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MINUTES OF MEETING

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on 19 February 2008

Chairman: Mr. Bruce Gosper (Australia)

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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.63)
- (b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.63)
- (c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.38)
- (d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities (WT/DS291/37/Add.1–WT/DS292/31/Add.1–WT/DS293/31/Add.1)

1. The Chairman recalled that Article 21.6 of the DSU 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 pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved". He proposed that the four sub-items to which he had just referred be considered separately.

- (a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.63)

2. The Chairman drew attention to document WT/DS176/11/Add.63, 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 7 February 2008, in accordance with Article 21.6 of the DSU. As noted in that status report, a number of legislative proposals that would implement the DSB's recommendations and rulings in this dispute had been introduced in the current US Congress, in both the US Senate and the US House of Representatives. The US administration continued to work with the US Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Communities said that Section 211 had been ruled to be WTO-incompatible more than six years ago, but the EC was still waiting for implementation. The EC hoped that the bipartisan bills introduced in the US Congress to repeal Section 211 would finally progress and bring the United States into compliance with its TRIPS obligations.

5. The representative of Cuba noted that under Item 1 of the Agenda of the present meeting: "Surveillance of Implementation of the Recommendations and Rulings Adopted by the DSB", three sub-items concerned the United States. Cuba wondered whether, apart from disregarding its commitments in the area of international trade, the United States wanted to dismantle the dispute settlement mechanism and to impose its power. Section 211 had already been in place for the past 10 years. Eight years ago, on 30 June 2000, the EC had requested the DSB to establish a panel to examine Section 211. It had now been six years since the DSB had adopted the Appellate Body report and had requested the United States to bring its WTO-inconsistent measure into conformity with the US obligations under the TRIPS Agreement. No changes had taken place since then. There was nothing to celebrate. In the DSB meetings the United States kept repeating the same statement, while no changes had been made towards legislative proposals on Section 211. The United States had not even mentioned that the current US administration had done nothing in the US Congress to support unsuccessful attempts to repeal Section 211, which violated WTO rules and principles.

6. On several occasions, Cuba had reiterated – and it would never get tired of doing this – that Section 211 had extended the illegal and extraterritorial trade, economic and financial blockade, which had been imposed on Cuba, into the area of intellectual property rights. Furthermore, the United States had failed to comply with its international obligations. The establishment of the WTO dispute settlement system marked the importance attached by Members to compliance with their WTO obligations. A failure on the part of big trading partners, such as the United States, to comply with the WTO obligations affected the balance between the rights and obligations of Members. It also affected Members' confidence in the WTO and the dispute settlement system. This, in turn, contradicted the view that the DSB was the "jewel in the crown" and one of the major achievements of the Uruguay Round negotiations.

7. Cuba noted that the issues related to intellectual property rights had been considered by the G-8 Summit held in Germany in 2007. The G-8 leaders had recognized the need for increased cooperation in an effort to combat counterfeiting and piracy of intellectual property rights, and had requested the OECD to make recommendations so as to ensure that intellectual property rights were respected. Therefore, it was difficult to understand that one of the key participants in the Summit, which presumably attached great importance to this issue, had failed to comply with its obligations under the TRIPS Agreement and other legal instruments in the area of intellectual property rights, and that this non-compliance was tolerated. It was clear that the objective was to prevent developing countries from taking actions that could pose threats to intellectual property rights in developed countries, while the industrialized countries tolerated and kept in place regulations promoting counterfeiting of third-party trademarks. It was evident that the attempt was to impose the law of the strongest, double standards and demagoguery. Counterfeiting actions not only affected intellectual property rights owners and their economic and moral interests, but were also damaging to economies and social structures. It was, therefore, not surprising that the United States was one of the Members most concerned about this. Cuba considered that this extreme situation should be resolved without further delay and requested the United States to immediately repeal Section 211. As Cuba had stated previously, this issue was not only about a blockade imposed on a small country, it was also about violating WTO rules. At present, Cuba was one of the most affected countries in this dispute, but other Members could also be affected in future since the United States disregarded its obligations. The United States was prepared to meet its obligations only if it was convenient to do so.

8. The representative of the Bolivarian Republic of Venezuela said that, like Cuba, her country wished to underline the importance of prompt and satisfactory implementation of the DSB's recommendations to the proper functioning of the dispute settlement mechanism. It was not enough to announce intentions to comply. The measures must be taken to compensate affected Members. WTO-commitments should be taken seriously, and the DSB's recommendations and rulings should be fully implemented. It was for this reason that her country called on the parties to take the necessary measures to settle this dispute.

9. The representative of India said that her country thanked the United States for the status report and the statement made at the present meeting. India appreciated the steps taken thus far to repeal Section 211 as steps in the right direction. However, India noted that there was no substantive change and felt compelled, yet again, to stress that the principle of prompt compliance continued to be missing in this dispute. India, therefore, wished to reiterate its systemic concerns about this situation of non-compliance as it clearly undermined the credibility and confidence that Members had reposed in the system.

10. The representative of Brazil said that his country called the attention of all Members to the US non-compliance with the DSB's recommendations in this dispute. There was increased apprehension in Brazil regarding the authority and integrity of the WTO dispute settlement system as no implementation action had been taken and there was no sign of compliance in this dispute. In

order to ensure and enhance the effectiveness of the system, Brazil urged the United States to take immediate action to ensure the implementation of the DSB's recommendations.

11. The representative of China said that his country thanked the United States for its status report and its statement made at the present meeting. China, once again, wished to reiterate its systemic concerns with the protracted implementation process in this dispute. The prompt and full implementation of the DSB's rulings and recommendations was one of the major cornerstones of the WTO dispute settlement system. China hoped that the present US Congress would realize that it was not only in the interest of other Members, but also in the interest of the United States, to put an end to this situation, which undermined the authority of the TRIPS Agreement and the creditability of the WTO dispute settlement system. Therefore, China urged the United States to make an extra effort to bring itself promptly into conformity with the decision of the DSB.

12. The representative of Thailand said that his country wished to thank the United States for its status report and the statement made at the present meeting. Like previous speakers, Thailand wished to express its concern over the systemic implications of this dispute. Non-implementation of the DSB's rulings and recommendations undermined the rules-based multilateral trading system. Thailand, therefore, called on the United States to take the necessary and urgent steps to comply with its obligations under the TRIPS Agreement.

13. The representative of Bolivia said that her country wished, once again, to express its concern about the situation of non-compliance in this dispute and the lack of respect for WTO rules. Once again, there was no progress towards the removal of the measure in question. This had a negative impact on the credibility of the world trading system and the dispute settlement mechanism, and undermined a proper balance between the rights and obligations of Members under the WTO Agreement. Therefore, once again, Bolivia urged the United States to comply with the DSB's rulings and to make further efforts to repeal Section 211.

14. The representative of Mexico said that in accordance with Article 21.3 of the DSU: "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". Mexico, therefore, urged the parties to the dispute to take the necessary steps to comply with the recommendations and rulings of the DSB to the benefit of all Members.

15. The representative of the United States said that his delegation wished to respond briefly to two points that had been raised. First, in response to the statements regarding concerns about non-compliance, the facts really did not support those concerns. The facts were that the US compliance record was not poor. To the contrary, the record showed that the United States had fully complied in a vast majority of its disputes, and as for the remaining few, the United States was actively working towards compliance. With respect to statements concerning undermining of the TRIPS Agreement, as the United States had stated on previous occasions, the United States regretted very much that some Members, including some whose record of protecting intellectual property rights appeared to be less than robust, continued to criticize the US commitment to intellectual property rights. These criticisms were completely unfounded. It was, of course, true that the United States remained a strong advocate of substantial protections for intellectual property internationally. However, the United States was also second to no one in providing strong intellectual property protection within its own territory. The United States, therefore, looked forward to continue to work with all Members, including all those Members who had spoken at the present meeting, to secure the protection of intellectual property rights around the world.

16. The representative of Cuba said that his delegation wished to make some brief comments. It was difficult to see that there had been compliance in this dispute since the status report submitted this month was exactly the same as the one submitted in previous years, and the matter continued to be

discussed in the DSB. He noted that under Item 1 of the Agenda of the present meeting, there were four matters regarding the DSB surveillance of the implementation of recommendations. Three out of those matters concerned the United States. According to the DSU provisions: "Unless the DSB decides otherwise, the issue of implementation of the recommendations and rulings shall remain on the DSB's agenda, until the issue is resolved". In this regard, Cuba reiterated that it had not seen any action regarding the Section 211 dispute in the US Congress for years. There had been a number of legislative bills to correct the situation, but some of them were contrary to the decision of the DSB. Cuba did not see any sign of political will to address this matter nor any solution in sight.

17. 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.63)

18. The Chairman drew attention to document WT/DS184/15/Add.63, 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.

19. The representative of the United States said that his country had provided a status report in this dispute on 7 February 2008, 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. The US administration would work with the US Congress with respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities by 23 November 2002.

20. The representative of Japan said that his country thanked the United States for its statement and its latest status report. Japan acknowledged that, in November 2002, the United States had taken certain measures to implement part of the DSB's recommendations, as had been reported by the United States. The fact remained, however, that the remaining part of the recommendations had not yet been implemented, and the issue of implementation in this case was still on the DSB's agenda. Japan strongly hoped that the United States would soon be in a position to report to the DSB on more tangible progress in this long-standing dispute. A full and prompt implementation of the DSB's recommendations and rulings was essential for maintaining the credibility of the WTO dispute settlement system. Japan urged the United States to come into full compliance with the DSB's recommendations without further delay.

21. 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.38)

22. The Chairman drew attention to document WT/DS160/24/Add.38, 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.

23. The representative of the United States said that his country had provided a status report in this dispute on 7 February 2008, in accordance with Article 21.6 of the DSU. The US administration would work closely with the US Congress and would continue to confer with the EC, in order to reach a mutually satisfactory resolution of this matter. In this regard, the United States appreciated the EC's recent statements that it remained prepared to work with the United States to seek a resolution to this

dispute. The United States shared the EC's goal of discussing how such a mutually satisfactory solution could be achieved.

24. The representative of the European Communities said that this item had been on the agenda for too long, and the situation was well-known to the DSB, so she would not repeat the same statement that the EC had made many, many times regarding this matter. The EC was still waiting for a solution in this long-standing dispute.

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

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities (WT/DS291/37/Add.1–WT/DS292/31/Add.1–WT/DS293/31/Add.1)

26. The Chairman drew attention to document WT/DS291/37/Add.1–WT/DS292/31/Add.1–WT/DS293/31/Add.1, which contained the status report by the European Communities on progress in the implementation of the DSB's recommendations in the case concerning the EC's measures affecting the approval and marketing of biotech products.

27. The representative of the European Communities said that this case was an example of good faith cooperation between the complainants and the defendant in relation to compliance with a WTO panel report. The EC had been holding regular technical discussions with the three complainants, which had addressed all relevant biotech-related issues of their concern. In recognition of the usefulness of this dialogue and progress made in the processing of pending applications, the three complainants had agreed to further extend the initial 12-month reasonable period of time for implementation (RPT) until 11 January 2008. Two of the complainants (Argentina and Canada) had agreed to a second extension of the RPT of five and one months respectively. Canada had even agreed to a third extension of 20 weeks (i.e. until 30 June 2008), which clearly showed recognition of progress being made.

28. The EC noted that the United States, while tabling its retaliation request, had concluded a sequencing agreement with the EC that would suspend proceedings conducive to the determination of any retaliation until compliance procedures under Article 21.5 of the DSU were concluded. Numbers may be illustrative in assessing progress. Seventeen applications had been approved since the establishment of a WTO panel in August 2003. Only in 2007, seven new GM products had been authorized and four other products would likely be approved in early 2008. The EC believed that given the inevitably sensitive nature of biotech issues, dialogue was the appropriate way forward and remained open to continue discussions with the three complainants.

29. The representative of the United States said that his country thanked the EC for its written status report and for its statement made at the present meeting. The reasonable period of time for the EC's compliance in this dispute had expired on 11 January 2008. The issues covered in the dispute remained unresolved, even though more than four and a half years had passed since the United States had filed its consultation request in May 2003. As the EC representative had noted, on 14 January, the United States and the EC had agreed to certain procedures under Articles 21 and 22 of the DSU for the purposes of this dispute.¹ These agreed procedures were intended to allow continued discussions aimed at the goal of resolving this dispute and related issues. On 17 January 2008, the United States had requested authorization under Article 22.2 of the DSU to suspend concessions and other obligations with respect to the EC under the covered agreements. Pursuant to the agreed procedures, the authorization request had been referred to arbitration.

¹ WT/DS291/38.

30. On 13 February 2008, the Secretariat had provided notice that the Arbitrator had been constituted and that the arbitration would be carried out by the three original panelists.² The United States thanked the panelists for their willingness to serve in this proceeding. Pursuant to the agreed procedures, on 15 February 2008, the EC and the United States had jointly requested that the arbitrator suspend the arbitration. On 18 February, the arbitrator had issued a decision suspending the arbitration proceedings. The arbitration would resume, at the request of the United States, if and when the DSB found that a measure taken to comply with the recommendations and rulings of the DSB in this dispute did not exist or was inconsistent with a covered agreement.

31. At the present meeting, the EC had cited progress in making approvals, and indeed some approvals had occurred. The United States would note, however, that the DSB had found that the EC had adopted a general moratorium starting in 1999 – nearly nine years ago – and lasting at least through mid-2003. A handful of approvals over a nine-year period was, unfortunately, of little commercial significance. Rather, the essential facts were that over 40 biotech applications were currently pending in the EC approval system – including many applications currently approved and marketed in major world markets. At least one pending application had been filed over 10 years ago. The United States was likewise concerned that some of the member State product bans found by the DSB to be in breach of the EC's SPS obligations remained unchanged. Moreover, additional EC member States had adopted new bans on the very same biotech products covered by the member State measures found to be in breach of SPS obligations. Most recently, on 7 February 2008, the Government of France had announced that it would be extending a ban on the only biotech variety currently grown commercially in the EC. Such actions were not conducive to a resolution of this dispute. The United States looked forward to continuing its dialogue with the EC. The United States continued to hope that the EC would take the steps necessary to resolve this dispute so that there would be no need for the United States to resort to the withdrawal of concessions or other obligations.

32. The representative of Argentina said that his country welcomed the status report provided by the EC. As it had been pointed out by the EC, the efforts made thus far had enabled the parties to make progress in some aspects of the matter concerning this dispute. Argentina was confident that those efforts, aimed at reaching a definitive solution to this matter, would continue.

33. The representative of Canada said that her country thanked the EC for its status report. With respect to the DS292 dispute, Canada agreed with the EC that progress had been made on this file. It was due to this progress that Canada had decided that it was worthwhile to extend the reasonable period of time until the end of June 2008. Canada hoped, and fully expected, that this extra time would be used well by the EC to complete all steps necessary to achieve a mutually satisfactory resolution of this dispute.

34. The representative of the European Communities said that the EC was working on the two applications referred to. The GMO regulatory regime was working normally, as could be demonstrated by the seven authorizations granted in 2007 (17 since the establishment of the WTO panel in August 2003). Four more applications were in the final stage of the authorization procedure. The EC had acted upon all the various national measures covered by the ruling of the WTO Panel Report. All those measures had become obsolete, with the only exception being the Austrian measures on GM maize MON810 and T-25. Concerning the Austrian measures, the Commission had tabled revised proposals to the Environment Council held on 30 October 2007, requesting Austria to lift the ban on import and processing of these GM events. The Commission had also requested Austria to provide scientific information supporting the ban on cultivation of these GMO events. The Commission was currently examining the information provided by Austria. Member States could adopt safeguard measures provided that they complied with the conditions established by the EC legislation, notably scientific information supporting the need for such measures. The Commission

² WT/DS291/41.

was determined to act upon any measure of member States that was in violation of that legislation. As expected, on 7 February 2008, the French Ministry of Agriculture had adopted a Decree suspending the cultivation of GM maize MON 810 until a decision on the renewal of the EC authorization of cultivation of MON810 was adopted. This measure had been notified to the Commission on 8 February as a safeguard measure under the relevant legislation. The Commission would now act upon this measure according to this legislation. It should be noted that, following discussions between the applicant (Monsanto) and the German authorities, on 5 December 2007, Germany had lifted the ban imposed on the cultivation of MON810 in April 2007 (due to come into force in 2008).

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

2. United States – Continued Dumping and Subsidy Offset Act of 2000: Implementation of the recommendations adopted by the DSB

(a) Statements by the European Communities and Japan

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

37. The representative of the European Communities said that the CDSOA had been condemned more than five years ago. Though nominally repealed, this legislation continued to produce its trade-distorting effects to the detriment of all WTO Members as collected anti-dumping and countervailing duties would still be distributed for a number of years. Slightly more than US\$262 million had just been distributed to US companies, which put the total amount disbursed thus far under the CDSOA close to US\$2 billion. The EC wished to ask again the United States if and what steps it intended to take to stop the transfer of anti-dumping and countervailing duties to its industry. The EC also renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit implementation reports in this dispute.

38. The representative of Japan said that the latest distributions under the CDSOA, which had been announced in December 2007³, amounted to some US\$262 million. This recent US action demonstrated that the CDSOA was still operational. The CDSOA continued to have negative trade impacts on Japan and other WTO Members. Japan, once again, urged the United States to immediately terminate the illegal distributions and to repeal the CDSOA not just in form but in substance. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report in this dispute "until the issue is resolved". Japan reserved all its rights under the DSU until the United States came into full compliance with the DSB's recommendations.

39. The representative of China said that his country thanked the EC and Japan for, once again, raising this item at the DSB meeting. China supported the views expressed by previous speakers and joined them in urging the United States to fully comply with the DSB's recommendations.

40. The representative of Canada said that her country was pleased that duty deposits collected by the United States after 30 September 2007 would no longer be subject to the Byrd Amendment. While this was a significant step forward, duty deposits collected by the United States before 1 October 2007, would, nevertheless, continue to be disbursed under the CDSOA. Until the United States ceased to administer the CDSOA, Canada shared the view that surveillance by the DSB must continue.

³ "FY2007 Annual Disbursements Report" issued by the US Customs and Border Protection 5 December 2007.

41. The representative of Brazil said that his country appreciated that this matter continued to be placed on the DSB's agenda and insisted that the United States take necessary actions to discontinue all disbursements made to its domestic industry under the Byrd Amendment. More than five years had elapsed since the adoption by the DSB of the Panel and the Appellate Body Reports in this dispute, but the United States had not yet fully complied with the recommendations and rulings. As a consequence of the enactment of the "Deficit Reduction Omnibus Reconciliation Act of 2005", duties on entries of goods made and filed before 1 October 2007, which would fall within the scope of the CDSOA, were still being distributed. Such a measure was detrimental to the rights of the WTO Members, and was in contradiction with the US obligations under the DSU. Therefore, it was Brazil's understanding that the United States should fully implement the recommendations and rulings of the DSB by ceasing all disbursements carried out under the Byrd Amendment. Furthermore, Member's rights arising in relation to this dispute shall be preserved.

42. The representative of India said that her country thanked the EC and Japan for bringing this matter, once again, before the DSB. India noted with appreciation the corrective steps taken by the United States, and was pleased that duty deposits collected by the United States after 30 September 2007 would no longer be subjected to the Byrd Amendment. While this was a significant step forward, duties collected before 1 October 2007 would, nevertheless, continue to be subject to the Byrd Amendment. This had trade-distorting effects on foreign producers and exporters. India, therefore, urged the United States to cease its WTO inconsistent disbursements, and supported the view that continued surveillance by the DSB was needed.

43. The representative of Thailand said that his country wished to join previous speakers in thanking the EC and Japan for bringing this item before the DSB. Thailand appreciated the positive steps taken by the United States to not disburse to its industries AD/CVD duties collected on goods entering the United States from 1 October 2007. However, AD/CVD duties collected on goods that had entered the United States prior to 1 October 2007 continued to be disbursed to the domestic industry under the Byrd Amendment. Thailand, therefore, urged the United States to cease its WTO-inconsistent disbursements, to repeal the Byrd Amendment with immediate practical effect, and to resume providing status reports until such actions were taken and this matter had been fully resolved.

44. The representative of the United States said that, as his country had already explained at previous DSB meetings, the US President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States welcomed the EC's and Japan's recognition that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007. With respect to comments made at the present meeting regarding further DSB surveillance in this matter, as the United States had already explained at previous DSB meetings and at the present meeting, the United States had taken all steps necessary to implement the DSB's recommendations and rulings in these disputes. In this light, the United States failed to see what purpose would be served by further submission of status reports repeating the progress the United States had made in the implementation of the DSB's recommendations and rulings.

45. The DSB took note of the statements.

3. United States – Measures relating to zeroing and sunset reviews

(a) Statement by Japan

46. The Chairman said that this item was on the Agenda of the present meeting at the request of Japan, and invited the representative of Japan to speak.

47. The representative of Japan said that his country had proposed that this item be placed on the Agenda of the present meeting, in accordance with Article 21.6 of the DSU. In the status reports, the United States had reported that it no longer used the zeroing methodology in average-to-average comparisons in original investigations. At the previous regular DSB meeting, the United States had further explained that as a result, it "has thus eliminated the single measure that Japan challenged and that the Appellate Body found to be inconsistent with the WTO Agreement 'as such'". In Japan's view, the United States had addressed only one of multiple "manifestations" of the zeroing procedures. Thus, there appeared to be disagreement between Japan and the United States at least as to the implementation of the DSB's recommendations regarding other "manifestations" of the "as such" zeroing procedures. The United States had also stated that the administrative reviews challenged "as applied" had been superseded by subsequent reviews and that, therefore, the United States had complied with the recommendations and rulings of the DSB. Presumably, the US statement referred to the compliance regarding 11 periodic reviews and, to that extent, there appeared to be disagreement between Japan and the United States within the meaning of Article 21.5 of the DSU regarding those "as applied" measures.

48. Japan was not sure, however, whether the US status reports and the statements previously made before the DSB covered the status of US implementation of the DSB's recommendations regarding the two sunset reviews. He recalled that Japan had also challenged two sunset reviews, as applied in this dispute, and the Appellate Body had found that by relying, in these two sunset reviews, on dumping margins calculated through the use of zeroing in previous proceedings, the United States had acted inconsistently with Article 11.3 of the Anti-Dumping Agreement. Japan asked the United States to clarify its position on the status of implementation of the DSB's recommendations regarding these two sunset reviews.

49. Finally, since there appeared to be broader disagreement between Japan and the United States as to the issues of compliance in this dispute, Japan intended to initiate the compliance proceedings under Article 21.5 of the DSU. In this respect, without prejudice to Japan's view on the proper interpretation of the relevant provisions of the DSU, Japan was also ready to request an arbitrator established under Article 22.6 of the DSU to suspend its entire work during the compliance proceedings so as to facilitate the orderly resolution of this dispute without unnecessary complications. To this end, Japan sought to conclude *ad hoc* procedural arrangements regarding "sequencing" with the United States.

50. The representative of the European Communities said that the EC had a direct interest in this dispute as it was also awaiting full implementation of the DSB's ruling in its own Zeroing case against the United States (DS294). In addition, the continued application of zeroing by the United States had left no choice, but to initiate another dispute which was now pending before a panel (DS350). In the present dispute, Members were again confronted with a failure of the United States to comply with the DSB's recommendations and rulings. The EC had heard the United States claiming that the illegality of zeroing was not yet settled in the WTO. This was anything but correct. Since the first case brought against the EC in 1998, 12 disputes had been brought against the use of zeroing by the United States whether as the unique subject of the dispute or as part of a wider dispute. All issues of law had been extensively pleaded and analyzed. There was no doubt left that zeroing ran foul of fundamental obligations of the Anti-Dumping Agreement, which were to establish dumping in respect of an exporter and a certain product, and to conduct a fair comparison between the export prices and normal value. The fact that the United States sought a change to the WTO obligations in the future was no valid ground for not complying with the obligations as they currently stood. Going down the route suggested by the United States would be the end of a system based on rules, which were enforced and respected to the equal benefit of all Members. The EC hoped that the United States would finally accept this and put an end to all remaining illegal practices of zeroing.

51. The representative of the United States said that, first, with respect to the EC's intervention he would not comment on the substance of those comments as the United States has previously remarked on those issues on a number of occasions. The United States referred delegations to those US comments.⁴ Second, the United States commented on two aspects of Japan's intervention. With respect to Japan's comments that it would like to agree to a procedural arrangement regarding the sequencing of proceedings under Articles 21.5 and 22.6 of the DSU, the United States appreciated Japan's engagement on this issue and looked forward to continuing to work with Japan in this regard. With respect to the sunset reviews mentioned by Japan, the United States offered the following observations. With respect to the sunset review regarding corrosion resistant carbon steel flat products, the United States had conducted a subsequent sunset review, and on 14 February 2007 had published a determination revoking that anti-dumping duty order, effective 15 December 2005. With respect to the sunset review regarding anti-friction bearings, the United States had conducted a subsequent sunset review and on 15 September 2006, had published a determination continuing the anti-dumping duty order.

52. The DSB took note of the statements.

4. Election of Chairperson

53. The outgoing Chairman said that, before he would proceed with this Agenda item, he wished to say just a few words. At the present meeting he would not wish to propose to reflect more broadly on the work of the DSB, but he would just want to say a few things. First, he said that he had enjoyed the past year as Chairman of the DSB. Members had certainly had his admiration for the way in which they had gone about their work, the professionalism and the good sense they had shown in the way in which they had engaged in this process and had worked with other Members – it was quite impressive. Second, he wanted to thank all Members for the role they had played in dealing with the Appellate Body selection process and the issues surrounding that. He had certainly appreciated their support for the process. He appreciated the restraint and patience that all Members had shown while they had worked through those issues, and the regard that they had shown for the views of all Members as part of that process. He thought that was a sign that what all often said about the dispute settlement system as being the "jewel in the crown" actually had meaning. And again, he thought that was a very good sign. Finally, he wished to thank all the members of the Secretariat, not only Mr. B. Wilson and Mr. E. Rogerson who were there to prevent any attempt at the improvisation on the part of the Chairman, but all the members of the Secretariat and in particular, of course, Ms B. Mueller-Holyst who was a gem of the Secretariat, who was one of the best examples of the way the Secretariat served the system through its assistance to Members. He knew that she was of great help to all Members and she certainly had been to him. With these words, he then proposed to move on with this Agenda item.

54. The outgoing Chairman recalled that at its meeting on 6 February 2008, the General Council had taken note of the consensus on a slate of names for Chairpersons to a number of WTO bodies including the DSB. On the basis of the understanding reached by the General Council, he proposed that the DSB elect by acclamation H.E. Mr Mario Matus of Chile as Chairperson of this Body.

55. The DSB so agreed.

56. The outgoing Chairman further stated that, unfortunately, Amb. Mario Matus of Chile was absent from Geneva and, therefore, could not participate at the present meeting. Nonetheless, he wished to take this opportunity to say a few words about Amb. Matus by way of introduction. Amb. Matus was well-known to most delegations for the years he had performed services of one sort

⁴ See WT/DS322/16 (26 February 2007); WT/DS294/18 (19 June 2006); WT/DS294/16 (17 May 2006).

or another to the Membership as a whole. By way of illustration, of course, he had chaired the WTO's Working Party on the Accession of Ukraine, which had successfully concluded its work just recently. He had, over the last year, very ably chaired the Special Session of the Committee on Trade and Environment. And, of course, he was no stranger to the workings of the WTO dispute settlement system, having served on both the US–Cotton Subsidies panel and the subsequent compliance panel. In light of this, there was no doubt that Amb. Matus was an outstanding choice to chair the DSB over the coming year, and that he would provide the leadership necessary for this Body to conduct its work in a smooth and efficient manner. With these words, he then invited delegations to make statements, if they so wished.

57. The representative of Chile said that his country wished to take this opportunity to express its gratitude and appreciation to Amb. Gosper for his work as Chairman of the DSB over the past year. He said that Amb. Gosper had skilfully guided Members through hard times and had helped them to find the right solution. Chile wished Amb. Gosper all the best in his new responsibilities as Chairman of the General Council. On behalf of Amb. Matus, who unfortunately was unable to participate at the present meeting, his delegation wished to thank Amb. Gosper for his kind words and his introduction and would convey them to Amb. Matus accordingly.

58. The representative of the United States said that his country wished to thank Amb. Gosper for his service to the DSB. He said that Amb. Gosper had been very patient, very inclusive, and had successfully worked toward consensus. This was especially so in his work on filling the vacancies on the Appellate Body. He had consistently provided a sense of direction – not imposing direction – but providing a sense of direction around which this Body could rally. The United States was looking forward to Amb. Gosper's upcoming Chairmanship of the General Council. This gave the United States optimism for the current year, and the United States pledged its support to Amb. Gosper's Chairmanship of the General Council. Regarding the incoming Chairman of the DSB, he said that he had known Amb. Matus for over 15 years. Amb. Matus was a very thoughtful person, who sought to solve problems, rather than to explain how problems could not be solved. He was a worthy successor to the outgoing Chairman.

59. The representative of the European Communities said that her delegation wished to echo the United States and to take the opportunity to express the EC's deep gratitude to the outgoing Chairman of the DSB for his able leadership throughout the year. The EC wished Amb. Gosper all the best in his new function as Chairman of the General Council and looked forward to working with him. With regard to Amb. Matus, she said that he had been the leading negotiator for the EC–Chile Association Agreement. During those negotiations, the EC had been impressed by his sharp legal mind, his diplomatic skills and his ability to get things done. The EC was, therefore, confident that these qualities would make Amb. Matus an excellent Chairman of the DSB.

60. The representative of Costa Rica, speaking on behalf of GRULAC, said that the countries in question wished to echo previous speakers who had expressed thanks and appreciation for the work done by Amb. Gosper and his leadership as Chairman of the DSB over the past year. They wished him the best of luck in his new job. They welcomed the newly-elected Chairman of the DSB, Amb. Matus. They had no doubt that his professional and personal qualities would ensure that the DSB's work was properly discharged and the DSB would remain the jewel in this organization. Amb. Matus could count on them for their support.

61. The representative of Japan said that his country wished to join previous speakers in thanking Amb. Gosper for his leadership in the past year as Chairman of the DSB, in particular in the selection process for Appellate Body members, and wished him all the best in his new capacity as Chairman of the General Council. Japan also welcomed Amb. Matus as the new Chairman of this very important decision-making Body and looked forward to working with him.

62. The representative of Brazil said that his country wished to extend a warm welcome to Amb. Matus as the new Chairman of the DSB. Brazil was sure that all would have the opportunity to do this personally. Brazil wished to extend its sincerest appreciation to Amb. Gosper for having conducted the DSB meetings in the past year. Amb. Gosper had shown Members leadership, patience and wisdom in situations where those qualities had been needed the most. Brazil was sure that Amb. Gosper would be discharging his new functions as the Chairman of the General Council with the same qualities and sense of duty. In this regard, Brazil wished him every possible success.

63. The representative of Canada said that her country also wished to express its sincere thanks to Amb. Gosper for his work as Chairman of the DSB over the past 12 months. Like other delegations, in particular, Canada wished to thank Amb. Gosper for his hard work and for the leadership that he had shown during the selection process for Appellate Body members in Autumn 2007. Canada felt that this difficult situation had been handled very ably. So Canada thanked Amb. Gosper for that. Canada wished Amb. Gosper all the best as he moved on to his new responsibilities as Chairman of the General Council and looked forward to working with Amb. Matus.

64. The representative of India said that his country wished to be associated with the statement made by Brazil. In addition, India wished to say that Amb. Gosper had conducted DSB meetings with grace, calmness and patience. In the difficult circumstances, Amb. Gosper had carried through with those qualities. He had not indulged, in the cricket term, in any "bodily intimidating fast bowling", but had conducted meetings with the "full grace of a glance stroke or a cover drive and fine spin bowling". India looked forward to working closely with Amb. Gosper, as Chairman of the General Council, and extended to him its full support. With regard to the newly-elected Chairman of the DSB, Amb. Matus, he noted that one would have to learn a bit more about Chile. He then referred to empanadas, salmon, wine and "Pisco Sour". India was certain that Members would smoothly sail under the leadership of Amb. Matus, and, once again, thanked Amb. Gosper for all the support and understanding that he had extended to all delegations.

65. The representative of China said that his country thanked Amb. Gosper for his outstanding leadership and his good efforts over the past year in safeguarding the smooth operation of the WTO dispute settlement system. China wished Amb. Gosper good luck and great success in his new capacity as the General Council Chairman. China was also pleased with the election of Amb. Matus as Chairman of the DSB and looked forward to working with him.

66. The representative of Hong Kong, China said that her delegation wished to join previous speakers in welcoming Amb. Matus as the new Chairman of the DSB, and looked forward to working with him in the coming year in this important Body. Hong Kong, China wished to take this opportunity to extend its thanks to Amb. Gosper for his excellent work and his contribution in the past year. Amb. Gosper's efforts in upholding the high esteem of this Body were highly appreciated. Her delegation wished to extend best wishes for Amb. Gosper's success in his new role as Chairman of the General Council.

67. The representative of Mexico said that it had been a pleasure for his delegation to work with Amb. Gosper. During his leadership, as Chairman of the DSB, he had been careful and calm, which had helped Members in hard times. There was no doubt that those qualities of Amb. Gosper had helped Members to settle difficult situations and would be very important in his upcoming tasks in his capacity as Chairman of the General Council. With regard to Amb. Matus, his delegation wished to say that he was known as an excellent lawyer and that he knew a great deal about FTA provisions as well as the DSU provisions. Mexico was certain that Amb. Matus would be an excellent Chairman of the DSB.

68. The representative of Cuba said that her country wished to thank Amb. Gosper for his work, which, Cuba believed, had been very serious and professional. Cuba wished Amb. Gosper all the best in the future, and warmly welcomed Amb. Matus as Chairman of the DSB and wished him good luck.

69. The representative of Ecuador said that his country supported the statement made by Costa Rica. Ecuador wished to thank Amb. Gosper for the work done in the DSB and wished him all the best in his new capacity as Chairman of the General Council. Amb. Gosper would have an important responsibility of hammering the gavel at the end of the Doha Round. Ecuador also hoped that Members would be in a position to settle the banana dispute in the course of the year. He said that Amb. Matus was a friend of Ecuador and a brilliant negotiator for his country and the FTAs. Ecuador wished him success in his work as Chairman of the DSB.

70. The representative of Argentina said that his country, like previous speakers, wished to express Argentina's gratitude to Amb. Gosper for his work in the past year. Argentina wished to echo Mexico in emphasizing how calm Amb. Gosper had been during his leadership as Chairman of the DSB, especially in some very difficult situations in the course of the year. Argentina wished him success in his new job as Chairman of the General Council. Argentina wished to extend its very warm welcome to Amb. Matus, and looked forward to working very closely with him.

71. The representative of Korea said that, like previous speakers, his country wished to extend its appreciation for Amb. Gosper's work over the past year. Korea wished him the best of luck and hoped to work closely with him as Chairman of the General Council.

72. The Chairman thanked delegations for the good wishes and for the expressions of support for the incoming Chairman of the DSB.

73. The DSB took note of the statements.
