in this dispute.

17. The representative of the United States said that his country had noted the statements and would convey them to its authorities. The United States wished to respond briefly to the statements made by some Members that this dispute raised concerns for the credibility of the dispute settlement system, a point the United States had addressed several times before. As had been previously expressed, the United States did not believe that those concerns were well-founded and it referred Members to those earlier statement. In particular, the United States noted that, if the situation in this dispute were having systemic consequences, one would expect Members to be demonstrating less interest in bringing disputes to the WTO, but the facts did not bear this out. In fact, on the Agenda of the present meeting, there were two requests for the establishment of a panel, including one by a Member expressing concern under this sub-item. The United States recalled that it had reiterated its intention to implement the DSB's recommendations and rulings in its status report and in its statement at the present meeting.

18. The representative of Cuba said that if the DSB functioned well and if there were no systemic concerns, then Members would not wish to modify the system in order to improve the provisions on compliance with the DSB's recommendations and rulings. Many Members had complied with their obligations in many cases, but three or four cases had remained on the DSB's Agenda for a number of years, including Section 211. A Member could not claim that it was interested in complying with the rules, and that other Members should comply with their obligations under multilateral agreements, and then do something else. In other words, Members could not promote policies that they themselves could not comply with.

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.80)

19. The Chairman drew attention to document WT/DS184/15/Add.80, 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 9 July 2009, in accordance with Article 21.6 of the DSU. As of 23 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. Details had been provided in document WT/DS184/15/Add.3. As stated previously,

with respect to the DSB's recommendations and rulings that had not already been addressed by the US authorities by 23 November 2002, 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 status report. Japan noted the statement made by the United States that it 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 tangible progress for the remaining part of the DSB's recommendations and rulings. A 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] 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.55)

23. The Chairman drew attention to document WT/DS160/24/Add.55, 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 9 July 2009, in accordance with Article 21.6 of the DSU. On 13 July 2009, the EC Trade Commissioner and the US Trade Representative had met and announced that they had exchanged ideas on this dispute. The US administration would continue to confer with the EC, 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 Communities said that the United States had again reported non-compliance and that the EC was, once again, disappointed. The EC remained ready to work with the US authorities towards the complete resolution of this case, and hoped that its continuing disappointment could be brought to an end soon.

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 Communities (WT/DS291/37/Add.18 – WT/DS292/31/Add.18 – WT/DS293/31/Add.18)

27. The Chairman drew attention to document WT/DS291/37/Add.18 – WT/DS292/31/Add.18 – WT/DS293/31/Add.18, which contained the status report by the European Communities on progress in the implementation of the DSB's recommendations in the case concerning the EC's measures affecting the approval and marketing of biotech products.

28. The representative of the European Communities said that the EC regulatory procedures on biotech products continued to work as foreseen in the legislation. Twenty-one GMO products had been authorized in the EC since the date of establishment of the Panel. Others were being processed in accordance with applicable law (e.g. the authorization of three GM maize events, MON89034,

[1] Article 3.3 of the DSU.

MON88017 and 59122xNK603, would be discussed at the regulatory Committee that week). The EC expressed its satisfaction with the constructive approach taken by both Canada and Argentina. In the case of Canada, the constructive discussions held thus far had resulted in a mutually agreed solution to this dispute. In light of the benefits obtained from both the EC and Canada from the informal dialogue held thus far, the parties had decided, as part of that solution, to continue such dialogue in a more formal setting. This would allow the two parties to continue discussions on issues of mutual interest in such a sensitive area. The EC was also satisfied with the extension, for the eighth consecutive time, of the reasonable period of time with Argentina until 31 December 2009.

29. The representative of Argentina said that his country thanked the EC for its statement. As stated by the EC, the work done thus far was appreciated, but Argentina still had some questions and would continue to discuss them with the EC in the constructive manner, as it had done so in the past.

30. The representative of Canada said that her country thanked the EC for its statement. Canada was also pleased to note that it had reached a mutually agreed solution with the EC. It was Canada's understanding that the mutually agreed solution had been circulated to Members by the Secretariat on 17 July 2009. Canadian and EC officials had worked well together over the past six years and Canada anticipated that this good relationship would continue through dialogue on biotech market access issues that would be formed under the mutually agreed solution. However, Canada remained concerned about continuing member State actions on the cultivation and marketing of EC-wide approved biotech products, particularly the ban on T25 by Austria that had been found to be in violation of the EC's obligations under the SPS Agreement. Canada also remained very concerned about the slow and uncertain EU approval process for GM products. Canada trusted that those concerns would be part of the dialogue on biotech market access that had been established through the mutually agreed solution.

31. The representative of the United States said that his country thanked the EC for its status report and its statement. As the DSB had been informed, the EC and Canada had announced an end to their bilateral dispute, without prejudice to their positions on whether the EC had implemented the DSB's recommendations and rulings. Members would recall that there were important differences between the dispute brought by Canada and the dispute brought by the United States. Unfortunately, there was no resolution of the dispute between the EC and the United States. First, the dispute brought by Canada addressed only four product-specific instances of undue delay. Each one of those four products was a variety of oilseed rape, used in the production of what was commonly known as Canola oil. In contrast, the dispute brought by the United States was much broader in scope, covering all of the types of products backed up in the EC approval pipeline as of May 2003, when the dispute had been initiated. In particular, the dispute brought by the United States addressed 25 instances of product-specific undue delay, covering a broad range of crops, including soybeans, maize, oilseed rape, cotton, and beets. As a result of continuing delays in the approval of these types of products, the EC backlog of pending applications had increased from about 25 in 2003 to approximately 50. As a consequence of the delays and the resulting backlog, products of agricultural biotechnology widely consumed and grown in the United States and other countries were banned from entry into the EC. Furthermore, the dispute brought by Canada covered only some of the bans adopted by EC member States on biotech products approved by the EC prior to its adoption of a general moratorium in 1999. In contrast, the dispute brought by the United States covered all of the EC member State bans as of May 2003. Most notably, the dispute brought by the United States – but not that brought by Canada – covered Austria's ban on a maize variety known as MON810, which was the only biotech crop currently approved to be grown in the EC. As the United States had noted in past DSB meetings, Austria continued to ban the cultivation of this product, and that ban had now spread to additional EC member States. Those bans had been maintained and adopted despite the fact that the DSB had found that Austria's ban on this product amounted to a breach of the EC's obligations set out in the SPS Agreement. In sum, the broader set of issues raised in the dispute brought by the United States had not been addressed satisfactorily. As had been noted by the United States in the past, as a result of the

EC's actions and the backlog in pending applications, US producers were shut out of what historically had been major US export markets for maize and other important agricultural products.

32. The representative of the European Communities said that the GMO regulatory regime had not been the subject of the original Panel's findings and neither had been its "operation" nor the status of specific applications not dealt with in the original Panel was covered by this Agenda item. In any event, the GMO regulatory regime was working normally. Its functioning should not be rigidly assessed purely quantitatively and in abstract, in terms of number of authorizations per year, since this was dependent on various product and case specific elements and, in particular, on the quality of applications and on the time needed by applicants to answer requests from EFSA on additional scientific information. The speedy authorization process of GM soybean MON89788 (Roundup Ready 2), with a decision adopted only four months after EFSA had issued its opinion, showed that the EC authorization procedures performed satisfactorily once a complete application was filed.

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

(e) European Communities – Regime for the importation, sale and distribution of bananas: Second recourse to Article 21.5 of the DSU by Ecuador: Status report by the European Communities (WT/DS27/96/Add.6)

34. The Chairman drew attention to document WT/DS27/96/Add.6, which contained the status report by the European Communities on progress in the implementation of the DSB's recommendations and rulings in the case concerning the European Communities' regime for the importation, sale and distribution of bananas.

35. The representative of the European Communities said that, as indicated in previous DSB meetings, his delegation stood ready to implement the recommendation made in the Panel Report by means of modifying its bound duty. The EC still hoped that this rebinding could be made in the context of a comprehensive agreement with Latin American suppliers, an agreement that had been sought since the EC initiated GATT Article XXVIII negotiations back in 2004. The EC was fully committed to finding very soon a final solution to this long-standing "banana saga". As indicated in its previous status report, the EC was fully engaged in negotiations with all Latin American supplying countries with the view to concluding promptly such a comprehensive agreement. The EC hoped that those negotiations could soon lead to a satisfactory agreement. The requests made to the EC to simply sign *tel quel* the draft agreement established in the margins of the 2008 July Ministerial Meeting had simply disregarded the fact that the signature of that agreement was subject to the successful adoption of DDA Agriculture modalities. Having said that, the EC was now engaged in negotiations to discuss the possibility of concluding a draft agreement with a number of elements based on the July 2008 text, subject to necessary adjustments to the current situation, and hoped that all banana suppliers would constructively engage in the necessary discussions. This was a unique opportunity to put an end to this long-standing dispute and to bring to economic operators the long-awaited legal certainty.

36. The representative of Ecuador said that his country thanked the EC for its status report, although, once again, the EC had failed to indicate any date by which it expected to comply with the DSB's recommendations and rulings in this dispute. The EC had proposed to the MFN banana suppliers an agreement, which was subject to a series of conditions that had gone far beyond the Bananas dispute, and had made any understanding among the parties more difficult. Those issues had nothing to do with compliance with the DSB's recommendations and rulings in the dispute won by Ecuador and compensation for the EC's enlargement, which was claimed by Ecuador. It was for that reason that Ecuador had been obliged to suspend the negotiations on the multi-party agreement with the EC, in protest at the delay in resolving this dispute. Nevertheless, Ecuador was still open to

finding a settlement in the WTO. However, any agreement would only be acceptable if it maintained the balance achieved in July 2008.

37. The representative of Panama said that, first, his delegation wished to recall previous statements made by Panama on this matter. His country continued to be disappointed about the EC's status reports and its actions in this dispute. Although the EC status report again alleged that progress had been made, the EC's manner of handling the dispute had hampered the achievement of a solution. The conditions for resolving the case had become so complicated that it was difficult to see that any progress had been made. A so-called "agreement" covering a number of difficult products unrelated to bananas, which involved Members that were not MFN banana suppliers, did not meet the objective of compliance under the DSB. This case remained on the DSB's Agenda because the EC's bananas policies had been condemned more often than any other regime in the history of the system, and the EC had still not brought itself into compliance. Those policies were the most flagrant example of recurring non-compliance in the system. In order to ascertain whether there was a sufficient degree of compliance in this case, Panama again requested that the EC explain, without hiding behind conditions not related to the DSB, when exactly the EC expected to rebind its banana tariff, in accordance with Article II of the GATT 1994, and at what level; how it intended to remedy its repeated violation of Article I of the GATT 1994; and what assurances it planned to offer to the affected MFN suppliers that its recurrent violation of Article XIII would not be repeated in the future. Panama urged other Members to join in reminding the EC of its compliance obligations and of the systemic importance of putting an end to the regrettable legacy of non-compliance.

38. The representative of Honduras said that, despite the assurances contained in the EC's status report, his country continued to have doubts as to whether the EC would honour its commitment to comply with the WTO obligations. What the EC's status report did not reveal was that the EC's intention to comply was contingent on a number of onerous conditions. According to the EC, there would be no agreement unless the MFN parties, which had won the disputes, renounced their Doha Round rights with regard to other products of interest to them. Furthermore, there would be no suitable agreement to settle the matter if other WTO bodies, which had no responsibility in the area of dispute settlement, did not validate an "early harvest" under the Doha framework. Indeed, the EC intended to continue in a state of non-compliance until it considered that its broader objectives in the Doha Round had been satisfied. The EC did not share those conditions with the DSB because they ran counter to the principle of prompt compliance with the DSU. Like the other MFN parties, Honduras was interested in reaching a compromise, but not at any cost. If the EC continued to insist on unrestricted conditionality, impracticable procedures and unacceptable commitments, it would only succeed in perpetuating its non-compliance in violation of WTO rules. Whatever its status reports may say, no one should be misled into believing that the EC's irrational compromise framework constituted a step forward in the implementation of the DSB's rulings. As a complainant in the Bananas III dispute, and as a major supplier to the EC market, Honduras continued to reserve its rights in this dispute.

39. The representative of the Dominican Republic, speaking on behalf of the ACP countries, said that in the course of the past six DSB meetings, during which this item had been discussed, the ACP countries had consistently reiterated their respect for the need to implement the DSB's decisions, notwithstanding their continuing disagreement with certain conclusions reached by the Panel and the Appellate Body in this dispute. As at previous meetings, however, the ACP countries felt that it would be useful to recall the conclusions reached by the Panel and the Appellate Body, namely, that the EC's schedule at this time still committed the EC to a TRQ at a tariff of €75/metric tons and an out-of-quota tariff of €680/metric tons. The ACP countries had indicated that they could live with a literal implementation of those conclusions. The EC, however, aimed to put this dispute to rest by changing the structure of its tariff commitments through negotiations with the MFN banana suppliers, thereby achieving compliance and implementation. This process would lead to an overall reduction of applied (and bound) duty rates. The DSB's recommendations in this dispute did not require such an

overall reduction of average tariff; all they required was either a literal implementation or a rearrangement. As stressed before by the ACP countries, a decision to reduce the EC's average banana tariffs would not be rooted in the need for compliance but rather in the DDA context. This should be kept in mind when designing and implementing a solution, which should be based on the right reasoning and should be balanced out in the right context. The ACP countries remained committed to supporting its partners in finding and implementing an effective final solution to the "banana issue".

40. The representative of Colombia said that his country thanked the EC for its status report and noted the EC's intention to bring itself into compliance with the DSB's recommendations and rulings by modifying its scheduled tariff commitments on bananas. Colombia had received a proposal from the EC and had submitted its counter proposal together with other Latin American banana suppliers. Colombia hoped that a balanced solution, consistent with multilateral rules, would be found in as short a time as possible. For that purpose, the wholehearted commitment of the EC was required, so as not to make the negotiations contingent on unnecessary conditions and to display sufficient flexibility.

41. The representative of Costa Rica said that his country wished to be associated with the statements made by Ecuador, Colombia and Honduras and other MFN suppliers. Costa Rica noted the EC's status report and expressed its disappointment about the lack of compliance by the EC with the DSB's recommendations and rulings in this dispute. Costa Rica noted that the conditions imposed by the EC had made it very difficult to seek a solution and demonstrated the lack of will of the EC to seek a settlement. Costa Rica urged the EC to make efforts in order to find a solution to this matter.

42. The representative of the United States said that his country thanked the EC for its status report and its statement. The United Stated had addressed this item many times in the past. The reasonable period of time for compliance in this dispute had expired more than ten years ago, on 1 January 1999. While having taken note of the EC's efforts to reach agreement with interested parties to resolve the dispute, the United States also noted that the commercial impact of the EC's non-compliance over this very long period was undeniably large and damaging to a number of WTO Members. The United States, therefore, called on the EC, once again, to resolve this dispute fully and promptly.

43. The representative of Cameroon said that his country thanked the EC for its status report and wished to be associated with the statement made by the Dominican Republic, on behalf of the ACP countries. Cameroon noted that the issue was complicated and that a solution through legal channels was not satisfactory. In Cameroon's view, a part of any settlement would have to be achieved through negotiations. In order for any solution to be credible, such a solution had to be acceptable to all and should take into account certain important aspects of the Doha Round. Cameroon hoped that a satisfactory solution to this matter would be reached.

44. The representative of Nicaragua said that, for a long time, the EC had stated that it was "ready to comply" with the DSB's recommendations and rulings in the Bananas dispute. However, the DSU provisions did not permit the EC to "be ready" to comply, but required the EC to comply. In this dispute, the compliance should have been achieved more than 10 years ago. Over the past 10 years, while the EC had been saying that it was "ready" to comply, the continued violation of rights had imposed a high price on Latin American countries. The EC should stop talking about its intentions and should take action, in accordance with the DSU provisions. It should comply promptly, taking into account special needs and interests of developing countries. The EC had failed to give any response when it had stated that it would only bring itself into compliance when developing countries promised to pay in other areas or agree to submit to an "early harvest" to be approved by the Membership. According to the DSU provisions, compliance could not be linked to other unrelated matters. The obligation to comply could not be exchanged for other products, on a request and offer

basis, nor could it be set aside by other suppliers who obviously preferred the status quo. Nicaragua reminded the EC that its compliance obligation was not amenable to conditions and that "being ready" to comply was not an option: the EC must comply.

45. The representative of Guatemala said that his country regretted that this item was, once again, on the DSB's Agenda and wished to be associated with the statements made by Ecuador, Panama, Honduras, Colombia, Costa Rica and Nicaragua. Guatemala urged the EC to comply promptly with the DSB's recommendations and rulings in this dispute.

46. The representative of Saint Lucia, speaking also on behalf of Dominica, Grenada and Saint Vincent and the Grenadines, said that the countries in question wished to be associated with the statement made by the Dominican Republic, on behalf of the ACP banana suppliers, as well as with the statement made by Cameroon. The countries in question urged that any solution to this matter must adequately address social, economic and security concerns of the ACP banana suppliers. If those special circumstances of the ACP banana suppliers were not taken into account, the countries in question would suffer severely.

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

(f) Brazil – Measures affecting imports of retreaded tyres: Status report by Brazil (WT/DS332/19/Add.4)

48. The Chairman drew attention to document WT/DS332/19/Add.4, which contained the status report by Brazil on progress in the implementation of the DSB's recommendations and rulings in the case concerning Brazil's measures affecting imports of retreaded tyres.

49. The representative of Brazil said that, on 9 July 2009, his country had provided the DSB with a further status report in this dispute, in accordance with Article 21.6 of the DSU. At the present meeting, Brazil was glad to announce that its Supreme Court had concluded, on 24 June 2009, that the importation of used tyres into Brazil violated core constitutional precepts relating to the rights to health and to a balanced environment. The Supreme Court had also affirmed the legality of Brazil's import ban on used tyres and revoked court decisions that allowed some companies to import used tyres into Brazil. The decision of the Supreme Court reinforced Brazil's comprehensive strategy to deal with the risks to the Brazilian population associated with the generation, transportation and accumulation of used tyres. That decision also constituted a fundamental step towards full compliance in this dispute, which Brazil expected to achieve in the very near future.

50. The representative of the European Communities said that the EC noted Brazil's fifth status report. The EC noted again that Brazil had admitted not having achieved compliance to date, despite the expiry of the reasonable period of time on 17 December 2008. In its fifth status report, Brazil had reported on a recent decision of its Supreme Court that had held regulations banning the importation of used tyres to be constitutionally valid. Brazil acknowledged that, in spite of this decision, it was still not in full compliance with the DSB's recommendations. The EC recalled that the Appellate Body Report had made it clear that Brazil's discriminatory import ban on retreaded tyres was illegal, no matter how few casings or MERCOSUR retreads were actually imported. One way to implement the DSB's recommendations was to lift the import ban on retreaded tyres. This also had the benefit of allowing Brazil to comply with its MERCOSUR obligations, as confirmed by binding arbitral rulings. This would bring Brazil in line with the overwhelming majority of WTO Members that did not ban the importation of retreaded tyres because it was acknowledged that retreaded tyres reduced the quantity of fossil fuel expended in the production of tyres as well as the quantity of end-of-life tyres that had to be burnt. International standards such as those elaborated by the UNECE ensured the safety of, and aimed to facilitate trade in, retreaded tyres. The EC and a great number of other WTO

Members imported retreaded tyres from other countries, including Brazil. The EC continued to express its understanding and support for Brazil's measures aiming to protect its citizens against diseases spread by mosquitoes that bred in abandoned waste tyres. For that purpose, however, there were measures available that would actually make a difference, contrary to the selective targeting of certain imported products that contributed marginally, if at all, to the problem. Throughout the dispute proceedings, Brazil had strongly insisted that it absolutely needed to comply with its MERCOSUR obligations to allow for importation of retreaded tyres. The DSB's recommendations did not require Brazil to change its position, so Brazil was under no WTO obligation to work in the direction of completely stopping the importation of MERCOSUR retread. The EC was deeply concerned about Brazil's ongoing lack of compliance and called again upon Brazil to end, without further delay, its arbitrary and discriminatory practices regarding retreaded tyres, and to do so by removing the import ban.

51. 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 Communities and Japan

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

53. The representative of the European Communities said that, as in many previous DSB meetings, the EC wished to ask the United States when it would effectively stop the transfer of anti-dumping and countervailing duties to its industry and finally put an end to the condemned measure. The EC also 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 in this dispute.

54. The representative of Japan said that the US Customs and Border Protection's publication of "FY 2009 Preliminary CDSOA amounts available"[2] showed that the CDSOA remained operational.[3] Japan, once again, called on the United States to stop illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute once and for all. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report in this dispute "until the issue is resolved". Japan reserved all its rights under the DSU until the United States was in full compliance.

55. The representative of Brazil said that his delegation thanked the EC and Japan for placing this item on the DSB's Agenda. Brazil remained concerned with trade-distorting effects of continuing disbursements under the Byrd Amendment. Full compliance in this dispute would only be achieved when the United States completely ceased to make disbursements under the WTO-inconsistent provisions of the Byrd Amendment.

56. The representative of China said that his country thanked the EC and Japan for, once again, raising this item at the DSB meeting. China shared the concerns of the previous speakers and joined them in urging the United States to comply fully with the DSB's rulings.

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[2] See US Customs and Border Protection's website at:
http://www.cbp.gov/linkhandler/cgov/trade/priority_trade/add_cvd/cont_dump/fy09_prelim.ctt/fy09_prelim.pdf

[3] In the words of the US Customs, "the distribution process will continue for an undetermined period". 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.xm1

57. The representative of Canada said that her country agreed with the EC and Japan that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

58. The representative of Thailand said that his country thanked the EC and Japan for bringing this item before the DSB once again. Thailand continued to urge the United States to cease disbursements under the Continued Dumping and Subsidy Offset Act, repeal the Byrd Amendment with immediate practical effect and resume providing status reports until such actions were taken and this matter was completely resolved.

59. The representative of India said that his country thanked the EC and Japan for bringing this issue before the DSB once again. In India's view, the CDSOA still allowed the disbursements by the US administration to its domestic industry. Members continued to raise concerns about this situation. India urged the United States to immediately cease its WTO-inconsistent disbursements, and fully comply with the DSB's recommendations and rulings.

60. The representative of the United States said that, as his country had already explained at many 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 those disputes. The United States recalled, furthermore, that Members, including the EC 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. The United States, therefore, still did not understand the purpose for which the EC and Japan had inscribed the item on the Agenda. With respect to comments regarding further status reports in this matter, the United States failed to see what purpose would be served by further submission of status reports repeating the progress it had made in the implementation of the DSB's recommendations and rulings.

61. The DSB took note of the statements.

3. United States – Certain measures affecting imports of poultry from China

(a) Request for the establishment of a panel by China (WT/DS392/2)

62. The Chairman drew attention to the communication from China contained in document WT/DS392/2, and invited the representative of China to speak.

63. The representative of China said that, on 11 March 2009, the US President had signed the US Omnibus Appropriation Act of 2009 into law. That Act included a provision of Section 727 providing that "none of the funds made available in this Act may be used to establish or implement a rule allowing poultry products to be imported into the United States from the People's Republic of China". This had resulted in a complete ban on the import of poultry products from China into the United States. While violating various WTO rules, the measure had severely undermined the stable development of Sino-US trade on poultry products, and damaged the lawful rights and interests of China's poultry industry. This constituted a typical discriminatory protectionist measure in international trade. China reiterated that, since at least 2007, the United States had entirely closed the door to China's poultry products through a number of annual Omnibus Appropriation Acts and a series of related measures. Those measures were in serious violation of the GATT 1994, the Agreement on Agriculture and other related WTO rules. Although China had repeatedly expressed its deep concerns to the United States, both bilaterally and multilaterally, this matter had not been solved thus far. For that reason, on 17 April 2009, China had filed its consultation request vis-à-vis the United States, in accordance with the DSU and related WTO Agreements. The consultations had

been held on 15 May 2009, but had failed to settle the dispute. Therefore, China, on 23 June 2009, had requested the DSB to establish a panel to examine certain measures taken by the United States affecting imports of poultry products from China. China noted and pointed out that the US Congress was currently in the process of formulating a new agriculture appropriation Act, and certain Congress members were still insisting on inserting new discriminatory provisions to restrict imports of poultry products from China. China had grave concerns over those activities, which would further forestall the normal business of Sino-US trade. China believed that the US measures were inconsistent with its obligations under the WTO Agreements, and had elaborated China's claims and legal basis in document WT/DS392/2, which had been circulated to all Members. Since consultations between China and the United States had not been able to resolve the dispute, China, therefore, requested that a panel, with standard terms of reference, be established by the DSB at the present meeting.

64. The representative of the United States said that his country was disappointed that China had chosen to move forward with a request for panel establishment at the present meeting. The United States placed great importance on ensuring that its measures relating to food safety were based on science and in compliance with US obligations under the WTO Agreement. Consistently with the SPS Agreement, the United States permitted imports of poultry products from all countries for which a determination of equivalence had been made. In this dispute, China challenged the way in which the United States was responding to China's request for a determination of equivalence. In this regard, the relevant US authorities were working together to ensure that the US response to China's request for a determination of equivalence was based on an objective, science-based consideration of all the relevant evidence in a way that was fully consistent with the obligations in the covered agreements. Contrary to what China appeared to believe, nothing in the measure identified by China prevented the US authorities from continuing to work together to reach an objective, science-based response to China's equivalence request that both safeguarded human life and health and was consistent with the US obligations under the WTO Agreement. Therefore, the United States considered that there was no basis for the claims made by China in its panel request. The United States also had a number of concerns with the way in which China had framed its panel request. For example, the request appeared both to include measures that were not consulted upon and to make claims under a covered agreement pursuant to which consultations had neither been requested nor held. In any event, the measure identified by China would, by its terms, expire at the end of the current US fiscal year on 30 September 2009. An open, public debate was underway in the US Congress as to what conditions, if any, should be attached to the use of appropriated funds in the next fiscal year with respect to the import of poultry products from China. He concluded by saying that, for all of the preceding reasons, the United States was not in a position to agree to the establishment of a panel at the present time.

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

4. Korea – Measures affecting the importation of bovine meat and meat products from Canada

(a) Request for the establishment of a panel by Canada (WT/DS391/3)

66. The Chairman drew attention to the communication from Canada contained in document WT/DS391/3, and invited the representative of Canada to speak.

67. The representative of Canada said that, as one of the world’s largest exporters of beef, her country's trade interests had been, and continued to be, significantly impaired by Korea's measures affecting the importation of bovine meat and meat products from Canada. Korea maintained a ban on the importation of bovine meat and meat products from Canada allegedly to protect against risks arising from bovine spongiform encephalopathy (BSE). Korea had also adopted measures that placed unjustified restrictions on the resumption of imports of bovine meat and meat products from Canada.

Over the years, Canada had consistently raised its concerns with regard to Korea's measures affecting the import of Canadian beef. This had been done through letters, technical exchanges, meetings between government officials and at meetings of the WTO Committee on Sanitary and Phytosanitary Measures. In addition, Canada's international trade and agriculture ministers had discussed their concerns with their Korean counterparts on various occasions. For more than six years now, Canada had been trying to restore access for Canadian beef to Korea based on science. During this time, Canada had provided Korea with extensive scientific information, far more than what was required to justify full resumption of trade. In fact, since 2003, Canada had sent Korea thousands of pages of documentation. There had been a total of 13 technical discussions with Korea, and Korean officials had come to Canada on several occasions to see for themselves the effectiveness of Canada's BSE control measures. Canada also noted that in May 2007, the World Organization for Animal Health (OIE) had recognized Canada as a controlled risk country for BSE. That categorization was the result of a comprehensive evaluation by the OIE's panel of BSE experts of Canada's BSE control measures. The OIE reconfirmed Canada's controlled risk status in 2008 and 2009. For countries in this risk category, OIE guidelines allowed for the safe trade in all beef under conditions that Canada met. Canada was disappointed that despite those significant efforts on its part, Korea maintained an import ban without justification. Canada also regretted that, despite its numerous attempts, Korea had been unwilling to resolve this issue based on science. As outlined in the letter addressed to the Chairman of the DSB dated 9 July 2009, Canada considered that Korea's measures were inconsistent with Korea's WTO obligations under the SPS Agreement and the GATT 1994. More specifically, it was Canada's view that these measures were not based on the relevant international standards, guidelines or recommendations, and were not based on scientific principles and were maintained without sufficient scientific evidence. In addition, Canada considered that Korea's measures were more trade restrictive than necessary, and were discriminatory and represented a disguised restriction on international trade. On 9 April 2009, Canada had requested consultations with Korea with respect to these measures. Consultations had been held in Geneva on 7 May 2009. Regrettably, the consultations had not led to a resolution of the dispute. Consequently, Canada was now requesting that a panel be established to examine this matter.

68. The representative of Korea said that his country was deeply disappointed that Canada had chosen to move forward with a request for panel establishment at this juncture, despite all the vigorous efforts that Korea had made to resolve the dispute in a mutually satisfactory manner. The dispute at hand related to BSE (Bovine Spongiform Encephalopathy), which was infectious to both human and cattle, and for which no effective treatment had yet been developed. Thus, once BSE agents entered a new territory, they could cause devastating damage not only to animals, but also to human life and health. While Korea had never detected BSE within its territory, 16 BSE outbreaks had been reported in Canada, including two recently, in November 2008 and May 2009. Under those circumstances, SPS measures taken by Korea were indispensable to prevent the introduction of BSE agents into its territory and to prevent their adverse effects on the life and health of its people and animals. Korea had continuously made its efforts to review BSE-related conditions in Canada and to maintain the SPS measure consistent with relevant international laws, including the SPS Agreement. As part of such efforts, Korea had conducted on-site evaluations of potential exporters' sanitary conditions in Canada in June 2007 and November 2008. Likewise, Korea and Canada had held technical consultations twice in November 2007 and November 2008. Despite those ongoing efforts, Canada had requested consultations pursuant to the DSU provisions on 9 April 2009. At the consultation meeting held on 7 May 2009, Korea had further provided explanations on various aspects of its measures and the legal and factual bases thereof. But, instead of pursuing continued bilateral efforts to reach a satisfactory solution to the dispute, Canada had decided to prematurely resort to the panel procedures. Korea strongly urged Canada to reconsider its decision to proceed to the panel procedures and to engage in thorough bilateral consultations to reach a mutually satisfactory solution. In this regard, Korea was not in a position to accept the establishment of a panel at the present time.

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

5. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/408)

70. The Chairman drew attention to document WT/DSB/W/408, which contained additional names proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/408.

71. The DSB so agreed.