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**Dispute Settlement Body**
**22 April 2015**

# MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 22 APRIL 2015

*Chairman: Mr. Harald Neple (Norway)*

**Table of Contents**

## 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.148)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.148)

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.123)

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.86)

E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.34)

F. European Communities – Measures prohibiting the importation and marketing of seal products: Status report by the European Union (WT/DS400/16/Add.1 – WT/DS401/17/Add.1)

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

### A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.148)

1.2. The Chairman drew attention to document WT/DS176/11/Add.148, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 9 April 2015, in accordance with Article 21.6 of the DSU. Several bills introduced in the current US Congress would repeal Section 211. Other previously introduced legislation would modify Section 211. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings and resolve this matter with the EU.

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

1.5. The representative of Cuba said that her country noted that the 148th US status report contained the same information each month stating that: "the relevant legislation has been introduced in the current 114th session of the United States Congress" and that "the United States will continue to work on a solution that would resolve this matter". At the 23 February 2015 DSB meeting, the United States had made reference to four bills aimed at resolving this dispute and possibly even repealing Section 211. These bills were: H.R. 274, H.R. 403, H.R. 635 and H.R. 735. These four bills had been submitted to the US House of Representatives during the first session of the 114th Congress in January and February 2015, and they did contain positive measures to settle this dispute. However, there was no real possibility that any of these bills would become law or influence whether Section 211 would remain in force. Furthermore, Cuba noted that, on 17 March 2015, Bill S–757, aimed at modifying Section 211, had been submitted to the US Senate. The purpose of that bill was to modify certain terms of the legislation so as to comply with the DSB's recommendations regarding the inconsistency of Section 211 with the national-treatment principle. So, minimal efforts were made by the US legislators to maintain Section 211 rather than to repeal it. In Cuba's view, following President Barack Obama's appeal to Congress to eliminate the blockade against Cuba, the United States must work towards the definitive repeal of Section 211. In that regard, Cuba wished to highlight that, in his address to the Seventh Summit of the Americas in Panama on 11 April 201, President Raul Castro Ruz stated the following: "We have publicly expressed to President Obama, who was also born under the blockade policy, our appreciation for his brave decision to engage the US Congress in a debate to put an end to that policy. Up to this day, Cuba has borne the full force of the economic, commercial and financial blockade, which has brought damage and shortages to our people and stands as the main obstacle to our economic development. It is a violation of international law, and its extraterritorial scope affects the interests of all States. One thing is to establish diplomatic relations, but the blockade is a different thing. I therefore ask you all to continue, as indeed we must, to support the fight against the blockade". Once again, Cuba called for the immediate repeal of Section 211 and an end to the adverse effects caused by the economic, commercial and financial blockade policy against Cuba. Cuba hoped that the United States would recognize the serious implications of this prolonged non-compliance with the DSB's decision and the negative precedent that this was setting. Such non-compliance undermined the fairness of the WTO dispute settlement system.

1.6. The representative of the Plurinational State of Bolivia said that his country noted the positive developments in bilateral relations between the United States and Cuba. However, the United States' 13 years of failure to comply with the DSB's recommendations and rulings in this dispute undermined the credibility of the multilateral trading system and adversely affected the economic interests of a developing-country Member. Bolivia was concerned about the systemic effects of non-compliance in this dispute. In that regard, Bolivia reiterated its call on the United States to comply with the DSB's recommendations and to remove the restrictions imposed under Section 211. Bolivia supported the statement made by Cuba at the present meeting.

1.7. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Cuba at the present meeting. Venezuela, once again, expressed concern that the US status report did not contain any information on progress in the implementation of the DSB's recommendations and rulings in this dispute. Non-compliance in this dispute affected the interests of a developing-country Member and was inconsistent with the principle of prompt compliance with the DSB's recommendations and rulings. Furthermore, this non-compliance undermined the credibility of the WTO and the multilateral trading system as well as its ability to resolve disputes. It also set a negative precedent. Venezuela regretted that the WTO dispute settlement system was negatively affected by the continued lack of compliance by one Member. Venezuela supported Cuba and strongly condemned the US conduct. Venezuela urged the United States to repeal Section 211 in order to resolve this dispute.

