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Dispute Settlement Body
23 May 2014

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 23 MAY 2014

Chairman: Mr. Fernando De Mateo (Mexico)

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1.1. The Chairman noted that there were seven 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". 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. He said that with those introductory remarks he wished to turn to the first sub-item under this Agenda item.

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.137)

1.2. The Chairman drew attention to document WT/DS176/11/Add.137, 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 12 May 2014, in accordance with Article 21.6 of the DSU. At least six bills had been introduced in the current Congress in relation to the DSB's recommendations and rulings in this dispute. This included H.R. 214, H.R. 778, H.R. 872, H.R. 873, H.R. 1917 and S. 647. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

1.4. The representative of the European Union said that the EU thanked the United States for its most recent status report and the 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 it was impossible to find one single sentence in the US status report that provided new information, let alone one that specified the alleged actions that the United States should have implemented over 12 years ago in order to resolve this dispute. In status report no. 125 (WT/DS176/11/Add.125), issued on 12 April 2013, the United States had

referred to five legislative proposals that had been introduced in the 113th session of the US Congress, namely H.R. 214, H.R. 778, H.R. 872, H.R. 873 and S. 647. In response to the clear lack of legislative action regarding these texts, which had never passed through the Senate, the Unites States had chosen, since January 2014, to omit these references from its status reports. Nevertheless, every month the United States read out a list of legislative proposals aimed at ending this dispute, even though it was known that no action had been envisaged to enable the texts to go through the legislative process. The position of the US Congress on the draft legislation with regard to Section 211 had remained unchanged throughout all these years. Time and time again, proposals both in favour of, and against, the repeal of Section 211 had been introduced without any success. They had been submitted to various committees, but had not been discussed or voted on, all of which demonstrated that this was not a priority issue for the US Congress or Executive Branch. The justification put forward was the alleged inability of US institutions to make the relevant legal adjustments. The true motive, however, was the hostile US economic, commercial and financial embargo policy that continued to be imposed on the Cuban people, thus disregarding US international obligations and exacerbating the unilateral measures against Cuba. The most recent example was the repetition by the US Department of State in the Country Reports on Terrorism 2013, published on 30 April 2014, of its arbitrary designation of Cuba as a "State Sponsor of Terrorism" for the thirty-second time. As pointed out in a statement denouncing that report, issued by the Cuban Ministry of Foreign Affairs, "political considerations and the need to justify at all costs the embargo, which has proven unsuccessful and has been unanimously rejected by the international community, are prevailing over rationality once again". In light of this situation, what political will could the United States show to comply with the DSB's recommendations? In Cuba's view it was unacceptable for the United States to claim, month after month, that a set of legislative proposals, read out informally, constituted some effort to meet its DSB obligations. Cuba urged the United States to act in a manner consistent with its economic position and its participation as a major user of the dispute settlement system. It was unwise to ignore the concerns, raised on a monthly basis by Cuba and a number of other Members, that such non-compliance undermined the credibility and effectiveness of the dispute settlement system.

1.6. The representative of India said that his country thanked the United States for its status report and its statement made at the present meeting. India noted with regret that the United States had not reported any progress. Members' continued non-compliance with the DSB's rulings and recommendations undermined the credibility and confidence that the Members reposed in the WTO dispute settlement system. India urged the United States to report full compliance in this dispute without any further delay.

1.7. The representative of Ecuador said that his country supported the statement made by Cuba. Ecuador, once again, recalled that Article 21 of the DSU expressly referred to prompt compliance with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. In the dispute: "United States – Measures Relating to Zeroing and Sunset Reviews: Recourse to Article 21.5 of the DSU by Japan", the Appellate Body stated: "The time frame within which compliance must be effected is addressed in Article 21 of the DSU. Article 21.1 of the DSU provides that '[p]rompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members'. The reference to 'essential' underscores the importance of the obligation to comply with the DSB's recommendations and rulings. The reference to 'prompt' compliance emphasizes the need for the timely implementation of DSB recommendations and rulings. The timing of implementation is also addressed in Article 21.3 of the DSU … According to this provision, implementation of the recommendations and rulings of the DSB must be done 'immediately', unless it is 'impracticable' to do so. In other words, the requirement is immediate compliance. However, Article 21.3 recognizes that immediate compliance may not always be practicable, in which case it foresees the possibility of the implementing Member being given a reasonable period of time to comply … the reasonable period of time is a limited exemption from the obligation to comply immediately. [In short] … 'the obligation to comply with the recommendations and rulings of the DSB has to be fulfilled by the end of the reasonable period of time at the latest'. Indeed, any conduct of the implementing Member that was found to be WTO inconsistent by the DSB must cease by the end of the reasonable period of time. Otherwise, that Member would continue to act in a WTO-inconsistent manner after the end of the reasonable period of time, contrary to Articles 3.7, 19.1, 21.1, 21.3, and 21.5 of the DSU." This matter of "prompt compliance" or "effective compliance" was a long-standing concern for many developing-country Members. It was a matter that transcended and went well beyond other strictly procedural concerns. In light of the discussions in previous years, between June and November 2012, a large group of developing countries had submitted proposals

to the DSB Special Session, together with relevant revised legal texts which concerned, *inter alia*, the issue of "effective compliance". Ecuador believed that these were essential to the smooth functioning and credibility of the dispute settlement system. The process of "clarifying" and "improving" the DSU should eventually produce a concrete outcome in which substantive issues were necessarily addressed, in particular those that affected the interests of developing-country Members.

1.8. The representative of Brazil said that his country noted that, once again, the United States did not report on any progress in its status report. Therefore, Brazil reaffirmed its concern about this situation of non-compliance with the DSB's recommendations and urged the United States to bring its measures into conformity with WTO rules.

1.9. 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 had not reported on any progress. The prolonged situation of non-compliance in this dispute was highly incompatible with the prompt compliance requirement under the DSU provisions, in particular since the interests of a developing-country Member were affected. China urged the United States to implement the DSB's rulings and recommendations without any further delay.

1.10. The representative of Mexico said that, as it had done at previous DSB meetings, his country urged the parties to the dispute, both the complainant as well as the respondent, to take the necessary steps to comply with the DSB's recommendations and rulings, in accordance with Article 21 of the DSU. Mexico thanked the United States for its status report. In Mexico's view, it would be useful to know the status of these legislative texts and, if appropriate, whether or not there was any public information on the internet regarding this matter, as the United States had mentioned at the previous DSB meeting. Mexico was also of the view that it would be useful if that information could be included in subsequent status reports so that all Members would be able to see what progress was made in the implementation.

1.11. The representative of Zimbabwe said that his country thanked the United States for its status report in this dispute. Zimbabwe also thanked Cuba for its comprehensive statement made at the present meeting. Zimbabwe noted that this item had remained a permanent feature on the DSB's Agenda for far too long. This state of affairs was neither desirable nor acceptable. It clearly implied complete disregard of the WTO's dispute settlement mechanism by one Member. The continued US failure to comply seriously undermined the integrity of the DSB, as well as the efficacy and effectiveness of its rulings. Zimbabwe, therefore, strongly supported Cuba and urged the United States to comply with the relevant DSB's rulings and recommendations.

1.12. The representative of Uruguay said that his country thanked the United States for its status report. Uruguay supported the statements made by previous speakers expressing their concern about this prolonged situation of non-compliance.

1.13. The representative of Argentina said that his country thanked the United States for its status report and the statement made at the present meeting. However, given that no substantive information had been provided, Argentina had no choice but to repeat what it had been saying for some time now. This lack of progress was inconsistent with the principle of prompt and effective compliance stipulated in the DSU provisions. Argentina noted that Ecuador had already referred to Article 21 of the DSU, in particular since the interests of a developing-country Member were affected in this dispute. Therefore, Argentina, once again, joined the requests by Cuba and previous speakers, and called on both parties to the dispute, but in particular the United States, to take the necessary steps to remove this item from the DSB's Agenda.

1.14. The representative of the Plurinational State of Bolivia said that, over the past 13 years, her country had heard the same status report by the United States, which contained no information on progress towards resolving this dispute. Bolivia, therefore, reiterated its concerns about the systemic implications of the US failure to comply with the DSB's recommendations and rulings in this dispute. Bolivia was also concerned about the lack of political will on the part of the United States to take steps towards compliance. This failure to comply undermined the credibility and integrity of the multilateral trading system and had a negative impact on the interests of a developing-country Member. Once again, Bolivia called on the United States to comply with the DSB's recommendations and rulings and to take steps to remove the restrictions imposed under

Section 211. Bolivia supported the concerns raised by Cuba in its statement made at the present meeting.

1.15. The representative of the Dominican Republic said that his country thanked the United States for its status report on the lack of compliance with the DSB's rulings and recommendations. This status report demonstrated that there was no real progress in this dispute. The Dominican Republic supported the statements made by Mexico and Ecuador and, once again, reiterated its call to the United States to accelerate necessary domestic procedures so as to comply with the DSB's rulings. The prolonged situation of non-compliance undermined the credibility of the decisions taken in the WTO. This, in turn, affected countries with small and vulnerable economies such as Cuba.

1.16. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Cuba at the present meeting. As had been expressed by previous speakers, Venezuela, once again, was concerned about the US status reports which did not contain any new information on progress. Every month, the status reports demonstrated the US failure to comply with the DSB's decision of 2002 and showed the lack of political will by the United States to resolve this dispute. Venezuela noted that, despite the DSB's ruling, the United States continued to maintain Section 211. The US non-compliance in this dispute undermined the interests of a developing-country Member, the credibility of the dispute settlement system and the multilateral trading system. This situation was unacceptable since it undermined the DSB's ability to resolve disputes. Venezuela called on the United States to put an end to its non-compliance with the DSB's recommendations and rulings and to report, at the next DSB meeting, on actions it had taken to resolve this dispute.

1.17. The representative of Nicaragua said that his country thanked the United States for submitting yet another status report. Nicaragua, once again, wished to express its concern about the continued US non-compliance with the DSB's recommendations within the reasonable period of time stipulated in Article 21.3 of the DSU. Nicaragua was also concerned that this situation of non-compliance affected the interests of Cuba, a developing-country Member with a small economy. Non-compliance also undermined the credibility of the dispute settlement system and the confidence that Members had placed in that system. Nicaragua supported Cuba's statement and urged the United States to provide information on the progress made in complying with the DSB's recommendations and rulings.

1.18. The representative of El Salvador said that her country thanked the United States for its status report. Like the previous speakers, El Salvador was concerned about the lack of compliance in this dispute. This situation of non-compliance adversely affected the multilateral trading system. El Salvador urged the parties to this dispute to comply with the DSB's recommendations and rulings.

1.19. The representative of Jamaica said that her country thanked the United States for its status report and Cuba for the statement made under this Agenda item. Jamaica joined other delegations in voicing its concern regarding the US failure to comply with the DSB's recommendations of 2002 with respect to Section 211. Jamaica remained mindful of the fact that this protracted failure of the United States to take the necessary steps to bring its regulations into conformity with its obligations under the DSU was incompatible with the requirement for prompt and effective implementation of DSU decisions. This was of particular concern given the potentially negative impact that any failure by a major international trading partner to meet an obligation under the DSU may have on the economic interests of a small, vulnerable, developing-country Member. Furthermore, Jamaica was compelled to express its concern in relation to the systemic implications of any disregard for DSB decisions as such actions could serve to undermine the overall integrity of the dispute settlement system, which remained a cornerstone of the WTO. Jamaica joined others in urging the United States to take the necessary steps to promptly implement the relevant DSB's recommendations so as to resolve this dispute.

1.20. The representative of South Africa said that her country thanked the United States for its status report, which did not contain any new information. South Africa referred to its previous statements stressing its systemic concerns that non-compliance with the DSB's rulings and recommendations undermined the integrity of the DSB, an important enforcement pillar of the WTO. South Africa was also concerned that non-compliance with Members' obligations, including the DSB's rulings and recommendations, also risked undermining the credibility of the multilateral

trading system as a whole. In addition, South Africa remained concerned that non-compliance perpetuated significant negative economic consequences for a particular developing-country Member and had ramifications for access to the dispute settlement system by the lesser-resourced Members. South Africa, therefore, urged the United States to bring its legislation into compliance with the DSB recommendations and rulings.

1.21. The representative of Viet Nam said that his country thanked the United States for its status report and its statement made at the present meeting. Viet Nam noted that, once again, the status report did not contain any progress regarding the implementation of the DSB's recommendations. Viet Nam urged the United States to comply, without any further delay, with the DSB's rulings so as to ensure that the disciplines of the multilateral trading system were preserved and to benefit Cuba, a developing country-Member.

1.22. The representative of Dominica, speaking on behalf of the OECS countries, thanked Cuba for its statement and the United States for its status report and update. Like previous speakers, the OECS countries were concerned about the US failure to implement the DSB's recommendation of February 2002 with respect to Section 211. This failure to comply was incompatible with the requirement of prompt and effective implementation of DSB decisions. This was of particular concern in cases where such failure to meet an obligation had an adverse effect on the economic interests of a developing-country Member. Therefore, the OECS countries urged the United States to take the required steps to promptly comply with the DSB's recommendations and rulings.

1.23. The representative of the Russian Federation said that his country believed that the dispute settlement system was the main guarantee of the stability of the multilateral trading system. However, Russia had witnessed, for many years, the US failure to comply with the DSB's rulings. Non-compliance endangered Members respect and trust in the dispute settlement system and the WTO as a whole and many delegations raised strong systemic concerns on this matter. Russia urged the interested parties to find a solution by using all the instruments available to them under the WTO system.

1.24. 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.137)

1.25. The Chairman drew attention to document WT/DS184/15/Add.137, 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.

1.26. The representative of the United States said that his country had provided a status report in this dispute on 12 May 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.

1.27. The representative of Japan said that his country thanked the United States for its statement and status report submitted on 12 May 2014. Japan referred to its previous statements to the effect that this issue be resolved as soon as possible.

1.28. 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.112)

1.29. The Chairman drew attention to document WT/DS160/24/Add.112, 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.

1.30. The representative of the United States said that his country had provided a status report in this dispute on 12 May 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.

1.31. 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 regarding its desire to resolve this dispute as soon as possible.

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

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.75)

1.33. The Chairman drew attention to document WT/DS291/37/Add.75, 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.

1.34. The representative of the European Union said that, in recent DSB meetings, the EU had already reported on authorization decisions taken up to April 2014. The Standing Committee of 24 April 2014 had voted on a draft decision for authorization of a maize[1] as well as on a draft decision for authorization of a soya[2], both for food and feed uses. The Committee had rendered no opinion on either of the draft decisions, which would now be presented to the Appeal Committee for a vote on 10 June 2014. Three more draft decisions concerning authorizations of soy products[3] would be presented for discussion and possible vote at the Standing Committee of 23 May 2014. As had been stated many times before, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings. The GMO regulatory regime was working normally as evidenced by the approval decisions and other actions towards approval decisions just mentioned. The details on the relevant products were set out in the written version of the EU statement.

1.35. 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. As it had explained at past DSB meetings, the United States had substantial concerns regarding EU measures affecting the approval of biotech products. At the present meeting, the United States said that it would like to recall the DSB findings that EU member State bans on biotech varieties approved at the EU-level were inconsistent with the EU's obligations under the SPS Agreement.[4] These findings of WTO-inconsistency included EU member State bans on the only variety of biotech corn, known as MON810, that had been approved for cultivation in the EU. Despite the DSB findings that EU member State bans on MON810 were in breach of the EU's WTO obligations, several EU member States continued to maintain bans on this product. Moreover, additional EU member States had adopted bans on this product. These actions had been taken, despite the DSB findings, and despite the fact that the EU's own scientific authority had repeatedly found this product to be safe. As a result of EU delays and member State bans on products approved at the EU-level, the EU

[1] T25 maize.
[2] MON87708.
[3] MON87705 soybean, 305423 soybean and BPS-CV127-9 soybean.
[4] "European Communities – Measures Affecting the Approval and Marketing of Biotech Products" (WT/DS291/R), adopted on 21 November 2006, at paras. 8.21 to 8.32.

measures affecting approval of biotech products were causing substantial restrictions on trade. The United States urged the EU to take steps to address these problems.

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

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.24)

1.37. The Chairman drew attention to document WT/DS371/15/Add.24, which contained the status report by Thailand on progress in the implementation of the DSB's recommendations in the case concerning Thailand's customs and fiscal measures on cigarettes from the Philippines.

1.38. The representative of Thailand said that, as indicated in its most recent status report, Thailand had no further actions outstanding to implement the DSB's recommendations and rulings in this dispute. Thailand had also indicated that it remained available to continue discussions with the Philippines on a bilateral basis on any other issues of concern to the Philippines. Thailand, therefore, had nothing further to report to the DSB. Thailand looked forward to positively continuing any further bilateral discussions with the Philippines in an amicable and satisfactory manner.

1.39. The representative of the Philippines said that his country noted Thailand's position, stated at the last DSB meeting and reiterated at the present meeting, that it did not need to take any further actions to implement the DSB's recommendations and rulings and that it had nothing to report to the DSB. The Philippines disagreed. As the Philippines had consistently stated over the past year, there remained a number of outstanding issues in this dispute. Some concerned the WTO-inconsistency of measures declared by Thailand as taken to comply; others concerned Thai acts and omissions that directly undermined, and undid, declared compliance measures. This resulted in Thailand's failure to fully comply with the DSB's recommendations and rulings. For as long as this was the situation, in the Philippines' view, there were only two options: (i) to continue the DSB surveillance; or (ii) to re-start litigation by initiating compliance proceedings. The Philippines wished to avoid the latter and, therefore, had consistently worked to maintain a dialogue in order to resolve the outstanding issues. The Philippines had bilaterally raised questions on each one of the outstanding issues. Thailand had only partly provided answers thus far, and where it had done so, had not fully resolved the WTO inconsistencies raised by the Philippines. The most recent example involved information provided by Thailand concerning a ruling by the Thai Customs Board of Appeals regarding entries covered by the DSB's recommendations and rulings. While it was still evaluating that information, based on its current understanding, the Philippines remained concerned that the BoA ruling was WTO-inconsistent on multiple grounds. Moreover, the Philippines noted that Thailand had declined to answer questions that the Philippines had put to it regarding its decision to prosecute a Philippine importer for declaring customs values that the WTO panel had ruled that Thailand enjoyed no legitimate grounds to reject, and that the Thai BoA had explicitly accepted in a separate ruling heralded by Thailand as a measure taken to comply. Pending further evaluation, as well as an overall assessment on whether it was worth pursuing the dialogue, the Philippines reserved all its rights under the DSU.

1.40. The representative of Thailand said that her country noted the Philippines' concerns, including the fact that the Philippines was currently in the process of evaluating Thailand's recent response and other matters. However, as noted in its previous statements, Thailand had nothing further to report at this time. Thailand reiterated that it would ensure to act in a WTO-consistent manner to the extent that this particular concern of the Philippines involved Thailand's obligations under WTO law.

1.41. The representative of the United States said that his country would like to comment on one procedural issue raised in the discussion between Thailand and the Philippines. There had been a suggestion from the Philippines that it was considering two options: continued DSB surveillance of the matter and further litigation. The United States did not take any position on the substance of the dispute or the decision of the Philippines on how it wanted to proceed, but Thailand had clearly stated that it had taken all necessary actions to implement the recommendations and rulings of

the DSB. In those circumstances, the United States would agree that further status reports were not required, and the DSB did not need to revert to this matter. Indeed, every other Member followed that approach. The United States was not aware of any Member that continued to provide status reports after it had announced the completion of those actions necessary to comply, regardless of whether or not the complaining party agreed.

1.42. The representative of the Philippines said that his country's reading from Thailand's statement was that there was nothing further to report at this time and that the Philippines still had some concerns regarding the BoA ruling. These were the questions provided to Thailand previously and this discussion would continue.

1.43. The representative of Thailand said that, at the present meeting, because the Philippines had stated that it was evaluating the response from Thailand, her country wished to revert to this matter at the next regular DSB meeting.

1.44. The representative of the United States said that his country sought some clarity on whether that meant that Thailand did intend to provide another status report. If Thailand did not want to, which the United States thought was their prerogative, the Philippines could take other actions, such as putting this matter on the Agenda of the next meeting and that would be another way to handle it. The United States sought clarity on Thailand's position.

1.45. The Chairman said that he noted that Thailand wished to revert to this matter and, therefore, in light of Thailand's statement the DSB would do so.

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

F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.23)

1.47. The Chairman drew attention to document WT/DS404/11/Add.23, 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.

1.48. The representative of the United States said that his country had provided a status report in this dispute on 12 May 2014, in accordance with Article 21.6 of the DSU. As the United States had noted at past DSB meetings, the US Department of Commerce had published a modification to its procedures in February 2012 in order to implement the DSB's recommendations and rulings regarding the use of zeroing in anti-dumping reviews. That modification addressed certain findings in this dispute. The United States would continue to consult with interested parties as it worked to address the recommendations and rulings of the DSB.

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

1.50. The representative of Cuba said that her country noted that this dispute was another case of failure to comply by the United States. The non-compliance affected the vital resources and interests of a developing-country Member, Viet Nam. Many developing-country Members made statements at every DSB meeting regarding the importance of compliance with the DSB's recommendations and rulings, in particular since the interests and trade of a developing-country Member were affected. Cuba urged the United States to take measures in order to comply with its WTO commitments and to remove the negative effect on Viet Nam.

1.51. The representative of the Bolivarian Republic of Venezuela said that her country supported Viet Nam and endorsed the statement raised by Cuba regarding the need for the United States to take measures so as to end this dispute.

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

G. Canada – Certain Measures Affecting the Renewable Energy Generation Sector/Canada – Measures Relating to the Feed-In Tariff Program: Status report by Canada (WT/DS412/17/Add.3 – WT/DS426/17/Add.3)

1.53. The Chairman drew attention to document WT/DS412/17/Add.3 – WT/DS426/17/Add.3, which contained the status report by Canada on progress in the implementation of the DSB's recommendations in the cases concerning Canada's measures affecting the renewable energy generation sector and the measures relating to the feed-in tariff program.

1.54. The representative of Canada said that the DSB had adopted recommendations and rulings in these disputes on 24 May 2013. Canada, Japan and the European Union had initially agreed that the reasonable period of time for Canada to implement these recommendations and rulings would end on 24 March 2014, and had then subsequently agreed to modify the reasonable period of time to expire on 5 June 2014. The measures taken by Canada and the Government of Ontario, with a view to ensuring compliance with the DSB's recommendations and rulings, had been outlined in previous status reports. In the previous status reports, Canada had also made reference to a bill before the Legislative Assembly of Ontario that related to elements of the Ontario FIT Program. On 2 May 2014, the 40th Legislative Assembly of Ontario was dissolved and General Elections would be held on 12 June 2014. With the dissolution, all business, including proposed legislation, of the Assembly had been terminated.

1.55. The representative of Japan said that his country thanked Canada for its statement and its status report. While appreciating the efforts by the Governments of Canada and Ontario thus far to bring the Feed-In Tariff Program into compliance with the DSB's recommendations and rulings, Japan considered it very regrettable that the legislation tabled by the Government of Ontario to eliminate any domestic content requirements from the FIT Program had been effectively abandoned following the dissolution of the Ontario Legislative Assembly on 2 May. In light of this development, Japan encouraged Canada to explain what course of action it intended to take in the period during the reasonable period of time, which would expire on 5 June 2014. Furthermore, Japan urged the Canadian authorities to take every possible measure to ensure that the legislation that was required to abolish domestic content requirements in the FIT Program would be reintroduced as soon as possible after a general election scheduled for 12 June 2014 under the new Government of Ontario. In order to facilitate Canada's full and prompt compliance with the DSB's recommendations and rulings, Japan was considering all available steps and reserved the right to resort to them. Japan was ready to engage with Canada to resolve this dispute within the shortest time possible.

1.56. The representative of the European Union said that the EU thanked Canada for its status report and the statement made at the present meeting. The reasonable period of time for the implementation of the DSB's recommendations and rulings in this dispute had been modified to expire on 5 June 2014. The present meeting was the last meeting before this date. The EU appreciated the efforts made by the Canadian authorities thus far, as set out in previous status reports. However, the EU was concerned that the most recent status report did not include any new information on the state of play of implementation and on Canada's intentions in that regard. In its first status report, Canada had informed WTO Members that the Government of Ontario had tabled legislation aimed at eliminating any domestic content requirements in the context of the feed-in tariff system for wind and solar PV power. Amending the relevant provision in the Ontario Electricity Act of 1998 was a necessary element to achieve a satisfactory solution in this dispute. Unfortunately, the Ontario Parliament had not concluded the legislative procedure before it was dissolved on 2 May with a view to elections on 12 June. The EU was disappointed by the fact that the legislative amendment, which had been tabled back in December 2013, had not been passed. The EU called upon the Canadian authorities to make every necessary effort to ensure that legislation was reintroduced as soon as possible after the parliamentary elections. Furthermore, the EU noted that, in its first status report, Canada had referred to two Ministerial Directives discontinuing FIT contracting activities for large projects and lowering the domestic content

requirements for small FIT and micro FIT, respectively. While the EU was fully aware that legislation could not be passed until a new Parliament was elected, it wished to ask Canada to explain whether any additional non-legislative steps were being considered, still within the reasonable period of time, aimed at suspending or minimizing domestic content requirements, where they still applied. Article 21.1 of the DSU stated that: "prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members". Therefore, the EU urged Canada to take necessary steps to address the EU's legitimate concerns and to ensure that compliance was achieved within the shortest possible time-frame. The EU looked forward to any additional explanations that Canada may offer at the present meeting, and to Canada's status report at the next DSB meeting.

1.57. The representative of Canada said that his country thanked Japan and the EU for their comments and questions. With respect to the question of whether any further changes would be made to the domestic content requirements in existing small and micro FIT contracts, reductions to levels of domestic content required the issuance of a Direction from the Minister of Energy to the Ontario Power Authority. While the Province of Ontario was in General Elections, the Minister of Energy would not issue any Direction. It was the convention and practice in the Province of Ontario that Ministers did not make policy changes while general elections were being held. With respect to questions about DCRs in the replacement large procurement program, in the 12 June 2013 Direction to the Ontario Power Authority (OPA), the Minister of Energy of Ontario had directed the OPA to not procure any additional energy under the FIT Program for large projects and to begin developing a competitive process for such projects, namely, the Large Renewable Procurement Program, or LRP Program. In preparation for the LRP program, the OPA had released on 8 April 2014 a draft of the Request for Qualifications (RFQ) for review and comment. The comment period had closed on 2 May 2014 and the OPA was now reviewing all submissions. The draft RFQ was available online and Canada had previously provided Japan and the EU with references to that material. There were no domestic content requirements in the draft RFQ. With respect to the more general questions about any further action that might be taken between the present time and 5 June, while the Province of Ontario was in General Elections, no action or commitment in regards to all matters falling under the Feed-in-Tariff Program would be taken or made. With respect to the point raised under the previous Agenda item on agreeing to revert to the matter, Canada pointed out that the reasonable period of time would expire on 5 June, and that it would be premature to decide whether or not to revert to the matter until the reasonable period of time had actually expired. In Canada's view, there would be time prior to the next DSB meeting to determine whether or not that would be necessary.

1.58. The representative of the European Union said that the EU was surprised about Canada's procedural point. The Ontario Parliament was dissolved and the elections would be held on 12 June. At the present meeting, Canada confirmed that no implementing actions were foreseen in the near future. It was, therefore, logical that the DSB would revert to this matter at its next regular meeting.

1.59. The representative of Japan said that his country fully agreed with what the EU had just stated.

1.60. The representative of the United States said that his country was taking no position on the substance of this matter and the issue of compliance or non-compliance. The United States thought it was important to comment on the procedural aspect of what Canada had just said. Before a status report item was no longer on the DSB's Agenda, a Member normally announced that it had taken all necessary actions to implement the recommendations and rulings of the DSB. After that happened, it did not need to submit further status reports, and the item would not appear on the Agenda.

1.61. The Chairman recalled that Article 21.6 required that: "unless the DSB decides otherwise, the issue of implementation of the recommendations and 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 resolved".

1.62. The representative of Canada said that his country understood that and his point was simply that the reasonable period of time would expire on 5 June 2014, and in terms of the Agenda to be

circulated for the 18 June DSB meeting, there was still time between 5 June and the deadline for the Agenda to determine whether or not it was necessary for the DSB to revert to the item.

1.63. 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 EU 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. Such disbursements 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 had been stated at previous meetings, Japan believed 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 Thailand said that her country thanked the EU and Japan for continuing to bring this matter before the DSB. Thailand referred to its statements made under this Agenda item at previous DSB meetings. Thailand's position had not changed.

2.5. The representative of India said that his country thanked the EU and Japan for regularly bringing this issue before the DSB. The United States continued to disburse WTO-inconsistent payments to its domestic industry, thereby adversely affecting the rights of other WTO Members. India agreed with the previous speakers that until such time that full compliance was achieved, this item should continue to remain under the DSB's surveillance.

2.6. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. As it had repeatedly expressed before, Brazil was of the view that the United States was under obligation to cease disbursements made under the Byrd Amendment. The United States should submit status reports in this dispute until such time that full compliance was achieved.

2.7. The representative of Canada said that his country thanked the EU and Japan for having, once again, placed this item on the DSB's Agenda. The Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

2.8. The representative of the United States said that, as his country had noted at previous DSB meetings, the President had signed the Deficit Reduction Act into law on 8 February 2006, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that Members, including the EU and Japan, had acknowledged during previous DSB meetings that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, which was more than six and a half years ago. The United States therefore did not understand the purpose for which the EU and Japan had inscribed this item on the Agenda of the present meeting. With respect to comments regarding further status reports in this matter, as it had 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.

2.9. 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 had not changed since the United States had first begun raising this matter in the DSB. In particular, China maintained a ban on foreign suppliers of electronic payment services ("EPS") by imposing a licensing requirement on them, while providing no procedures for them to obtain that license. As a result, China's own domestic champion remained the only EPS supplier that could operate in China's domestic market. China's measures could not be reconciled with the DSB's findings that China's WTO obligations included both market access and national treatment commitments concerning Mode 3 for EPS.[5] The United States took note of China's statements in prior DSB meetings that China was working on the necessary regulations that would allow for the licensing of foreign EPS suppliers. The United States had been engaging with China at many levels to seek the timely issuance of these necessary regulations. But the regulations had still not yet been issued, despite the fact that it had been nearly ten months since the conclusion of the 11 month reasonable period of time in this dispute. The United States also noted that in response to the United States raising this item in the DSB, China had repeatedly stated that it did not have any further obligations with which to comply. In that context, China had characterized the Panel Report language clarifying China's commitments as mere "precursors" and not really DSB findings. This was extremely troubling. It would be a significant repudiation of China's WTO obligations for China to disagree with the findings in the Panel Report adopted by the DSB that clarified China's WTO commitments and were at the core of the dispute. China knew, as all did, that it had WTO commitments here. In fact, China's previous explanation that it was working on regulations was recognition that it must take further action to 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 its WTO obligations.

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. With respect to the regulation that the United States had mentioned, China reiterated that it was irrelevant with the implementation of the DSB's recommendations and rulings in this dispute. China believed that this issue should be addressed bilaterally. China hoped that the United States would reconsider the systemic implications of its position.

3.4. The DSB took note of the statements.

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

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

4.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Antigua and Barbuda. He further stated that it was his understanding that, in the absence of

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

Antigua and Barbuda at the present meeting, the representative of Dominica would make a statement on behalf of Antigua and Barbuda.

4.2. The representative of Dominica, speaking on behalf of Antigua and Barbuda, read out the following statement: "The delegation of Antigua and Barbuda has four points to communicate to the DSB at this meeting. First, since the last meeting of the DSB, the United States has not made any offer to Antigua and Barbuda in settlement of this dispute nor in fact made any communication at all. Second, other than an offer of a few thousand dollars-worth of training and seminar sessions, the United States has made no settlement offer to Antigua and Barbuda at all. Third, the United States has never offered an explanation as to why it continues to fail to submit reports on this matter for the regular meetings of the DSB as required by Article 21.6 of the DSU, although Antigua and Barbuda has on many occasions asked for one. It would be interesting to hear from the United States delegation in this regard. Fourth, the United States continues to assert that Antigua and Barbuda are standing in the way of the Americans' effort to dispose of this case by changing their obligations under the treaty and removing the commitment for gambling and betting services. Of course Antigua and Barbuda has blocked this effort, as the United States has offered nothing to the country in return. As is known from certain 'wikileaked' communications, the United States granted concessions for the removal of the commitment worth some US$200 billion to the European Union. Further, the Government of Antigua and Barbuda knows from face-to-face discussions with the United States that there are no concessions available to it, who brought this case at great expense and as a result of crippling devastation to a new and bright promise to the struggling Antiguan economy. Is it really so simple? Can the United States please other countries with basically bilateral agreements on whoever knows what scope of topics and provide nothing in return to the country that has suffered so much and expended so much of its very dear treasure in an honest but seemingly misguided and naive recourse to the process under the DSU? To this query, as well, Antigua and Barbuda would appreciate an answer".

4.3. The representative of Dominica, speaking on behalf of CARICOM countries, said that he wished to make reference to the CARICOM Council for Trade and Economic Development at its 38th meeting held in Church Town, Guyana, 9-10 May 2014, where the Council had urged the United States to comply with the DSB's decision in this dispute. The Council had noted that the United States had thus far failed to comply with the DSB decision and had also failed to reach a settlement with Antigua and Barbuda. The meeting had urged the United States to make additional efforts to reach a fair settlement.

4.4. The representative of the Dominican Republic said that his country noted that this was another case of the US failure to comply with the DSB's recommendations and rulings in a dispute that affected the economy of a small and vulnerable Caribbean country. Countries in the Caribbean region had been hit hard by the loss of major exports of goods to their traditional markets and had experienced an increase in levels of unemployment in these economies with very vulnerable populations. In that regard, the Dominican Republic urged the United States to promptly comply with the DSB's recommendations and rulings, particularly in this case which had such a strong effect on a small economy of the Caribbean region.

4.5. The representative of Argentina said that his country thanked Antigua and Barbuda for inscribing this item on the DSB's Agenda. Argentina also thanked Dominica for its statement made on behalf of Antigua and Barbuda in order to keep the DSB abreast of developments in this matter. However, Argentina regretted that, once again, no progress had been made. Argentina, therefore, reiterated its concern about the systemic implications of protracted failure to comply with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Argentina recalled that Article 21.1 of the DSU was clear in this respect and stated that: "prompt compliance with the recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members". Argentina, therefore, urged the parties to this dispute to redouble their efforts to reach a fair and equitable solution to this long-standing dispute.

4.6. The representative of India said that his country thanked Antigua and Barbuda for inscribing this item on the Agenda and Dominica for reading the statement, on behalf of Antiqua and Barbuda. India sympathized with Antigua and Barbuda and shared its concerns. The WTO dispute settlement system was designed to be power-neutral, where any WTO Member irrespective of its size and status could get its legitimate rights protected. Therefore, any act of prolonged non-compliance undermined Members' confidence in the WTO dispute settlement system. India urged

the United States to continue its engagement with Antigua and Barbuda so as to reach a mutually satisfactory resolution of the matter.

4.7. The representative of Cuba said that her country regretted that there had been several cases of US non-compliance that affected a developing-country Member, in this case Antigua and Barbuda, a small and vulnerable economy. Cuba fully supported the statement made by Dominica, on behalf of small islands. Cuba noted that, at each DSB meeting, a large number of countries expressed their concern about the US lack of compliance for the past five years. However, as was mentioned by Dominica, no real progress had been made towards a resolution of this dispute. Consequently, a vital sector was affected in one of the smallest economies of the world. Cuba, once again, urged the United States to promptly comply with its obligations and to compensate Antigua and Barbuda.

4.8. The representative of Trinidad and Tobago said that his country thanked Dominica for reading the statement on behalf of Antigua and Barbuda under this Agenda item. Trinidad and Tobago wished to refer to its previous statements made under this Agenda item, in particular at the DSB meetings on 26 February and 25 April 2014. On 19 February 2013, the Heads of Government of 15 CARICOM states, which included the Head of Government of Trinidad and Tobago, affirmed their full support for Antigua and Barbuda in its endeavours to obtain compliance by the United States with respect to the DSB's ruling in this dispute regarding the cross-border provision of gambling and betting services. More than a year after that affirmation by the Heads of Government of the Caribbean community, there had been no resolution or amicable settlement to this dispute. In addition, and of more recent, Trinidad and Tobago also took due note of the meeting of the CARICOM Council for Trade and Economic Development which had met in Guyana on 9 and 10 May 2014. At that meeting, the Council had urged the United States to make additional efforts to reach a fair settlement. Furthermore, Trinidad and Tobago had noted in the intervention just read on behalf of Antigua and Barbuda that, since the last DSB meeting in April, no settlement offer had been put on the table. In that regard, Trinidad and Tobago, once again, urged the United States to seek to engage Antigua and Barbuda in urgent, meaningful and constructive negotiations in order to arrive at a mutually acceptable settlement of this long-standing dispute. Trinidad and Tobago stood by Antigua and Barbuda as it looked forward to an early and amicable resolution of this dispute.

4.9. The representative of Jamaica said that her country reaffirmed its support for the statement delivered by Dominica on behalf of Antigua and Barbuda under this Agenda item. Jamaica, once again, called for a judicious resolution of this matter by fully implementing the DSB's ruling in favour of Antigua and Barbuda. Jamaica continued to be particularly concerned about the US prolonged failure to comply with the DSB's ruling of 20 April 2005. Jamaica and other member States of the Caribbean Community had consistently reiterated the region's profound disappointment at the failure to resolve this matter in line with the DSB's ruling. This failure to comply with the DSB's decisions threatened the integrity of the DSB and the foundation upon which the WTO rested. For the small and vulnerable Members who relied on the rules-based multilateral trading system, it was extremely important that the credibility of the dispute settlement mechanism be preserved and strengthened through faithful observance and implementation of decisions and it should not be undermined by non-compliance. Jamaica, once again, urged the United States to take the steps necessary to meet its obligations outlined in the Appellate Body Report contained in document WT/DS285/AB/R, which ruled in favour of Antigua and Barbuda.

4.10. The representative of Brazil said that his country thanked Antigua and Barbuda for including this item on the DSB's Agenda and Dominica for delivering the statement at the present meeting. As it had previously stated, Brazil was of the view that the WTO dispute settlement system had proved to be an effective tool for resolving trade disputes among WTO Members through a rules-based mechanism. However, the credibility and effectiveness of the system depended on the premise that the mechanism worked for the benefit of all Members, regardless of their size or level of development. Bearing that in mind, Brazil, once again, encouraged both parties to the dispute to engage in effective negotiations with a view to reaching a mutually agreed solution in this long-standing dispute, in accordance with the DSB's rulings on this matter.

4.11. The representative of China said that his country thanked Antigua and Barbuda for inscribing this item on the Agenda of the present meeting. China understood the concerns of a small and vulnerable economy regarding the continued non-compliance with the DSB's

recommendations and rulings in this long-standing dispute. China encouraged the parties to engage in consultations on this matter so as to resolve the dispute as soon as possible.

4.12. The representative of the Bolivarian Republic of Venezuela said that, once again, her country noted that this was a prolonged situation of non-compliance that affected a developing-country Member. Venezuela supported Antigua and Barbuda and the statement made by Dominica. The repeated failure by the United States to comply with the DSB's recommendations and rulings in this dispute violated the basic principles of the multilateral trading system. Furthermore, US non-compliance had serious consequences that affected the credibility and effectiveness of the DSB as the appropriate platform for the resolution of trade disputes. What was more serious was that the US non-compliance had a direct impact on a developing-country Member whose economy was principally based on the provision of services. In that regard, any restriction in this area of services had a negative impact on Antigua and Barbuda's economy. Venezuela supported Antigua and Barbuda, a member of the ALBA alliance. Venezuela urged the United States to bring this non-compliance to an end and to take the steps necessary to resolve this dispute as soon as possible.

4.13. The representative of the United States said that his country remained committed to resolving this matter. The United States had met with Antigua at many different levels of the US Government, and contrary to some of the statements made at the present meeting, the United States had made multiple generous settlement offers to Antigua in the context of the GATS process that the United States had initiated to withdraw the gambling concession at issue. The United States remained committed to a constructive dialogue with Antigua to the present day. Antigua, through statements read by other Members, had in previous DSB meetings characterized the United States as acting in bad faith. That kind of accusation was unfortunate. It was not an appropriate use of the DSB forum, it was not true, and it was not conducive to a successful resolution of the dispute. The United States had worked for months with Antigua on a settlement package in 2008, and had thought that the parties had reached agreement, only to have Antigua summarily reject the agreement later on. More recently, the United States had again offered Antigua a broad range of useful suggestions to settle this dispute in November 2013, only to have Antigua ignore the US offer for a long period of time before just recently indicating that it was not acceptable. Multiple Members at the present meeting had commented on the current status of the discussions between Antigua and the United States and had indicated that the United States had failed to make a settlement offer to Antigua since the last DSB meeting. Although it was not conducive to a successful resolution to make detailed comments on ongoing negotiations, the United States could say that it had only recently received Antigua's reply to its recent proposed settlement package, and the United States continued to await a constructive answer or a realistic counter-proposal from Antigua in response to it. The United States also recalled that its efforts to find a resolution through the GATS Article XXI process had succeeded with every Member except Antigua. In sum, the United States had tried repeatedly in good faith to resolve this dispute. Despite the unfortunate choice of Antigua to make unfounded allegations regarding the US intentions, the United States would continue to do so. Antigua had also suggested that the United States should submit status reports with respect to this dispute. The United States failed to see what purpose would be served by doing so. The GATS Article XXI process which the United States had initiated was the proper forum for further discussion of this matter, not the DSB. Despite the unique difficulties that it had working with Antigua in the GATS Article XXI process, the United States continued to hope to find a solution with Antigua in this context, and looked forward to a realistic and constructive counter-proposal from Antigua.

4.14. The DSB took note of the statements.

5 INDIA – CERTAIN MEASURES RELATING TO SOLAR CELLS AND SOLAR MODULES

A. Request for the establishment of a panel by the United States (WT/DS456/5)

5.1. The Chairman recalled that the DSB had considered this matter at its meeting on 25 April 2014 and had agreed to revert to it. He drew attention to the communication from the United States contained in document WT/DS456/5, and invited the representative of the United States to speak.

5.2. The representative of the United States said that, for the second time, his country was requesting that the DSB establish a panel to examine domestic content requirements in a solar

energy program adopted by India known as the National Solar Mission. At the April 2014 DSB meeting, the United States had articulated the specific reasons for its request for the establishment of a panel. It bore repeating, however, that the United States had held two rounds of consultations with India to try to resolve this dispute: early in 2013, and again earlier in 2014. Not only did these consultations fail to resolve the dispute, but India had actually chosen to expand the scope of the domestic requirements following the initial consultations in 2013. The United States also wished to emphasize that it was not challenging India's National Solar Mission on the basis that it promoted solar power generation. The United States shared the commitment of many Members to reduce their reliance on fossil fuels through greater use of solar power and other renewable energy sources. What the United States was challenging was the domestic content requirements in India's measures that discriminated against imported solar cells and modules in favour of like Indian products. Such domestic content requirements were inconsistent with WTO obligations, and did not promote solar power. To the contrary, domestic content requirements undermined India's efforts to promote solar power by impeding access to the best available technology from the global marketplace. For those reasons, the United States, for the second time, requested that the DSB establish a panel to examine the matter set out in the US panel request.

5.3. The representative of India said that his country was disappointed that the United States had made a second request for the establishment of a panel in this dispute. India had participated in the consultations with an open mind and had shown willingness to explore all options for a mutually satisfactory solution, but the United States had chosen to litigate rather than to negotiate. According to the DSU provisions, a panel would have to be established at the present meeting. India stood ready to defend its measure before the Panel.

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 Brazil, Canada, China, the European Union, Japan, Korea, Malaysia, Norway, the Russian Federation and Turkey reserved their third-party rights to participate in the Panel's proceedings.

6 PAKISTAN – ANTI-DUMPING AND COUNTERVAILING DUTY INVESTIGATIONS ON CERTAIN PAPER PRODUCTS FROM INDONESIA

A. Request for the establishment of a panel by Indonesia (WT/DS470/2)

6.1. The Chairman drew attention to the communication from Indonesia contained in document WT/DS470/2, and invited the representative of Indonesia to speak.

6.2. The representative of Indonesia said that, on 27 November 2013, Indonesia had requested consultations with Pakistan concerning the initiation of an anti-dumping and a countervailing duty investigation of imports of certain paper products from Indonesia, and Pakistan's failure to terminate these investigations in a timely manner. That request had been circulated to Members on 2 December 2013. Consultations had been held in Geneva on 27 February 2014 with a view to reaching a mutually satisfactory solution. Accordingly, Indonesia had hoped for a swift resolution to this dispute, with a positive outcome for both sides. But while the consultations had been amicable, had taken place in a helpful atmosphere and had clarified certain issues pertaining to this matter, they had failed to resolve the dispute. Pursuant to Articles 4.7 and 6 of the DSU, therefore, as well as Article XXIII:2 of the GATT 1994, Article 17.4 of the Anti-Dumping Agreement and Article 30 of the SCM Agreement, Indonesia requested that the DSB establish a panel to examine Indonesia's complaint. Indonesia's request for the establishment of a panel set out in greater detail the background and claims relating to this matter. As had been stated in that panel request, in November 2011, Pakistan had initiated an anti-dumping investigation on certain paper products from Indonesia. In the same month, Pakistan had also initiated a countervailing duty investigation of alleged subsidized imports of certain paper products from Indonesia. Up to the present day, almost 30 months later, the investigations had still not been finalized and no notices of termination had been issued. To the contrary, the investigating authority was actively undertaking certain investigative steps. Indonesia was, therefore, concerned that Pakistan had not completed these investigations within the time-frames provided for under the Anti-Dumping Agreement and the SCM Agreement. Additionally, Indonesia was concerned that Pakistan did not appear to apply its anti-dumping laws in a uniform, impartial and reasonable manner as it was

required to do under Article X:3 (a) of the GATT 1994. Indonesia was particularly concerned because Pakistan had, in the past, completed certain anti-dumping and countervailing duty investigations within the prescribed 18-month deadline but, in other investigations, had not respected this time-limit. In Indonesia's view, trade remedy investigations did not have a commercial impact only when they were finalized and measures were imposed. Rather, the initiation and conduct of an investigation itself had a significant commercial impact, because it discouraged importers to source products from exporters in the investigated countries. As Indonesia had explained to Pakistan during the consultations, Pakistan's investigations had resulted in estimated losses to Indonesia of approximately US$1 million a month since the initiation of these investigations. In addition, these investigations, and their continuation far beyond the 18-month deadline, had had a significant adverse "chilling effect" on imports from Indonesia.

6.3. Finally, Indonesia believed that Pakistan had failed to take steps, both of a general and particular character, to ensure that all its laws, regulations and administrative procedures were consistent with its obligations. At this particular occasion, as well as several previous occasions demonstrated, Pakistani law made it possible for the investigating authorities to extend anti-dumping and CVD investigations far beyond the 18-month deadline. This was inconsistent with, *inter alia*, Pakistan's obligations under Article 18.4 of the Anti-Dumping Agreement and Article 32.5 of the SCM Agreement to ensure that its laws, regulations and administrative procedures were consistent with its obligations under those Agreements. Indonesia, therefore, requested that the DSB establish a panel to consider this complaint, with standard terms of reference. Although it was requesting the establishment of a panel to underline the seriousness of this matter, Indonesia remained open to further consultations with Pakistan with a view to reaching a mutually satisfactory and positive solution to this dispute.

6.4. The representative of Pakistan said that his country was surprised and regretted Indonesia's request for the establishment of a panel in this dispute: "Pakistan – Anti-Dumping and Countervailing Duty Investigations on Certain Paper Products from Indonesia" (DS470). Indonesia had approached Pakistan to hold consultations in November 2013. The same day, Pakistan had conveyed its willingness to engage in a good faith dialogue. Further consultations had been held on 27 February 2014. The consultations had taken place in a friendly manner and both Members had better understood each other's positions. Indonesia was a major exporter of certain paper products to Pakistan and had consistently held over 50% of Pakistan's import market share. No provisional or definitive anti-dumping or countervailing duties had been imposed by Pakistan on the products in question in this case. Since the initiation of anti-dumping and countervailing investigations by Pakistan, Indonesia's share of the import market had in fact grown from 53% in 2011 to nearly 58% in 2013. During consultations both Members had noted that the investigations had not had any economic impact on Indonesia. Pakistan did not support Indonesia's request for the establishment of a panel to examine this matter, and urged Indonesia to reconsider that option.

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

7 AB SELECTION PROCESS

A. Proposal by the Chairman

7.1. The Chairman recalled that, at the April 2014 DSB meeting, he had circulated a room document containing his proposal regarding the Appellate Body selection process. He had invited delegations to provide comments on that proposal. Based on the comments from delegations, he had revised the proposal to adjust the time-lines for the process. Subsequently, on 12 May 2014, the revised proposal had been sent out by fax to all delegations in preparation for the present meeting. Therefore, as set out in the fax, he proposed that the DSB agree to the following five elements: (i) to launch a selection process for the vacant position in the Appellate Body and to invite nominations of candidates for that position; (ii) to agree that the candidates nominated for the 2013 process initiated by the DSB (WT/DSB/60) will remain under consideration and that it will not be necessary for Members to re-nominate them; (iii) to set a deadline of 30 June 2014 for Members' nominations of any additional candidates for the vacant position; (iv) to establish a Selection Committee, consistent with the procedures set out in document WT/DSB/1 and with previous selection processes, composed of the Director-General and the 2014 Chairpersons of the General Council, the Goods Council, the Services Council, the TRIPS Council and the DSB, to be

chaired by the DSB Chair; and (v) to request the Selection Committee to carry out its work, including conducting interviews with all candidates and hearing the views of delegations on all candidates during July and September 2014, as necessary, in order to make a recommendation to the DSB no later than 15 September 2014 so that the DSB can take a decision to appoint a new Appellate Body member by its regular meeting scheduled for 26 September 2014. He hoped that the proposal was acceptable to all delegations. He said that since there was no objection to proceed along the lines that he had just outlined, he proposed that the DSB agree to the text that he had just read out.

7.2. The DSB so agreed.

7.3. The representative of Australia said that his country had previously expressed its disappointment with the outcome of the earlier Appellate Body selection process. The overarching purpose of the criteria in Article 17.3 of the DSU, and the selection process adopted in WT/DSB/1, was to ensure that members of the Appellate Body were highly qualified and derived from a range of geographical, legal and economic backgrounds. Australia considered that merit remained the foremost criteria for appointment to the Appellate Body and that was enshrined in the first sentence of Article 17.3 of the DSU. In Australia's view, the requirement for members of the Appellate Body to be "broadly representative of Membership in the WTO" was one that was unlikely to be achieved through any one combination of seven people. However, over a period of time, Australia expected that Appellate Body members would represent a broad geographical spread, different legal systems and economies, and varying levels of development. In the past, Australia had supported meritorious candidates from different regions and economies, and it would continue to do so in the future. On the other hand, Australia firmly opposed any suggestion that vacancies in the Appellate Body must be filled by new appointees from the same geographical region or country as the previous member. This had not previously been the case and Australia would certainly not support such an interpretation of Article 17 of the DSU becoming entrenched for current or future vacancies. In addition to the overall negative implications for the dispute settlement system of the failure of the previous Appellate Body selection process, an unfortunate result was that the Appellate Body continued to be one member short, at a time when it had a significant workload. This only placed further stresses on the system. In that context, Australia hoped that the move to proceed with a new selection process would allow Members to have a new Appellate Body member in place as soon as practicable. Australia had no comment on the specific text of the decision to launch a further selection process and it did not oppose it. Australia noted, however, that paragraph 2 provided that previous candidates would remain under consideration in the new selection process. As it had indicated at the DSB meeting on 26 February 2014, Australia believed that its candidate, Ms. Joan Fitzhenry, would have made an excellent contribution to the Appellate Body. However, given its disappointment with how the original selection process had transpired, Australia had indicated at the time that it would not be re-nominating Ms. Fitzhenry in any new process. On that basis, with the start of a new selection process, Australia wished to advise that it was formally withdrawing Ms. Fitzhenry as a candidate. Finally, Australia hoped that the new selection process would be carried out fairly, meritoriously and apolitically, for the future strength and legitimacy of the Appellate Body.

7.4. The Chairman said that the DSB would take note of the statement made by Australia. He further stated that it was his understanding that the text of the decision that had been adopted at the present meeting would be circulated as a DSB document in the three languages of the WTO.[6] As was done in the past, any additional nominations of candidates, together with their CVs, should be addressed to the Chair of the DSB in care of the Council/TNC Division. They would be circulated as Job documents to all Members.

7.5. The DSB took note of the statements.

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[6] Subsequently circulated in document WT/DSB/63.