



Dispute Settlement Body  
17 December 2014

## MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD  
ON 17 DECEMBER 2014

*Chairman: Mr. Fernando De Mateo (Mexico)*

### Table of Contents

<b>1 SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB.....</b>	<b>2</b>
A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States.....	2
B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States .....	6
C. United States – Section 110(5) of the US Copyright Act: Status report by the United States .....	6
D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union .....	6
E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States .....	7
<b>2 UNITED STATES – CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB .....</b>	<b>8</b>
A. Statements by the European Union and Japan .....	8
<b>3 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES .....</b>	<b>9</b>
A. Statement by the United States .....	9
<b>4 THAILAND - CUSTOMS AND FISCAL MEASURES ON CIGARETTES FROM THE PHILIPPINES .....</b>	<b>10</b>
A. Statement by the Philippines .....	10
<b>5 BRAZIL – CERTAIN MEASURES CONCERNING TAXATION AND CHARGES .....</b>	<b>11</b>
A. Request for the establishment of a panel by the European Union.....	11
<b>6 PERU – ADDITIONAL DUTY ON IMPORTS OF CERTAIN AGRICULTURAL PRODUCTS .....</b>	<b>12</b>
A. Joint request by Peru and Guatemala for a decision by the DSB .....	12
<b>7 PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS.....</b>	<b>13</b>

## 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.144)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.144)

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.119)

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.82)

E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.30)

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

### A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.144)

1.2. The Chairman drew attention to document WT/DS176/11/Add.144, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 4 December 2014, in accordance with Article 21.6 of the DSU. Several bills had been introduced in the current Congress in relation to the DSB's recommendations and rulings in this dispute, some of which would repeal Section 211 while others would modify it. In prior meetings of the DSB, the United States had described the status of each of these bills. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings and resolve this matter with the European Union.

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

1.5. The representative of Cuba said that the fact that this matter appeared as the first item on the DSB's Agenda indicated that this dispute had been kept under the DSB's surveillance, pursuant to Article 21 of the DSU, for a long time. Cuba noted that the United States had submitted a total of 144 status reports, and yet there had been no resolution of this dispute. This long-standing dispute was one of the longest unresolved disputes in the history of the WTO dispute settlement system. In Cuba's view, powerful political and economic interests were involved in this dispute. The United States was not only violating WTO rules, it was in fact violating the rules recognized by its own Patent and Trademark Office. Bacardi's fight for the Cuban rum trademark had intensified after the success of the Havana Club Holdings (HCH) company, which had been founded in 1993

as a joint venture between the French company Pernod Ricard and Cuba Ron S.A., and whose sales had doubled in the first four years. In 1996, the Franco-Cuban company HCH had won a lawsuit against Bacardi-Martini in a New York court for infringement of the Havana Club trademark that had been duly registered by Cuba in the United States and had been approved by the US Patent and Trademark Office in 1976. In response, Bacardi had continued its plan and had succeeded, among many other things, in getting the US Congress to pass a new law, with retroactive effect, to cancel the registration of the trademark by the Cuban company CUBAEXPORT in 1976. Accordingly, Section 211 had been adopted as an amendment to the Omnibus Appropriations Act of 1998. As the DSB had found in February 2002, the unlawful Section 211 established provisions that were inconsistent with the TRIPS Agreement and with the Paris Convention for the Protection of Industrial Property. It reflected the policy of anti-Cuban hostility pursued by the United States, and was one of the many regulations underpinning the inhuman economic, commercial and financial embargo against Cuba. As an expression of the US interventionist stance, it affected not only the interests of Cuban companies, but also the interests of other Members, for example the French company Pernod Ricard. In a multilateral organization such as the WTO, Cuba found it unacceptable that the US foreign policy interests in relation to Cuba should prevail over its WTO obligations under a system of rules that other Members strived to respect. There was no excuse for this illegal conduct and Cuba would continue to denounce the US violations, which reflected the US customary and proven disregard for the rules and principles of international law established by the international community. Cuba reiterated its conviction that the only satisfactory solution to this case was the full repeal of Section 211.

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

1.7. The representative of the Plurinational State of Bolivia said that, as his country had noted for the past 12 years, the US status reports did not contain any information on progress in this dispute. In that regard, Bolivia reiterated its concern about the systemic implications of the US failure to comply with the DSB's rulings and the lack of political will to resolve this dispute. Non-compliance in this dispute undermined the credibility and the integrity of the multilateral trading system and affected the economic interests of a developing-country Member. Bolivia, once again, called upon the United States to fully comply with the DSB's rulings and to remove the restrictions imposed by Section 211. Bolivia supported the statement made by Cuba at the present meeting.

1.8. The representative of China said that his country thanked the United States for its status report and the statement made at the present meeting. China noted that the United States reported no substantial progress at the present meeting. The prolonged situation of non-compliance was highly incompatible with the principle of prompt implementation required under the DSU provision, in particular since the interests of a developing-country Member were affected. China urged the United States to implement the DSB's rulings and recommendations without any further delay.

1.9. The representative of Argentina said that his country thanked the United States for its status report and its statement made at the present meeting. Argentina, once again, noted that the United States had not provided any substantive information and only recalled the existence of bills before the US Congress. As Argentina had stated on previous occasions, the lack of progress was incompatible with the principle of effective and prompt implementation of the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were concerned. In that regard, Argentina supported Cuba and the previous speakers who had urged the parties to the dispute, in particular the United States, to take the necessary steps to resolve this matter.

1.10. The representative of Brazil said that his country thanked the United States for its status report concerning the surveillance of implementation in this dispute, which had been on the DSB's

Agenda for many years. Brazil noted that the US status report did not contain any new information on progress in this matter. Brazil, once again, shared the concerns expressed by Cuba and urged the United States to take concrete steps towards meaningful compliance. Such compliance would certainly strengthen the multilateral rules.

1.11. The representative of Mexico said that, as it had done in the past, his country urged the parties to this dispute to take the necessary measures to comply with the DSB's recommendations and rulings, in accordance with Article 21.1 and Article 21.6 of the DSU. Article 21.6 of the DSU stipulated that the Member concerned shall provide a status report, in writing, of its progress in the implementation of the DSB's recommendations or rulings. In Mexico's view, the status report should provide more detailed information regarding progress.

1.12. The representative of the Bolivarian Republic of Venezuela said that his country supported the statement made by Cuba. Venezuela, like many other delegations, noted with concern that the US status report did not provide any information on progress regarding compliance with the DSB's recommendations and rulings. Venezuela underscored its systemic concern about the prolonged situation of non-compliance by the United States. Such non-compliance affected the interests of a developing-country Member and had a negative effect on the multilateral trading system as well as the WTO and its ability to settle disputes. Venezuela noted that the dispute settlement system was central in providing security and predictability to the multilateral trading system. Venezuela was, therefore, concerned that the dispute settlement system was being negatively affected by the situation of non-compliance. Venezuela supported Cuba, denounced the US conduct and called upon the United States to repeal Section 211 so as to end this flagrant violation of the DSB's recommendations and rulings.

1.13. The representative of Ecuador said that his country supported the statement made by Cuba. Ecuador stressed, once again, that Article 21 of the DSU specifically referred to prompt compliance with the DSB's rulings and recommendations, in particular since the interests of a developing-country Member were affected. Ecuador hoped that the United States would step up its efforts and implement the DSB's recommendations and rulings. Ecuador noted that more than eight years had passed without implementation of the DSB's rulings and recommendations in this dispute. In Ecuador's view, this dispute highlighted some of the shortcomings of the dispute settlement system.

1.14. The representative of India said that his country noted the US status report and its statement made at the present meeting. India recalled the introductory remarks made by the Chairman of the DSB at its meeting on 26 March 2013. The Chairman had rightly opined that the habit of submitting status reports that generally provided very limited information about specific efforts under way or undertaken to achieve compliance with particular DSB recommendations or rulings belied the considerable importance of the WTO dispute settlement mechanism, its surveillance function, and of the requirement for Members to submit status reports informing the Membership of progress made in the implementation of the DSB's recommendations or rulings. India shared and renewed its systemic concerns about the continuation of non-compliance as this undermined the confidence the Members reposed in a rules-based system, especially in the context of a developing-country Member seeking compliance. India urged the United States to report compliance to the DSB.

1.15. The representative of El Salvador said that her country thanked the United States for its status report and Cuba for its update on this dispute. El Salvador was concerned about the lack of compliance in this dispute, which affected the interests of a country with a small, vulnerable economy. Non-compliance in this dispute also undermined the multilateral trading system. El Salvador urged the parties in this dispute to find a solution so as to promptly comply with the DSB's recommendations and rulings.

1.16. The representative of Nicaragua said that his country thanked the United States for its status report. As it had done previously on many occasions, Nicaragua noted that there was no progress or will to promptly resolve this dispute. In that regard, Nicaragua called upon the United States to comply with the DSB's recommendations and rulings in this dispute. Nicaragua, once again, supported the concerns expressed by Cuba in its statement made at the present meeting. Non-compliance with the DSB's recommendations and rulings undermined the credibility of the multilateral trading system and affected the economic interests of a small, vulnerable country such as Cuba.

1.17. The representative of Trinidad and Tobago said that his country thanked Cuba for its update and the United States for its status report under this Agenda item. Trinidad and Tobago, once again, regretted that there had been no positive movement towards prompt compliance with the DSB's rulings and recommendations in this dispute concerning Section 211. Trinidad and Tobago noted that Article 21.1 of the DSU called for prompt compliance with the DSB's rulings and recommendations. Prompt compliance was an essential requirement in the DSU, as it built confidence in the multilateral trading system and ensured the effective resolution of disputes to the benefit of all Members. Non-compliance with the DSB's rulings and recommendations not only affected small developing countries such as Cuba and Trinidad and Tobago, but it also adversely impacted all WTO Members. In that regard, Trinidad and Tobago supported the call for prompt compliance with the DSB's rulings and recommendations in order to preserve the integrity of the WTO system.

1.18. The representative of Viet Nam said that her country thanked the United States for its status report and its statement made at the present meeting. As it had done at previous regular DSB meetings, Viet Nam urged the United States to implement the DSB's recommendations and rulings.

1.19. The representative of the Russian Federation said that her country regretted that it had to, once again, express its concern about the lack of progress in this long-lasting dispute. Russia noted that this dispute was an example of non-compliance with, and disregard of, the DSB's recommendations and rulings. As such, it attracted the attention of many Members. Russia believed that due and timely implementation of the DSB's rulings and recommendations by all Members was essential for maintaining mutual trust and credibility within the entire WTO system. Russia urged the parties to this dispute to address the outstanding issues and to resolve this dispute as soon as possible.

1.20. The representative of the United States said that, in response to the comments about systemic concerns about the dispute settlement system, the facts did not support Members' assertions or justify such systemic concerns. The record was clear that the United States had come into compliance, fully and promptly, in the vast majority of its disputes. As for the remaining few instances where its efforts to do so had not yet been entirely successful, the United States had been working actively towards resolving such matters. That certain Members were wilfully ignoring the facts was well illustrated by the announcements at a recent DSB meeting that the United States, working together with other parties, had successfully resolved both the "US - Upland Cotton" and "US - Clove Cigarettes" disputes. Accordingly, contrary to the statements just heard, the record showed that the United States had a strong record of support for the WTO and its dispute settlement system, including through implementation actions and working with other Members to resolve disputes. The United States also regretted that some Members had suggested that the US Administration was not providing sufficient details of US implementation efforts. The United States had, in its status report and at past DSB meetings, cited the various legislative proposals that had been introduced by Members of the current US Congress. Further, the US Administration continued to work with Congress to implement the recommendations and rulings in this dispute. As it had explained at previous DSB meetings, it was not always possible or appropriate to recount internal governmental conversations or efforts to pass legislation. The fact that internal deliberations may not be appropriate for public discussion should not be misconstrued as meaning that no steps were being taken.

1.21. The representative of Cuba said that, once again, her country had noted the same statement explaining and trying to convince Members that the United States had come into compliance with the vast majority of the DSB's recommendations and rulings. Cuba, once again, wished to reiterate that in a multilateral organization, such as the WTO, the aim was not to comply in the majority or the vast majority of the DSB's recommendations and rulings, but with all of them. Cuba found it disrespectful and unacceptable that a dispute of this magnitude had been under discussion in the DSB for the past 12 years. Cuba recalled that Article 21.6 of the DSU provided that status reports should be submitted in writing and should reflect progress made in the implementation of the DSB's recommendations or rulings. In that regard, the United States was required, officially and in a transparent manner, to inform the DSB of the reality of these facts and to update the DSB on the status of this dispute. The legislative bills which the United States mentioned in relation to Section 211 had been at a stalemate for all these years. Various projects and bills had been submitted regarding Section 211 but none had moved forward. Various committees had received these bills, but there had been no debate or vote. This suggested that it

was not a matter of priority for the US Congress or for the US executive branch. In Cuba's view, the only real obstacle towards the US compliance with the DSB's rulings in relation to Section 211 was the lack of political will, which was in line with the hostile policy of economic and financial embargo maintained for many years against Cuba.

1.22. 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.144)**

1.23. The Chairman drew attention to document WT/DS184/15/Add.144, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.24. The representative of the United States said that his country had provided a status report in this dispute on 4 December 2014, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.25. The representative of Japan said that his country thanked the United States for its statement and the status report submitted on 4 December 2014. Japan, once again, requested that this issue be resolved as soon as possible.

1.26. 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.119)**

1.27. The Chairman drew attention to document WT/DS160/24/Add.119, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.28. The representative of the United States said that his country had provided a status report in this dispute on 4 December 2014, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

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

1.30. 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.82)**

1.31. The Chairman drew attention to document WT/DS291/37/Add.82, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

1.32. The representative of the European Union said that, in recent DSB meetings, the EU had already reported on authorisation decisions and other actions towards approval decisions taken up to November 2014. The Appeal Committee of 28 November 2014 had voted on draft decisions for

authorisations of two cotton products<sup>1</sup>, and one oilseed rape<sup>2</sup> for food and feed uses. The Committee had rendered no opinion on either of the draft decisions. The EU Standing Committee on plants, animals, food and feed of 9 December 2014 had voted on a draft decision for authorisation of soybean<sup>3</sup> for food and feed use. The Committee had rendered no opinion. The European Commission would present this draft decision to the Appeal Committee in early February 2015. As stated many times before, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings. The GMO regulatory regime was working normally as evidenced by the approval decisions and other actions towards approval decisions just mentioned. The details on the relevant products were set out in the EU's written statement.

1.33. 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. The United States noted with concern that the EU had failed to approve a single new biotech product in all of 2014. As a result of this failure, the EU measures affecting the approval of biotech products were seriously disrupting trade in agricultural products. The United States recalled that under the EU system, biotech approvals should be made by EU regulatory committees, consisting of EU member State representatives. Under the EU system, the regulatory committees should act in accordance with the scientific recommendations of the EU's scientific authority (the European Food Safety Authority, or EFSA). When it came to biotech approvals, however, the EU regulatory committees consistently failed to take any action, and left approval decisions to the political level of the European Commission. In 2014, the EU College of Commissioners had failed to act with respect to even a single pending application. The United States noted with further concern that the new Commission established on 1 November 2014, was signalling that it may engage in further delays, under the guise of yet another re-examination of the EU biotech approval process. These circumstances indicated that the EU authorization process was based not on the scientific merits of each application, but instead on political considerations. The United States urged the EU to take steps to address these matters.

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

#### **E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.30)**

1.35. The Chairman drew attention to document WT/DS404/11/Add.30, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain shrimp from Viet Nam.

1.36. The representative of the United States said that his country had provided a status report in this dispute on 4 December 2014, in accordance with Article 21.6 of the DSU. As the United States had noted at past DSB meetings, in February 2012 the US Department of Commerce had modified its procedures in a manner that addressed certain findings in this dispute. The United States would continue to consult with interested parties as it worked to address the other recommendations and rulings of the DSB.

1.37. The representative of Viet Nam said that her country thanked the United States for its status report and the statement made at the present meeting. Viet Nam noted that the reasonable period of time, mutually agreed by the parties, had expired several months ago. However, the US Administration had not taken any action to recalculate the anti-dumping duty for the 2nd and the 3rd administrative review, which was inconsistent with the DSB's recommendation. Viet Nam, once again, requested the United States to fully comply without any further delay to ensure the multilateral trading system's discipline and for the benefit of Viet Nam as a developing-country Member. Viet Nam reserved the right to pursue any legal proceeding under the WTO in order to protect the legitimate benefits of Vietnamese enterprises and farmers who were being affected by the US lack of compliance with the DSB's recommendations and rulings.

1.38. The representative of Cuba said that her country, once again, noted that the recent status report submitted by the United States in this dispute did not provide any information on progress

<sup>1</sup> MON88913 cotton, LLcotton25xGHB614 cotton.

<sup>2</sup> MON88302 oilseed rape.

<sup>3</sup> MON87769 soybean.

towards achieving compliance in this dispute. The DSB had ruled on this matter in September 2011, but there had been no information regarding a potential solution to this dispute, which affected Viet Nam's economy. Cuba, therefore, called upon the United States to take effective measures in order to resolve this dispute and remove the adverse effects that Viet Nam, a developing-country Member, had to sustain.

1.39. The representative of the Bolivarian Republic of Venezuela said that his country supported the statements made by Cuba and Viet Nam. Venezuela attached great importance to prompt and effective compliance with the DSB's recommendations and rulings. Venezuela called upon the United States to bring a definitive end to this dispute by taking the necessary measures.

1.40. The representative of Nicaragua said that his country supported the statement made by Viet Nam and the statements made by Cuba and Venezuela in support of Viet Nam. Nicaragua urged the United States to implement the necessary measures in line with the DSB's recommendations and rulings.

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

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

### **A. Statements by the European Union and Japan**

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

2.2. The representative of the European Union said that, once again, the EU requested that the United States stop transferring anti-dumping and countervailing duties to the US industry. These actions were clearly incompatible with the DSB's recommendations and rulings. The EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit status reports in this dispute.

2.3. The representative of Japan said that since the distributions under the CDSOA had been continuing, Japan, once again, urged the United States to stop the illegal distributions in order to resolve this long standing dispute. As it had stated in previous DSB meetings, Japan was of the view that the United States was under obligation to provide the DSB with a status report in this dispute in accordance with Article 21.6 of the DSU.

2.4. The representative of Canada said that her country thanked the EU and Japan for including this item on the Agenda of the DSB meeting. Canada shared their point of view that the Byrd Amendment must still be submitted before the DSB's surveillance until the United States ceased to apply it.

2.5. The representative of Brazil said that, as the party to this dispute, his country thanked the EU and Japan for keeping this item on the DSB's Agenda. As it had expressed in previous DSB meetings, Brazil was of the view that the United States was under an obligation to discontinue any disbursements made pursuant to the Byrd Amendment, even if related to investigations initiated before the repeal of the Act. Only then would compliance be achieved and the United States could be released from its obligation to submit status reports in this dispute.

2.6. The representative of India said that his country shared the concerns of the EU and Japan. The WTO-inconsistent disbursements continued unabated to the US domestic industry. The latest data available<sup>4</sup> in the CDSOA Annual Report of the US Customs and Border Protection for the fiscal year 2013 indicated that about US\$60 million were disbursed to the US domestic industry. India was of the view that this item should continue to remain on the DSB's Agenda until such time as full compliance was achieved in this dispute.

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<sup>4</sup> See:

[http://www.cbp.gov/sites/default/files/documents/2013%20Annual%20Disbursement%20Report\\_updated.pdf](http://www.cbp.gov/sites/default/files/documents/2013%20Annual%20Disbursement%20Report_updated.pdf)



2.7. The representative of the United States said that, as his country had noted at previous DSB meetings, the Deficit Reduction Act, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000, was enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that the EU, Japan, and other Members had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, which was over seven years ago. The United States, therefore, did not understand the purpose for which the EU and Japan had inscribed this item on the Agenda of the present meeting. With respect to the comments regarding further status reports in this matter, as it had already explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports which would repeat, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Indeed, as these very WTO Members had demonstrated repeatedly when they were responding parties in disputes, there was no obligation under the DSU to provide further status reports once a Member announced that it had implemented those DSB recommendations and rulings, regardless of whether the complaining party disagreed about compliance.

2.8. The DSB took note of the statements.

### **3 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES**

#### **A. Statement by the United States**

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

3.2. The representative of the United States said that his country continued to have serious concerns that China had failed to bring its measures into conformity with its WTO obligations. The situation unfortunately had not changed since the United States had first begun raising this matter in the DSB and despite repeated interactions between the United States and China. China continued to maintain a ban on foreign suppliers of electronic payment services ("EPS") by imposing a licensing requirement on them, while at the same time providing no procedures to obtain that license. As a result, an enterprise located in China remained the only EPS supplier that could operate in China's domestic market. To implement fully its WTO obligations, China must adopt the regulations necessary for allowing foreign EPS suppliers to operate in China. The United States took note of the recent statement by China's State Council that China would open the EPS market to qualified suppliers. The United States looked forward to the prompt issuance of those specific regulations to implement the State Council's statement in a manner that was consistent with the WTO's findings.

3.3. The representative of China said that his country regretted that the United States had, once again, brought this matter before the DSB. China referred to its statements made under this Agenda item at previous DSB meetings. China had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute. China had also further explained that the actions being sought by the United States were beyond the scope of China's compliance obligations and thus it was not appropriate to discuss this matter at the present meeting. China hoped that the United States would reconsider the systemic implications of its position.

3.4. The representative of the United States said that, as his country had previously stated, the United States strongly disagreed with China's statement. The DSB's findings clearly stated that "China has made a commitment on market access concerning mode 3"<sup>5</sup> and that "China has made a commitment on national treatment concerning mode 3"<sup>6</sup>. Indeed, China itself had noted that it was working on regulations that would provide access to foreign EPS suppliers. The United States urged China to move forward with these regulations and to allow the licensing of foreign EPS suppliers in China, consistent with China's WTO obligations.

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<sup>5</sup> "China – Certain Measures Affecting Electronic Payment Services", WT/DS413/R (adopted on 31 August 2012), at paragraph 7.575.

<sup>6</sup> Idem, at paragraph 7.678.

3.5. The representative of China said that his country noted that the United States had mentioned China's State Council's decision to further open and regulate the bankcard clearing market, raising the level of opening-up in the financial sector. However, as stated at previous meetings, China wished to reiterate that the regulation mentioned by the United States was not relevant to the implementation of the DSB's recommendations and rulings in this dispute. China urged the United States to read the Panel report carefully, in particular the recommendations and rulings. China noted that the DSB meeting was not the appropriate forum to discuss this regulation.

3.6. The DSB took note of the statements.

#### **4 THAILAND - CUSTOMS AND FISCAL MEASURES ON CIGARETTES FROM THE PHILIPPINES**

##### **A. Statement by the Philippines**

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

4.2. The representative of the Philippines said that the end of the year was usually the time where Members looked back to assess the achievements and highlights of the year. Unfortunately, when the Philippines looked back over the year to take stock of what had been achieved in this dispute, the picture was bleak. The Thai Attorney General's decision to prosecute an importer of Philippine cigarettes for alleged under-declaration of customs value remained, threatening the imprisonment of 11 accused current and former employees and the existence of the importer itself. As the Philippines had pointed out before the DSB, the WTO Panel had ruled that Thailand enjoyed no legitimate grounds to reject the customs values that Thailand now sought to criminalize. In addition, Thai Customs' Board of Appeals had explicitly accepted the customs values in a separate ruling heralded by Thailand itself as a measure taken to comply. Under these circumstances, to maintain the Prosecution Order, and to refuse to provide any information to the Philippines about the matter, not only undermined Thailand's declared compliance measures, but derided the very objective of dispute settlement. The picture did not look any better when considering other outstanding issues. At the previous DSB meeting, the Philippines had spoken at some length about the Board of Appeal's ruling on the valuation of 210 entries from Indonesia that had been covered by the DSB's rulings and recommendations in the original proceedings in this dispute. Thailand had submitted the Board of Appeal's ruling on these 210 entries as a declared measure taken to comply.

4.3. However, the Philippines had noted in the DSB, and with Thailand bilaterally, that the ruling was riddled with WTO-inconsistencies, and set out a methodology that put Thailand on the wrong course regarding customs valuation of related party transactions in the future. A Thai court had recently agreed with the Philippines' position that the Board of Appeal's ruling was flawed. However, rather than accept the consequences of the decision, Thai Customs had decided to appeal the matter. Finally, to complete the bleak picture, the Thai importer of Philippine cigarettes continued to face roadblock after roadblock in its efforts to secure refunds of what Thailand had expressly acknowledged were excess taxes paid for 118 entries from the Philippines. Thailand denigrated the WTO dispute settlement system by its persistent refusal to accept the consequences of the DSB's recommendations and rulings, as well as the consequences of the ruling from its own Board of Appeals that the customs value for these entries was inflated, a ruling that Thailand itself had long ago declared to be a measure taken to comply. The Philippines did not understand how Thailand could claim to have taken all measures necessary to comply with the DSB's recommendations and rulings, when it refused to make good on its declared compliance measures by refunding to the importer excess taxes that Thailand did not deny were due. The Philippines noted that, although the picture looked bleak, the end of the year was also the time when one made wishes and resolutions for the New Year. The Philippines' wish was that Thailand would rise to its role as a responsible and important WTO Member and help resolve the dispute outside of formal dispute settlement proceedings. The Philippines' resolution was that 2015 would be the year in which this dispute would be resolved.

4.4. The representative of Thailand said that her country took note of the Philippines' statement made at the present meeting. As stated in its previous status reports and at the DSB meetings, Thailand believed that it had taken all actions necessary to implement the DSB's recommendations

and rulings in this dispute. This was without prejudice to any other rights of the Philippines under the DSU provisions. Thailand reiterated that it had been, and remained, available to discuss the specific concerns of the Philippines bilaterally, including those not addressed by the DSB's recommendations and rulings.

4.5. The DSB took note of the statements.

## 5 BRAZIL – CERTAIN MEASURES CONCERNING TAXATION AND CHARGES

### A. Request for the establishment of a panel by the European Union (WT/DS472/5)

5.1. The Chairman recalled that the DSB had considered this matter at its meeting on 18 November 2014. He drew attention to the communication from the European Union contained in document WT/DS472/5, and invited the representative of the European Union to speak.

5.2. The representative of the European Union said that, for the second time, the EU was requesting the DSB to establish a panel in this dispute regarding certain Brazilian taxation measures. As already mentioned at the previous DSB meeting, this dispute concerned several programmes in the automobiles, ICT and automation sectors that conferred tax advantages to domestic products that were not equally extended to imported ones. The measures were thus discriminatory and they were also aimed at import substitution, as they were contingent, *inter alia*, upon local content requirements. The dispute also addressed tax exemptions for companies in Brazil that met certain export targets, in contravention of the prohibition on export contingent subsidies. The EU was troubled by the continuous extension and expansion of these measures to cover an increasing number of sectors. This was the case of INOVAR-AUTO, replacing a previous temporary, but equally discriminatory regime. It was important that Brazil abided by the WTO rules and, therefore, the EU had little choice but to request the establishment of a panel, in order to secure a solution to this dispute.

5.3. The representative of Brazil said that, once again, his country regretted the EU's decision to request the establishment of a panel to examine this matter. Brazil wished to reaffirm the WTO-consistency of its programmes. These programmes had been fostering innovation and the formation of a more skilled workforce in Brazil, while at the same time increasing trade and promoting a dynamic interaction between investment in the covered sectors and global trade flows. Companies from several origins, and especially EU companies established in Brazil, had been positively affected by these programmes, which had no detrimental effects on imports. The challenged programmes were aimed at better positioning Brazil in complex, high-end technological sectors of the global market, and not to isolate the country from it. They were the result of a serious diagnosis of Brazil's technological and workforce deficiencies in certain strategic sectors and how to remedy them. In documents submitted thus far, the European Union seemed to advocate a very broad interpretation of the disciplines relating to national treatment and local content. If accepted, this vision of core WTO rules would unduly curtail Members' ability to promote social and technological development and their policy space more generally. The Special Regime for the Purchase of Capital Goods for Exporting Enterprises (RECAP) and the tax suspension to predominantly exporting companies (PEP) were simply mechanisms to improve tax administration by Brazilian authorities and to facilitate the redemption of taxes paid in excess by certain types of taxpayers. In Brazil's view the measures at issue were in line with its multilateral obligations and were actually put in place with a view to contributing to WTO's objectives of raising standards of living, ensuring full employment and expanding trade in goods and services. In light of these facts, Brazil failed to see the merit of the panel request and was prepared to demonstrate before the Panel the consistency of its measures with the covered Agreements.

5.4. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU, with standard terms of reference.

5.5. The representatives of Argentina, Australia, China, India, Japan, Korea, Russian Federation, Chinese Taipei, Turkey, and the United States reserved their third-party right to participate in the Panel's proceedings.

## 6 PERU – ADDITIONAL DUTY ON IMPORTS OF CERTAIN AGRICULTURAL PRODUCTS

### A. Joint request by Peru and Guatemala for a decision by the DSB (WT/DS457/6)

6.1. The Chairman drew attention to the joint communication from Peru and Guatemala contained in document WT/DS457/6 and invited the representatives of Peru and Guatemala to speak.

6.2. The representative of Peru said that, in some other previous disputes, the parties had requested and had received the approval of the DSB to extend the time-period for appeal in order to accommodate the increased workload of the Appellate Body. The parties to this dispute were seeking to do the same at the present meeting. As Members were aware, the Panel Report in the dispute: "Peru – Additional Duty on Imports of Certain Agricultural Products" (DS457) had been circulated on 27 November 2014. Article 16.4 of the DSU stated that reports shall be adopted at a DSB meeting within 60 days, unless a party to the dispute formally notified the DSB of its decision to appeal or the DSB decided by consensus not to adopt the report. Consequently in this dispute, the deadline for one of the parties to file an appeal, or for the DSB to adopt the Report, was 26 January 2015. Taking into account the current workload of the Appellate Body, both Peru and Guatemala had agreed that the 60-day period in Article 16.4 of the DSU, as applicable to this dispute, should be extended until 25 March 2015. In order to preserve the procedural rights of the parties with respect to the adoption or appeal of the Panel Report, Peru and Guatemala had agreed on two alternative scenarios. If no more than two other appeals were pending before the Appellate Body on 9 February 2015, Peru would appeal the Panel Report on that date. However, if three or more other appeals were pending before the Appellate Body on that date, then Peru would appeal the Panel Report on 25 March 2015. Essentially, the appeal would be incorporated into the Appellate Body working schedule in an orderly and constructive manner, and the order of appeals would be respected. The draft decision submitted to the DSB, which was contained in document WT/DS457/6, reflected those arrangements. Peru understood that some Members had concerns regarding the language used in the draft decision. In order to address those concerns, Peru and Guatemala had agreed to revise and amend the current draft decision. Accordingly, the parties to the dispute proposed to remove the phrase: "no earlier than 9 February 2015 and" from the current text. They also proposed that the entire last sentence of the draft decision be deleted. The revised text was entirely consistent with the previous DSB decisions, which addressed similar requests, and should, therefore, be acceptable to all Members. Peru found it important to underline that, in submitting this request, Peru was in no way attempting to delay this appeal. Rather, like Guatemala, it was simply reacting to circumstances surrounding the time-table of the appeal. There was no need to debate the broad systemic issues arising from the tight deadlines imposed by the DSU and the limited resources of the Appellate Body when addressing multiple simultaneous appeals. Peru wished to note that, throughout the WTO's history, Members had always taken a practical approach in an effort to move forward in a professional manner, and they were rightly proud of this pragmatic quality of the WTO. Peru hoped that the DSB would respond in a similar way at the present meeting.

6.3. The representative of Guatemala said that the Panel in this dispute had circulated its Report on 27 November 2014. The 60-day period within which, under Article 16.4 of the DSU, the DSB would normally be required to decide on the adoption of the report in the absence of an appeal, would expire on 26 January 2015. Guatemala and Peru were aware of the increased workload of Appellate Body. Under the circumstances, the parties had agreed that the period of 60 days under Article 16.4 of the DSU, as applicable to this dispute, should be extended until 25 March 2015. Furthermore, in fairness to the other Members involved, the appeals must be launched in the order in which the panel reports had been circulated. At that moment, it was not certain that all of the recent reports circulated prior to the Report in this dispute would be appealed. In the circumstances, in order to avoid any unnecessary delays in settling this dispute, the procedural agreement between the parties provided for two possible dates for launching the appeal depending on which of the recent reports would be appealed in January. If, as of 9 February 2015, the Appellate Body did not have more than two appeals pending, Peru would appeal the Panel Report on that date. However, if on that date three or more appeals were pending before the Appellate Body, Peru would appeal the Panel Report on 25 March 2015. The original draft decision of the DSB submitted by Guatemala and Peru reflected this situation by including two possible dates for the extension of the 60-day period specified in Article 16.4 of the DSU. However, some Members had expressed concern regarding the language contained in that draft decision. To address those concerns, Guatemala and Peru had agreed to put forward minor amendments to the text of the draft decision originally circulated. Specifically, Guatemala and Peru suggested that the phrase:

"no earlier than 9 February 2015 and" be deleted from the first sentence. The parties also proposed that the last sentence of the draft decision be deleted. Guatemala thanked Peru for its cooperation in reaching this agreement and would be grateful if the DSB could accept this joint request from the parties to extend the 60-day time-period, taking into consideration the proposed amendments to the draft that had originally been circulated in document WT/DS457/6.

6.4. The representative of the United States said that his country thanked Peru and Guatemala for their joint request for a DSB decision regarding the adoption of this Report. Given the workload of the Appellate Body and resulting delays in circulation of an Appellate Body report should an appeal be filed before the Appellate Body was in a position to take it up, it was essential that Members cooperated regarding the timing and order of appeals, as Peru and Guatemala had done in this dispute. The United States appreciated Guatemala's comments about the order of appeals. Without such communication and cooperation during a heavy appeals period, Members instead would have the incentive to rush to file their appeals to try to gain some procedural or timing advantage, complicating efforts to ensure the timely resolution of appeals as set out in the DSU. The United States also supported the revisions to the draft text of the decision, which would appear to clarify and simplify the DSB's decision at the present meeting.

6.5. The DSB took note of the statements.

6.6. The Chairman proposed that: "The DSB decides that it shall, no later than 25 March 2015, adopt the Panel Report in the dispute: *Peru – Additional Duty on Imports of Certain Agricultural Products* contained in document WT/DS457/R and Add.1 unless (i) the DSB decides by consensus not to do so or (ii) Guatemala or Peru notifies the DSB of its decision to appeal the Report pursuant to Article 16.4 of the DSU".

6.7. The DSB so agreed.

## **7 PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/536)**

7.1. The Chairman drew attention to document WT/DSB/W/536, which contained one new name proposed by Israel 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 name contained in document WT/DSB/W/536.

7.2. The DSB so agreed.

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