1.8. The representative of Zimbabwe said that his country welcomed the US status report. Zimbabwe, once again, regretted to note that the United States had not provided any substantive information on progress in this dispute. As Zimbabwe and other delegations had continuously stated in the past 13 years, this lack of progress was inconsistent with the principle of effective and prompt implementation of the DSB's rulings and recommendations and affected the interests of a developing-country Member. Zimbabwe was also concerned that this disregard for the DSB's

recommendations and rulings was seriously undermining the overall integrity of the dispute settlement system. Zimbabwe joined previous speakers in supporting Cuba and urging the United States to comply with the DSB's recommendations and rulings.

1.9. The representative of Nicaragua said that his country supported the statement made by Cuba and, once again, expressed its concern about the prolonged situation of non-compliance in this dispute. Nicaragua noted that the US status report did not contain any new information on progress in this dispute, which had been ongoing for 13 years. The US failure to comply with the DSB's recommendations and rulings affected the economic interests of a country with a small economy and undermined the dispute settlement system, a fundamental pillar of the WTO. Nicaragua joined other Members in urging the United States to adopt the necessary measures to comply with the DSB's recommendations and rulings.

1.10. The representative of El Salvador said that her country thanked the United States for its status report. El Salvador was concerned about the lack of compliance with the DSB's recommendations and rulings in this dispute, which affected the interests of a country with a small and vulnerable economy. El Salvador urged the United States to comply with the DSB's recommendations and rulings.

1.11. The representative of Ecuador said that her country supported the statement made by Cuba. Ecuador noted, once again, that Article 21 of the DSU referred specifically to the prompt compliance with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Ecuador hoped that the United States would step up its efforts and promptly comply with the DSB's recommendations and rulings by repealing Section 211.

1.12. The representative of Mexico said that since the circumstances in this dispute had not changed and non-compliance continued, his country wished to refer to its previous statements made under this Agenda item.

1.13. The representative of Jamaica said that her country thanked Cuba, the United States and the EU for their statements, updates and the US status report under this Agenda item. Jamaica noted that the circumstances of this dispute had not changed and that no progress had been reported since the previous DSB meeting. As in past DSB meetings, Jamaica wished to join the previous speakers in expressing its concern about the continued US failure to implement the DSB's recommendations adopted on 2 February 2002 in this dispute. The protracted US failure to take the necessary steps to comply with its obligations under the DSU provisions was incompatible with the requirement for prompt and effective implementation of the DSB's decisions. This was of particular concern in cases such as this where the failure to meet an obligation had a negative impact on the economic interest of a developing-country Member. Jamaica reiterated its deep concern about the systemic implications of any disregard for DSB decisions. Contrary to what may have been reported by some Members, such disregard could undermine the overall integrity of the dispute settlement system, which remained a key pillar of the WTO. Jamaica believed that, after 13 years since the adoption of the DSB's recommendations in this dispute, it was more than reasonable for Members to expect that this matter would be resolved and removed from the DSB's Agenda.

1.14. The representative of Uruguay said that his country thanked the United States for its status report and Cuba for its statement and update. Uruguay regretted that there was no new information on progress in this dispute, which had lasted for 13 years. While there was some hope, the situation remained the same.

1.15. The representative of Viet Nam said that her country thanked the United States for its status report and the EU for its statement. Viet Nam noted that the US status report did not contain any new information. Viet Nam supported the statements made by Cuba and the previous speakers expressing concern about the lack of progress in this dispute. Viet Nam urged the United States to step up its efforts and comply with the DSB's recommendations and rulings.

1.16. The representative of Peru said that her country thanked the United States for its status report. Peru noted that, as in any other dispute, the parties to this dispute, needed to take all necessary measures, within a reasonable period of time, to implement the DSB's recommendations

and rulings. Peru joined the previous speakers who had expressed concern about the lack of progress in the implementation of the DSB's recommendations and rulings in this dispute, in particular since the interests of a developing-country Member were affected.

1.17. The representative of Trinidad and Tobago said that her country thanked the United States for its status report and Cuba for its update. Trinidad and Tobago, once again noted that there had been no positive movement towards prompt compliance with the DSB's recommendations and rulings in this dispute. Non-compliance with the DSB's recommendations and rulings affected the root of an effective WTO dispute settlement system. As a result, such non-action created a negative impact, in particular on the economic development of Cuba and other countries with small and vulnerable economies. In that regard, Trinidad and Tobago supported the call for prompt compliance with the DSB's rulings and recommendations under Article 21.1 of the DSU.

1.18. The representative of India said that his country thanked the United States for its status report. India also noted Cuba's statement regarding the steps that needed to be taken to comply with the DSB's recommendations and rulings. India was concerned about the lack of progress in the implementation of the DSB's recommendations in this dispute even after more than a decade of surveillance by the DSB. At the 26 March 2013 DSB meeting, the then Chairman of the DSB had noted with concern the habit of submission of status reports that generally provided very limited information about specific efforts undertaken to achieve compliance. India joined the previous speakers in renewing its systemic concerns about the continuation of non-compliance as this undermined the confidence the Members reposed in a predictable, rules-based multilateral system, especially in the context of a developing-country Member seeking compliance. India noted that, as Members recognized, continued non-compliance by Members eroded the confidence and the credibility of the WTO dispute settlement system. India urged the United States to report compliance to the DSB without further delay.

1.19. The representative of China said that his country thanked the United States for its status report and the statement made at the present meeting. The prolonged situation of non-compliance in this dispute was highly inconsistent with the principle of prompt compliance required under the DSU provisions, in particular since the interests of a developing-country Member were affected. China urged the United States to implement the DSB's rulings and recommendations without any further delay.

1.20. The representative of the Dominican Republic said that his country thanked the United States for its status report on the steps taken to comply with the DSB's recommendations and rulings in this dispute regarding the inconsistency of Section 211 with Article 21 of the TRIPS Agreement. In that regard, the Dominican Republic urged the United States to step up its internal procedures in order to comply with the DSB's recommendations and rulings. This prolonged situation of non-compliance undermined the credibility of the DSB.

1.21. The representative of Argentina said that his country thanked the United States for its status report. Argentina, once again, regretted that the US status report did not contain any new information on progress in this dispute. As Argentina had stated repeatedly in the past, this lack of progress was inconsistent with the principle of prompt and effective compliance with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were concerned. Argentina, therefore, supported Cuba and the EU, and urged the United States to adopt the necessary measures to finally resolve this matter.

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

1.23. The representative of Brazil said that his country thanked the United States for its status report in this dispute. Brazil regretted that the US status report did not contain any information on concrete progress achieved in this dispute. Brazil shared the concerns expressed by the EU, Cuba

and other delegations regarding the lack of compliance in this dispute. Brazil urged the United States, in light of the new political developments with Cuba, to adopt meaningful measures towards compliance. Such compliance would certainly strengthen the multilateral rules.

1.24. The representative of Angola said that his country thanked the United States for its status report regarding Section 211. Angola also welcomed the recent progress in relations between Cuba and the United States. Angola noted with concern that this dispute had remained on the DSB's Agenda for 13 years without progress and continued to adversely affect Cuba, a small and vulnerable country. Angola had repeatedly expressed its concerns in past DSB meetings. Since the situation in this dispute had not improved, Angola believed that it was its right to continue to reiterate the need to find a fair solution to this dispute so as to safeguard the credibility of the dispute settlement system, a key pillar of the multilateral trading system. Angola supported Cuba and, once again, encouraged the parties to this dispute to find a mutual solution to this dispute as soon as possible. Angola urged the United States to show its determination to resolve this matter.

1.25. 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.148)

1.26. The Chairman drew attention to document WT/DS184/15/Add.148, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.27. The representative of the United States said that his country had provided a status report in this dispute on 9 April 2015, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the DSB's recommendations and rulings that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.28. The representative of Japan said that his country thanked the United States for its statement and its status report submitted on 9 April 2015. Japan, once again, requested that this issue be resolved as soon as possible.

1.29. 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.123)

1.30. The Chairman drew attention to document WT/DS160/24/Add.123, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.31. The representative of the United States said that his country had provided a status report in this dispute on 9 April 2015, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

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

1.33. 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.86)

1.34. The Chairman drew attention to document WT/DS291/37/Add.86, which contains the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

1.35. The representative of the European Union said that, in recent meetings, the EU had already reported on authorization decisions and other actions towards approval decisions taken up to February 2015. Four draft decisions for the renewal of the authorization of GM food and feed products had been voted in the Standing Committee on 16 March 2015 and in the Appeal Committee on 31 March 2015[1]. The Committees had rendered no opinion. It was now for the European Commission to take a decision on these authorisations. Two draft authorization decisions for non-food and non-feed uses had been voted in the Regulatory Committee on 16 March 2015[2] and in the Appeal Committee on 31 March 2015. The Committees had rendered no opinion. It was now for the European Commission to take a decision on these authorisations. The products just referred to were identified in the written version of the EU statement. The other applications continued to be assessed by EFSA and processed by the European Commission. As stated many times before, the EU recalled that the EU's approval system was not covered by the DSB's recommendations and rulings.

1.36. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. The EU measures affecting the approval of biotech products were seriously disrupting trade in agricultural products between the United States and the EU. As the United States had explained at recent DSB meetings, the EU had failed to approve a single new biotech product since November 2013. Nineteen product applications currently pending before the EU College of Commissioners were awaiting final, political approval. Each one of these products had received a positive safety evaluation from the EU's scientific authority. Further, the United States was aware of reports indicating that the EU was considering a member State "opt-out" of the EU's biotech approvals such that a member State could ban importation of a product. The United States was concerned about the relationship of such a proposal to the EU's obligations under the SPS Agreement.[3] The United States recalled that every biotech product approved at the EU level had been subject to a full, positive safety assessment by the EU's own scientific authority. In that light, the United States had difficulty understanding how an EU member State ban on a biotech product approved by the EU could, as required by the SPS Agreement, be based on scientific principles and a risk assessment appropriate to the circumstances and maintained with sufficient scientific evidence. The United States was further concerned with this proposal's ultimate effects on trade in biotech products. The United States urged the EU to end the unwarranted delays in biotech approvals and to ensure that any revisions to its measures affecting the approval of biotech products would not result in breaches of WTO rules.

1.37. The representative of the European Union said that, in response to US comments, the EU wished to inform the DSB that Directive 2015/412 of the EP and of the Council regarding the possibility for the member States to restrict or prohibit the cultivation of GMOs in their territory had been published in the Official Journal of the European Union on 13 March 2015 and that it had entered into force on 2 April 2015. As the EU had previously stated, the aim of the Commission proposal as discussed in the legislative process was to facilitate decision-making on GMOs for cultivation in the EU. The new law would allow an individual member State to request the applicant to remove part of or all its territory from the geographical scope of the application (Option 1). When a member State had not made a request under Option 1, or when the applicant had not adjusted the scope of the application, after authorization, the relevant member State could adopt a national measure to restrict or ban the cultivation of the concerned GMOs, or of a group of GMOs defined by crops or traits, on its territory (Option 2, so-called "opt out" measure). The reasons for opting out must be other than health risk or environmental risk as assessed by the European Food and Safety Authority. Member States must respect the international commitments, notably the WTO commitments when justifying their reasons for an opt-out. Thus, the proposal would not

[1] MON531 cotton, MON1445 cotton, MON531xMON1445 cotton, MON15985 cotton.
[2] Carnations IFD-25958-3 and IFD-26407-2 (cut flowers).
[3] Agreement on the Application of Sanitary and Phytosanitary Measures.

affect the core features of the authorization system for GMOs' cultivation. In particular, the risk assessment done by EFSA would remain unchanged.

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

### E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.34)

1.39. The Chairman drew attention to document WT/DS404/11/Add.34, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain shrimp from Viet Nam.

1.40. The representative of the United States said that his country had provided a status report in this dispute on 9 April 2015, in accordance with Article 21.6 of the DSU. As the United States had noted at past DSB meetings, in February 2012, the US Department of Commerce had modified its procedures in a manner that addressed certain findings in this dispute. The United States would continue to consult with interested parties as it worked to address the other recommendations and rulings of the DSB.

1.41. The representative of Viet Nam said that her country thanked the United States for its statement and its status report on this dispute. Viet Nam was, once again, pleased to address the implementation of DS404. As Members were aware, the DSB would consider the adoption of the Panel and Appellate Body Reports in the DS429 dispute under Item 8 of the Agenda of the present meeting. In that regard, Viet Nam would address the DS429 dispute separately. However, those actions which the Panel in the DS404 dispute had found to be WTO-inconsistent should be addressed in the context of US implementation of the DS429 dispute. Specifically, the WTO-inconsistent margins of dumping found in each of the reviews at issue in DS404 must be revised based on a WTO-consistent methodology in order for the United States to take the WTO-consistent remedial action required in the DS429 dispute. Specifically, this includes conducting a redetermination of the sunset review on frozen warmwater shrimp from Viet Nam and re-examining individual company requests for revocations based on the sustained absence of dumping. Viet Nam believed that the United States was prepared to fully implement in the DS404 dispute in that context and looked forward to being able to address the DSB after the reasonable period of time had elapsed for implementation of DS429 and announce that DS404 had been fully implemented.

1.42. The representative of Cuba said that her country supported the statement made by Viet Nam. Cuba urged the United States to comply with the DSB's recommendations and rulings.

1.43. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Viet Nam. Venezuela emphasized the need for prompt and effective compliance with the DSB's recommendations and rulings and urged the United States to take the necessary measures to resolve this matter.

1.44. The representative of the United States said that the Reports in the DS429 dispute were subject to a different Agenda item and, like Viet Nam, the United States would discuss this matter when that item would be considered.

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

### F. European Communities – Measures prohibiting the importation and marketing of seal products: Status report by the European Union (WT/DS400/16/Add.1 – WT/DS401/17/Add.1)

1.46. The Chairman drew attention to document WT/DS400/16/Add.1 – WT/DS401/17/Add.1, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning the EU measures prohibiting the importation and marketing of seal products.

1.47. The representative of the European Union said that the EU continued to work on the implementation of the DSB's recommendations and rulings in this dispute and was making its best efforts to complete the implementation before the expiry of the agreed reasonable period of time on 18 October 2015. As already reported at the previous DSB meeting, the European Commission had submitted a proposal to the EU legislators, the Council and the Parliament, for amending those aspects of EC Regulation No. 1007/2009 on trade in seal products that had been found to be discriminatory. In particular, the Commission proposed to remove the exception for maritime resource management hunts and provide for certain modifications to the exception of indigenous communities. The proposal continued to be discussed by the legislators. Once the amendment to the Regulation on trade in seal products was adopted, subsequent changes would be made to Commission regulation No. 737/2010. As already reported at the previous DSB meeting, the European Union was confident that the very constructive cooperation with Canada on the access of Canadian Inuit products to the EU market would soon result in the setting up of the necessary attestation system for Canadian Inuit to start using the IC exception. The EU wished to recognize the presence at the present meeting of Ms Patricia Holmes who was a panelist in this dispute. The EU thanked her and all others that had helped resolve this complex and sensitive dispute. On a more general note, the EU wished to underline the importance of those individuals who agree to serve as panelists particularly during a period of high workload as was currently being experienced.

1.48. The representative of Canada said that her country thanked the EU for its second status report in this dispute. As the EU had noted, the parties continued to engage to operationalize the indigenous exemption, with the objective of ensuring practical market access for Canadian aboriginal seal products. Under the existing regulations, Canadian officials had recently submitted a formal application for the Nunavut Territorial Government, one of Canada's northern territories, to become a recognised body. Canada hoped that Nunavut would achieve this status in a timely manner. Other applications could follow. Canada reiterated its belief that its seal harvests were humane, sustainable and well-regulated activities that provided an important source of food and income for coastal and Inuit communities. Canada expected that any amendments to the EU Seal Regime would be implemented consistently with the DSB's recommendations and rulings and in a manner that did not adversely affect Inuit and other indigenous communities.

1.49. The representative of Norway said that his country thanked the EU for its status report on the implementation of the DSB's recommendations and rulings in this dispute. Norway followed with interest the discussions in the European Parliament on the proposal for an amendment of the Basic Seal Regulation. In that regard, Norway reiterated its view that Norway's seal hunt was well-regulated, was conducted in a humane manner and contributed to the sustainable management of its living marine resources. Norway was disappointed that these factors were not taken into consideration in the proposed amendment. Norway would continue to monitor the legislative process, and expected that the EU would fully implement the DSB's recommendations and rulings within the agreed reasonable period of time. Like the EU, Norway also welcomed the presence, at the present meeting, of one of the panelists in this dispute.

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

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

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

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

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

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

2.4. The representative of Brazil said that his country, as one of the parties to these disputes, thanked the EU and Japan for keeping this item on the DSB's Agenda. Brazil was of the view that the United States was under an obligation to discontinue disbursements made pursuant to the Byrd Amendment. The fact that the current disbursements may be related to investigations initiated before the repeal of the Act in February 2006 did not mean that they were excluded from the US compliance obligations. Since the DSB had confirmed the illegal nature of the disbursements under the Byrd Amendment more than 10 years ago, any disbursement to petitioners must be discontinued. Only then would compliance be achieved in this dispute.

2.5. The representative of India said that his country shared the concerns of the EU and Japan. The WTO-inconsistent disbursements continued unabated to the US domestic industry. The latest data available[4] in the Annual Report of the US Customs and Border Protection for 2014 fiscal year indicated that about US$70 million were disbursed to the US domestic industry. In India's view, this item should remain on the DSB's Agenda until such time that full compliance was achieved in this dispute.

2.6. The representative of Canada said that her country thanked the EU and Japan for keeping this item on the DSB's Agenda. Canada agreed with the EU and Japan that the Byrd Amendment continued to be subject to the DSB's surveillance until the United States ceased to administer it.

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

2.8. The DSB took note of the statements.

## 3 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

### A. Statement by the United States

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

3.2. The representative of the United States said that his country continued to have serious concerns regarding China's ongoing failure to bring its measures into conformity with its WTO obligations more than one and a half years after the expiration of the reasonable period of time. Since the United States had begun raising this matter in the DSB, and despite repeated interactions between the United States and China, the situation remained unchanged. China continued to maintain a ban on foreign suppliers of electronic payment services ("EPS") by

[4] http://www.cbp.gov/sites/default/files/documents/FY2014%20Annual%20Report%20wHolds.pdf

imposing a licensing requirement on them, while at the same time providing no procedures for foreign suppliers to obtain that license. Several months had now passed since China's State Council had announced that China would open the EPS market to qualified suppliers, but no action had yet been taken. China had yet to adopt any procedures under which foreign enterprises could apply for licenses, and, as a result, foreign suppliers remained barred from operating in China. China Union Pay, therefore, continued to operate as the only EPS supplier in China's domestic market. To comply with its WTO obligations, China must adopt the regulations necessary for allowing foreign EPS suppliers to operate in China. The United States, therefore, called on China to follow through on the announcement by the State Council and to issue the necessary regulations immediately, so that China may come into compliance with its WTO obligations.

3.3. The representative of China said that his country regretted that the United States had, once again, brought this matter before the DSB. China referred to its statements made under this Agenda item at previous DSB meetings. China had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute. China had also further explained that the actions sought by the United States were beyond the scope of China's compliance obligations. China hoped that the United States would reconsider the systemic implications of its position.

3.4. The DSB took note of the statements.

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

### A. Statement by the Philippines

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

4.2. The representative of the Philippines said that Thailand had repeatedly informed the DSB that it had done all it was required to do to secure full compliance with the DSB's recommendations and rulings in this dispute. Nonetheless, a series of outstanding compliance issues remained. The Philippines, once again, wished to highlight two of these issues because their systemic impact on the DSB's rulings, and the Customs Valuation Agreement was of particular importance. First, the Philippines remained deeply concerned about the Thai Attorney General's decision to prosecute an importer of Philippine cigarettes for alleged under-declaration of customs value. The WTO panel had ruled that Thailand enjoyed no legitimate grounds to reject the customs values that Thailand now sought to criminalize. In addition, Thai Custom's Board of Appeal (or "BoA") had explicitly accepted those customs values in a ruling heralded by Thailand itself as a measure taken to comply. Thailand's criminal prosecution directly undermined the implementation obligation placed on it by the DSB's recommendations and rulings. In systemic terms, there could be no doubt that the disciplines of the Customs Valuation Agreement applied, whenever a WTO Member engaged in the customs valuation of goods, including in the enforcement of domestic customs provisions. Despite this clear WTO inconsistency, in its statement made at the previous DSB meeting, Thailand had said that it "will take steps to ensure" the WTO-consistency of the criminal prosecution. While it appreciated the sentiment behind this statement, the Philippines was yet to receive information about the basis for the apparent finding of under-declaration since the decision to prosecute the importer had been taken over a year ago. The Philippines wanted to understand precisely what steps Thailand would take to ensure the WTO consistency of the criminal prosecution. The Philippines requested Thailand to deliver on this assurance expeditiously.

4.3. Second, the Philippines was also concerned about a separate Thai BoA ruling rejecting the transaction value for 210 entries from Indonesia that were covered by the DSB's rulings and recommendations in the original proceedings in this dispute. Thailand had submitted the BoA ruling as a declared measure taken to comply. However, as the Philippines had previously noted, the ruling was riddled with WTO-inconsistencies, and set out a methodology that put Thailand on the wrong course regarding customs valuation of related party transactions. In addition, as explained at the previous DSB meeting, the position that Thai Customs had recently taken in pending domestic appeal proceedings concerning the BoA ruling was disturbing. Thai Customs had explicitly advised the Thai court that it did not need to follow the WTO ruling because it supposedly bound only the Philippines, as the party that had brought the dispute, and not Thailand. The

Philippines reiterated its appeal to Thailand to rise to its role as a responsible and important WTO Member and to prove that its commitment to full compliance was real. If that was not possible, the Philippines would reserve its right to return to dispute settlement procedures.

4.4. The representative of Thailand said that her country noted the Philippines' statement made at the present meeting. As stated previously in its status reports and at previous DSB meetings, Thailand had taken all actions necessary to implement the DSB's recommendations and rulings in this dispute. This was without prejudice to any other rights of the Philippines under the DSU provisions. With respect to the ongoing criminal matters, the outcome of the pending investigations should not be prejudged. Thailand would take necessary steps to ensure that all actions that may be taken would be consistent with its rights and obligations under the WTO law. Thailand reiterated that it had been, and remained, available to discuss the specific concerns of the Philippines bilaterally, including those not addressed by the DSB's recommendations and rulings.

4.5. The DSB took note of the statements.

## 5 INDONESIA – IMPORTATION OF HORTICULTURAL PRODUCTS, ANIMALS AND ANIMAL PRODUCTS

### A. Request for the establishment of a panel by New Zealand (WT/DS477/9)

## 6 INDONESIA – IMPORTATION OF HORTICULTURAL PRODUCTS, ANIMALS AND ANIMAL PRODUCTS

### A. Request for the establishment of a panel by the United States (WT/DS478/9)

6.1. The Chairman proposed that items 5 and 6 be considered together since they pertain to the same matter. He then drew attention to the communication from New Zealand contained in document WT/DS477/9, and invited the representative of New Zealand to speak.

6.2. The representative of New Zealand said that this dispute related to prohibitions and restrictions imposed on the import of horticultural products, animals, and animal products into Indonesia, including through Indonesia's trade-restrictive non-automatic import licensing regime, and measures which accorded less favourable treatment to imported products than to like products of national origin. Consultations had been held between New Zealand and Indonesia in June 2014, and had followed consultations in earlier but closely related disputes that had taken place in September 2013. Unfortunately, those consultations could not resolve the dispute, and New Zealand still had significant concerns about a number of restrictions and prohibitions that had resulted in major declines of New Zealand's exports to Indonesia across a range of agricultural products, including both horticultural and animal products. New Zealand believed that Indonesia's measures undermined core WTO principles and were inconsistent with key obligations under the WTO Agreements, including in particular Article XI.1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture. This, along with the real commercial impact that Indonesia's various trade restrictions had on New Zealand's exports, had made it necessary for New Zealand to proceed to request the establishment of a panel to examine this dispute. New Zealand, therefore, requested that the DSB establish a panel pursuant to Article 6 of the DSU, with standard terms of reference as set out in Article 7.1 of the DSU, in order to examine the matters described in New Zealand's panel request. As the United States was also requesting the establishment of a panel related to the same matter, New Zealand further requested the DSB, pursuant to Article 9.1 of the DSU, to establish a single panel to examine both complaints.

6.3. The Chairman drew attention to the communication from the United States contained in document WT/DS478/9, and invited the representative of the United States to speak.

6.4. The representative of the United States said that his country understood that Indonesia used its import licensing measures to prohibit or restrict the importation of horticultural products, animals and animal products. The products subject to Indonesia's measures were many and varied, including fruits such as apples, grapes and oranges; vegetables such as potatoes, onions and shallots; dried fruits and vegetables; flowers; juices; cattle; beef; poultry, including chicken parts, and other animal products. Indonesia's import restrictions included strict application

windows and validity periods for import permits, restrictions on the type, quantity, and country of origin of products that may be imported, requirements that importers actually import a certain percentage of the volume of products allowed under their permits and prohibitions on the importation of secondary cuts of beef and on chicken parts. The WTO Agreement, however, generally obligated Members not to impose restrictions on the importation of goods from other Members. Accordingly, the United States was concerned that Indonesia's measures appeared to be in breach of core WTO obligations involving trade in goods. For several years, the United States had attempted to resolve its concerns through dialogue with Indonesia. Indonesia had repeatedly revised or replaced its import licensing measures, without eliminating their restrictive effect, leading the United States to request consultations regarding Indonesia's import licensing regime three separate times. Those efforts had failed to resolve the dispute. Accordingly, and together with New Zealand, the United States was now proceeding to request the DSB to establish a panel. As set out in the US request for the establishment of a panel, Indonesia's measures served to restrict imports from the United States and other Members, in apparent breach of various provisions of the GATT 1994 and the Agreement on Agriculture. Indonesia's measures had significantly impacted trade in horticultural products and animals and animal products and raised serious concerns about Indonesia's compliance with its WTO obligations. The United States, therefore, respectfully requested that the DSB establish a panel to examine the matter referred to in the US panel request. The United States further requested, pursuant to Article 9.1 of the DSU, that a single panel be established to examine the complaints of the United States and New Zealand.

6.5. The representative of Indonesia said that her country regretted that New Zealand and the United States had brought up this matter at the present meeting and had chosen to move forward with their panel requests. Indonesia had consulted on this issue and had further attempted to revise its regulation based on the consultation. Indonesia was of the view that it had been progressing well. Indonesia was fully aware of the US and New Zealand's concerns over its policies on importation of horticultural products, animals and animal products and it had moved towards the right direction. Indonesia believed that the current policies were consistent with WTO rules. Indonesia and New Zealand, as well as the United States, had conducted several consultations in 2013 and 2014. Indonesia had responded to questions raised by New Zealand and the United States, and had also provided clarifications on the policies concerning horticultural products, animals and animal products. