

**Dispute Settlement Body
31 August 2010**

MINUTES OF MEETING

Held in the Centre William Rappard
on 31 August 2010

Chairman: Mr. Yonov Frederick Agah (Nigeria)

Prior to the adoption of the Agenda, the item concerning the Panel Report in the case on: "Australia – Measures Affecting the Importation of Apples from New Zealand" (DS367) was removed from the proposed Agenda following Australia's decision to appeal the Report.

Prior to the closure of the meeting, the Chairman and many delegations made statements to pay tribute to the outgoing Director of the Legal Affairs Division, Mr. Bruce Wilson, expressing appreciation for his invaluable contribution to the WTO.

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¹ On 1 December 2009, the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (done at Lisbon, 13 December 2007) entered into force. On 29 November 2009, the WTO received a verbal note (WT/L/779) from the Council of the European Union and the Commission of the European Communities stating that, by virtue of the Treaty of Lisbon, as of 1 December 2009, the European Union replaces and succeeds the European Community.

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1. Surveillance of implementation of recommendations adopted by the DSB

- (a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.93)
- (b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.93)
- (c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.68)
- (d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.31)
- (e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.11)
- (f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.8)
- (g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/38/Add.2)

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

- (a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.93)

2. The Chairman drew attention to document WT/DS176/11/Add.93, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

3. The representative of the United States said that his country had provided a status report in this dispute on 19 August 2010, in accordance with Article 21.6 of the DSU. As had been noted, a number of legislative proposals that would implement the DSB's recommendations and rulings in this dispute had been introduced in the First Session of the current, 111th Congress. The Second Session of the 111th Congress had begun in January 2010. The Committee on the Judiciary of the House of Representatives had held a hearing on certain of those proposals on 3 March 2010. In addition, the US administration was working with Congress to implement the DSB's recommendations and rulings in this dispute.

4. The representative of the European Union said that, at the present meeting, the United States was presenting yet another status report in this dispute. The EU hoped that the US authorities would very soon take steps towards implementing the DSB's ruling and resolve this matter.

5. The representative of Cuba said that, each month, Members expected the parties to this dispute to provide new information to enable them to understand what was being done, and what steps were being taken to comply with the Appellate Body's ruling made more than eight years ago. However, once again, the US status report contained the same information, which had repeatedly been heard by Members. Pursuant to Article 21.6 of the DSU, status reports must provide information on progress in the implementation of the DSB's recommendations and rulings. However, since there was not much real progress to report in this dispute, the United States was not in a position to comply with its obligation under Article 21.6 of the DSU. The implementing Member should inform the DSB of content, scope and progress of the legislative proposals relating to Section 211, and how it would bring itself into compliance with the DSB's recommendations and rulings. In Cuba's view, disputes concerning legislations that were contrary to the basic principles of the TRIPS Agreement questioned the very basis of the multilateral trading system and undermined its effectiveness. The multilateral trading system was designed to ensure that disputes were resolved rapidly in a structured manner and in such a way so as to rectify negative trade effects. It was also designed to redress the imbalance between strong and weak Members by enforcing rules to ensure that "might does not make right" and that solutions were not unilateral. Therefore, if the DSB's recommendations were to be disregarded, the multilateral trading system would be seriously undermined. The parties to this dispute were aware that many Members wished that this dispute be settled as soon as possible. Certainly, Cuba was more affected than any other country by the parties' lack of political will in finding a solution to this long-standing dispute. However, Cuba was not the only country interested in the resolution of this dispute. Article 21.2 of the DSU stipulated that particular attention should be paid to matters affecting the interests of developing-country Members. This important provision was being ignored by the parties, and in particular by the United States, which had a selective approach to compliance with its obligations under the TRIPS Agreement. It was of serious concern that a Member put into place laws aimed at usurping a third party's registered intangible assets. If the trademarks involved were to be US trademarks or European geographical indications, the situation would have been different. The HAVANA CLUB trade mark had been registered according to US law by the Cuban company CUBAEXPORT in 1976. It was BACARDI's interest in appropriating that trademark that had led to the so-called Section 211. As stated by the Appellate Body in its concluding remarks in paragraph 363 of its Report pertaining to this dispute: "where a WTO Member chooses not to recognize intellectual property rights in its own territory relating to a confiscation of rights in another territory, a measure resulting from and implementing that choice must, if it affects other WTO Members, comply with the TRIPS Agreement, by which all WTO Members are voluntarily bound". Some Members might find the monthly reporting obligation to be tedious and consider it to be an empty exercise. At the same time, Members were aware that there was no will to comply in this dispute and that discriminatory treatment was accorded to a small country like Cuba. Members were right that this Agenda item was a tiresome business. However, neither Cuba nor the majority of Members were responsible for the violations committed by one powerful country. However, Members were wrong to question the value of denouncing US violations of international law. Cuba believed that the main

weapon against the use of force and the violation of international law by more powerful countries was the ethical call for justice. Thus, Cuba would not waiver in that effort.

6. The representative of India said that his country thanked the United States for its status report. India noted with disappointment that there was no change in the status of compliance in this dispute. The continued non-compliance by the United States was a matter of serious systemic concern as this non-conformity eroded the confidence and the credibility that Members placed in the dispute settlement system. India urged the United States to take immediate steps to comply with the DSB's rulings and the recommendations in this dispute without any further delay.

7. The representative of Ecuador said that his country thanked the United States for its status report but regretted that the United States did not mention as to when it expected to comply with the DSB's recommendations and rulings. Ecuador fully supported Cuba's statement and recalled that Article 21 of the DSU stated that prompt compliance with the DSB's recommendations or rulings was essential, and that particular attention should be paid to matters affecting the interests of developing-country Members. Ecuador, once again, urged the US administration and Congress to fully repeal Section 211 and asked the EU to provide more information on the steps being taken to resolve this dispute.

8. The representative of China said that his country thanked the United States for its status report. China regretted that the report simply reiterated what had been stated at previous DSB meetings and that, after eight years since the adoption of the relevant Reports by the DSB, there was no sign of compliance. China believed that this situation was not in line with the principle of prompt implementation stipulated in the DSU provisions and that it was highly inappropriate for a developed-country Member to prolong non-compliance in a dispute that involved the interests of a developing-country Member. China strongly supported Cuba and urged the United States to implement the DSB's decision as soon as possible.

9. The representative of Brazil said that his country thanked the United States for its status report. As at previous DSB meetings, the United States again failed to report on progress in the implementation of the DSB's recommendations in this dispute. Thus, Brazil joined previous speakers in urging the United States to bring its measures into conformity with the multilateral trade disciplines without further delay.

10. The representative of the Bolivarian Republic of Venezuela said that her country, once again, supported Cuba on this matter. This dispute, which had been initiated more than eight years ago, raised questions about the functioning of the multilateral trading system, due to the repeated and prolonged failure by the United States to comply with the Appellate Body's ruling, and the continued application by the United States of the legislation that was inconsistent with the TRIPS Agreement and the Paris Convention for the Protection of Intellectual Property. In its most recent status report, the United States stated that "the US Administration will continue to work with the US Congress with respect to appropriate statutory measures that would resolve this matter". In Venezuela's view, this constituted "action without results", action which did not yield any results. Venezuela, therefore, requested the United States to provide further information on the work supposedly being carried out with Congress, so as to demonstrate that the US statement was not merely a delaying tactic, but its genuine commitment towards compliance with the Appellate Body's decision. Venezuela, once again, urged the United States to comply with the DSB's recommendations so as to avoid calling into question the functioning of the WTO, and to ensure that the trademark concerned was returned to its original and rightful owners. Venezuela called on the United States to repeal Section 211, thereby meeting its WTO obligations and restoring Cuba's rights. If not, the economic, commercial and financial embargo policy that had affected Cuba as a WTO Member since 1962 would remain in effect.

11. The representative of Viet Nam said that his country thanked the United States for its status report and supported Cuba's statement. The prompt settlement of disputes and the compliance of the DSB's rulings and recommendations was essential for the effective functioning of the WTO. Viet Nam, therefore, urged the United States to comply with the DSB's rulings and recommendations in this case as soon as possible.

12. The representative of Uruguay said that his country shared the systemic concerns expressed by previous speakers. It was extremely important for Members to comply promptly with the DSB's recommendations since this was essential for ensuring the smooth functioning of the dispute settlement system and its credibility, as well as for maintaining legal certainty and effective balance of rights and obligations provided under the multilateral trading system. Uruguay, once again, urged the United States to do its utmost to comply with the DSB's recommendations.

13. The representative of Paraguay said that her country thanked the United States for its status report. Paraguay expressed concern that there had been no progress made to comply with the DSB's ruling in this dispute and that the United States had not repealed Section 211.

14. The representative of Mexico said that his country thanked the United States for its status report. Mexico had taken note of the US status report and urged the parties to resolve this dispute through legal remedies available under the DSU. It was Mexico's understanding that any WTO Member that considered itself to be affected by the lack of compliance in this dispute could initiate its own dispute, in accordance with the DSU provisions.

15. The representative of Argentina said that his country thanked the United States for its status report and reiterated its concern about the lack of concrete progress in implementing the DSB's recommendations over a long period of time. The delay in implementing the DSB's recommendations undermined the ability of the dispute settlement system to solve disputes. Argentina, once again, called on the parties to the dispute, in particular the United States, to ensure full compliance with the DSB's ruling.

16. The representative of Angola said that her country thanked the United States for providing information on the implementation of the DSB's decision and the Appellate Body's Report of 12 February 2002 on Section 211. Angola recalled that the prompt compliance with the DSB's recommendations and rulings was essential to ensure an effective resolution of disputes to the benefit of all WTO Members. As was well known, the Panel Report had concluded in August 2001 that Section 211 was inconsistent with Article 42 of the TRIPS Agreement and the Appellate Report had confirmed, in February 2002, that Section 211 violated the national treatment and most-favoured-nation principles under the TRIPS Agreement and the Paris Convention for the protection of industrial property and had requested the United States to bring this measure into conformity with its obligation under the TRIPS Agreement. The delay in the implementation of the DSB's decision, despite the fact that the DSB had determined that Section 211 was inconsistent with the WTO rules and principles, affected the WTO dispute settlement system which was a central element in providing security and predictability for all Members and set a negative precedent for similar cases. Angola believed that concrete actions by the parties in this dispute would send a positive signal of respect for WTO rules.

17. The representative of Nicaragua said that disputes between Members with different economic capacities tested their will to comply with WTO rules and the DSB's rulings and recommendations. However, Members' commitment to implement the DSB's rulings and recommendations was unequivocal. Nicaragua regretted that this matter was being permanently included under item 1 of the DSB's Agenda and that no progress had been reported at the present meeting regarding the steps taken to implement the DSB's rulings and recommendations in this dispute. Nicaragua hoped that the United States would make genuine efforts to resolve this long-running dispute and urged the United States to take the necessary steps without further delay.

18. The representative of the United States said that, in response to the statements made by some Members regarding systemic concerns about the dispute settlement system, as the United States had said on numerous occasions, the facts simply did not support Members' assertions or justify such systemic concerns. The record was clear: 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 compliance in furtherance of the purpose of the dispute settlement system. In relation to efforts towards compliance in this dispute, the United States had previously noted that a number of legislative proposals had been introduced in the US House of Representatives and the US Senate. These included H.R. 188, H.R. 1530, H.R. 1531, H.R. 2272, S. 1089, H.R. 1103 and S. 1234. These bills would repeal or clarify Section 211.

19. The representative of Cuba said that, as had just been pointed out, the United States had complied in the vast majority of its disputes. However, the United States was a defender of the dispute settlement system which protected its rights. Therefore, this system did not take into account special and differential treatment, it did not promote the right to development nor did it take into account concerns of the most vulnerable countries. The WTO system contained imbalances and inequalities and, for historical reasons as well, due to the international economic order, the United States had a privileged position under this system. As demonstrated by statistics, in the majority of disputes the United States tried to consolidate its interests and hegemonic dominance. One could look at the compliance record from various points of view. One could argue that if Members did not comply within a short period of time, their compliance record was poor. Cuba did not believe that the Section 211 dispute was the only dispute where the United States violated WTO rules. However, even if this were the only dispute where no compliance had taken place over the period of eight years, it would be sufficient to conclude that the United States was not in compliance with its obligations. Cuba recognized that the US representative had a difficult task of supporting a policy which was unfair and had to make its statement. However, Cuba could not give any credibility to what had just been stated by the United States.

20. 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.93)

21. The Chairman drew attention to document WT/DS184/15/Add.93, 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.

22. The representative of the United States said that his country had provided a status report in this dispute on 19 August 2010, in accordance with Article 21.6 of the DSU. As of 23 November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. Details were provided in document WT/DS184/15/Add.3. With respect to the DSB's recommendations and rulings that had not already been addressed by the US authorities, the US administration would work with the US Congress with respect to the appropriate statutory measures that would resolve this matter.

23. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan took note of the US' report that the United States had taken certain measures to implement part of the DSB's recommendations in November 2002. With respect to the remaining part of the DSB's recommendations and rulings, Japan was still waiting for statutory action to be taken by the United States. Japan hoped that the United States would soon be in a

position to report to the DSB more tangible progress. Full and prompt implementation of the DSB's recommendations and rulings was "essential to the effective functioning of the WTO and the maintenance of a proper balance of the rights and obligations of Members".² Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

24. 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.68)

25. The Chairman drew attention to document WT/DS160/24/Add.68, 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.

26. The representative of the United States said that his country had provided a status report in this dispute on 19 August 2010, in accordance with Article 21.6 of the DSU. The US administration would continue to confer with the EU, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

27. The representative of the European Union said that the United States had again reported non-compliance and the EU was again disappointed. As it had been from the beginning, the EU remained ready to work with the US authorities towards the complete resolution of this case.

28. 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.31)

29. The Chairman drew attention to document WT/DS291/37/Add.31, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning its measures affecting the approval and marketing of biotech products.

30. The representative of the European Union said that, once again, his delegation noted that the EU regulatory procedures on biotech products continued to work as foreseen in the legislation. On 28 July 2010, the Commission had adopted new authorizations for GM maize MON89034xNK603, Bt11xGA21, MON88017xMON810, 59122x1507xNK603 and 1507x59122 and had renewed the authorization for maize Bt11. Those five new authorization decisions raised the number of GMOs authorized since the date of establishment of the Panel to thirty-four. Progress had also been made on other applications for authorization. For example, the European Food Safety Agency had delivered favourable opinions on four GM events (GM maize MIR604xGA21, GM maize Bt11xMIR604 and GM maize Bt11xMIR604xGA21 and GM cotton 281-24-236 x 3006-210-23). In an effort to further streamline EU authorization procedures, while taking into consideration legitimate concerns raised by EU member States, the European Commission had adopted, on 13 July 2010, a package proposal regarding cultivation of GM crops. This proposal allowed member States to decide on the cultivation of GM crops authorized at EU level in their territory, taking into consideration their specific conditions. The proposal made clear that any member State measure should be limited to cultivation itself and not impede marketing or trade in GM seeds, and that it should be consistent with obligations both under the EU Treaties and the WTO Agreements. The EU welcomed the US decision to re-

² Article 3.3 of the DSU.

engage in a technical dialogue on biotechnology with the EU. A meeting between relevant services from the European Commission and the US authorities had taken place in July 2010. The EU hoped that this was the first step towards a constructive approach based on dialogue which would allow the parties to leave litigation aside.

31. The representative of the United States said that his country thanked the EU for its status report and its statement. Although the EU had recently approved several biotech applications pending in its approval pipeline, the EU had not resolved the fundamental problems in the operation of its regulatory system for biotech products. A number of pending biotech applications were still affected by lengthy delays, including two of the products which the DSB had found to be unduly delayed in breach of the EU's WTO obligations. In addition, even though the DSB had found nine bans adopted by individual EU member States on products approved at the EU level to be in breach of the EU's WTO obligations, EU member States continued to adopt and maintain such bans. As the EU had noted in its status report, US and EU officials had held discussions in July 2010 to discuss matters related to the EU's regulation of biotech products. The United States appreciated the efforts taken by the Commission in organizing the meeting and had found the discussions to be constructive. The United States was reviewing the information received during the discussions, and would continue to monitor developments regarding the EU's biotech approval system.

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

(e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.11)

33. The Chairman drew attention to document WT/DS322/36/Add.11, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US measures relating to zeroing and sunset reviews.

34. The representative of the United States said that his country had provided a status report in this dispute on 19 August 2010, in accordance with Article 21.6 of the DSU. As noted in that status report, the United States had taken steps to implement the DSB's recommendations and rulings in this dispute. With respect to the outstanding issues, the United States would continue to consult with interested parties in order to address those issues.

35. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. The United States had stated in its status reports that it "will continue to consult with interested parties in order to address the findings contained in [the Appellate Body and the panel] reports" adopted by the DSB on 31 August 2009. Japan took this statement as an expression of commitment by the United States to fully implement the DSB's recommendations and rulings. Once again, Japan called on the United States to fulfil its commitment by taking immediate and concrete action so as to resolve this dispute.

36. The representative of the European Union said that his delegation wished to reiterate its disappointment over the lack of any real progress by the United States on compliance with adverse rulings on zeroing in this dispute. The EU recalled that immediate compliance with the DSB's recommendations and rulings was not an option, but an obligation under the DSU.

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

- (f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.8)

38. The Chairman drew attention to document WT/DS350/18/Add.8, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the existence and application of zeroing methodology by the United States.

39. The representative of the United States said that his country had provided a status report in this dispute on 19 August 2010, in accordance with Article 21.6 of the DSU. As noted in that status report, the United States had taken steps to implement the DSB's recommendations and rulings in this dispute. With regard to the remaining issues, the United States would continue to consult with interested parties.

40. The representative of the European Union said that his delegation's concerns about the lack of implementation in this case were well known and were recorded in the minutes of past DSB meetings. Despite encouraging political statements, the final determination in Section 129 proceeding of 12 March 2010 left the EU perplexed as to the US intentions on compliance with the ruling in this dispute. The EU continued to urge the United States to reconsider its Section 129 determination immediately and to implement the DSB's ruling.

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

- (g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/38/Add.2)

42. The Chairman drew attention to document WT/DS294/38/Add.2, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US laws, regulations and methodology for calculating dumping margins.

43. The representative of the United States said that his country had provided a status report in this dispute on 19 August 2010, in accordance with Article 21.6 of the DSU. As noted in that status report, the United States had already taken a number of steps to implement the DSB's recommendations and rulings in this dispute. The United States would continue to consult with interested parties with regard to the remaining issues. Finally, as mentioned in previous DSB meetings, the EU had requested authorization from the DSB to suspend concessions or other obligations in this dispute, and the United States had objected to the EU's request. Therefore, pursuant to Article 22.6 of the DSU, the matter had been referred to arbitration.

44. The representative of the European Union said that his delegation wished to reiterate its disappointment over the lack of any real progress by the United States on compliance with adverse rulings on zeroing in this dispute. The EU recalled that immediate compliance with the DSB's recommendations and rulings was not an option, but an obligation under the DSU.

45. 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

46. 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.

47. The representative of Japan said that, on 2 June 2010, US Customs and Border Protection published "FY2010 Preliminary CDSOA Amount Available"³ and that a new round of distributions under the CDSOA appeared to be underway. That latest action showed that the CDSOA remained operational. As US Customs and Border Protection had explained, "the distribution process will continue for an undetermined period".⁴ Under these circumstances, Japan had decided to continue, as from 1 September 2010, to suspend concessions and related obligations under GATT 1994 for another year to induce full compliance by the United States. Details of this determination were provided in Japan's notification to the DSB, dated 25 August 2010, which would be circulated to all Members on 31 August 2010 as document WT/DS217/58. Japan urged the United States to stop the illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute once and for all. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report pertaining to this dispute.

48. The representative of the European Union said that, as had previously been done on many occasions, the EU wished to ask the United States when it would effectively stop the transfer of anti-dumping and countervailing duties to the US industry and, hence, put an end to the condemned measure. The EU, once again, renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit status reports in this dispute.

49. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. As the United States continued to make disbursements pursuant to the CDSOA, this dispute was not resolved. Once again, Brazil urged the United States to fully implement the DSB's recommendations and rulings in this dispute and to provide regular status reports as required by Article 21.6 of the DSU.

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

51. The representative of India said that his country appreciated the EU and Japan for constantly bringing this matter before the DSB. India shared their concerns and registered its disappointment over the US continued disbursement of WTO-inconsistent payments under the CDSOA. India was concerned that non-compliance by Members undermined the WTO dispute settlement system and the WTO's credibility. India agreed with the EU and Japan that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

52. The representative of Thailand said that his country thanked Japan and the EU for continuing to bring this matter before the DSB and supported the statements made by previous speakers. Thailand urged the United States to cease the disbursements, repeal the Byrd Amendment with

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

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

immediate practical effect, and resume the submission of status reports until such actions had been taken and this matter was fully resolved.

53. The representative of China said that his country thanked the EU and Japan for raising this matter at the DSB meeting. China shared the concerns expressed by previous speakers and wished to join them in urging the United States to fully comply with the DSB's rulings.

54. The representative of the United States said that, as his country had already explained at previous DSB meetings, the US President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Furthermore, the United States recalled 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. 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, the United States failed to see what purpose would be served by further submission of status reports repeating, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. With respect to Japan's renewal of measures suspending concessions, the United States would be reviewing carefully the measures taken by Japan. As the United States had previously observed, the DSB only authorized the suspension of concessions or other obligations as provided in the Award of the Arbitrator.

55. The DSB took note of the statements.

3. United States – Anti-dumping measures on polyethylene retail carrier bags from Thailand

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

56. 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.

57. The representative of the United States said that his country was pleased to report that it had implemented the DSB's recommendations and rulings in the dispute: "US – Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand". The United States and Thailand had agreed to a reasonable period of time of six months from the date of adoption of the Panel Report. That reasonable period of time had expired on 18 August 2010. The US Department of Commerce had recalculated the margins of dumping from the investigation for two respondents, providing offsets for non-dumped comparisons. The recalculated margin for one of the respondents was zero, and the Department had revoked the order with respect to that respondent. In addition, the Department had recalculated the all-others rate. The implementation of the Department's new determination, including the revocation with respect to one respondent, was effective from 28 July 2010. Therefore, the United States had implemented the DSB's recommendations and rulings prior to the expiry of the reasonable period of time in this dispute.

58. The representative of Thailand said that his country thanked the United States for its status report on the implementation of the recommendation adopted by the DSB in this dispute on 18 February 2010. Thailand appreciated the United States for its continued cooperation in this case, and in particular its timely determination under Section 129 of the Uruguay Round Agreement Act.

Thailand would continue to monitor the implementation of this determination to ensure that traders benefited fully from the Panel's rulings and recommendations in this dispute.

59. The DSB took note of the statements.

4. Proposed nomination for the indicative list of governmental and non-governmental panelists (WT/DSB/W/432)

60. The Chairman drew attention to document WT/DSB/W/432, which contained an additional name proposed for inclusion in 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/432.

61. The DSB so agreed.

5. Amendments to the Working Procedures for Appellate Review

(a) Statement by the Chairman

62. The Chairman, speaking under "Other Business", said that, as announced at the beginning of the meeting, he wished to make a statement regarding the amendments to the Working Procedures for Appellate Review that had originally been proposed by the Appellate Body in its letter circulated to Members on 12 January 2010. After having received and carefully considered comments made by Members during the regular DSB meeting on 18 May 2010, along with written comments received by the 26 May 2010 deadline, the Appellate Body had, on 27 July 2010, circulated a communication containing the final amendments to its Working Procedures, set out in document WT/AB/WP/W/11, which was available in the meeting room. That was followed by the circulation of the revised and consolidated version of the Working Procedures for Appellate Review on 16 August 2010, set out in document WT/AB/WP/6, which was also available in the meeting room. He drew Members' attention to the fact that the modified rules would apply to appeals initiated on or after 15 September 2010. Any appeals initiated before 15 September 2010 remained subject to the previous version of the Working Procedures, set out in document WT/AB/WP/5. He underlined that the Appellate Body had expressed its appreciation for the interest shown by Members in the proposed amendments, and had found the comments received from Members to be extremely helpful in the process of finalizing the amendments.

63. The DSB took note of the statement.
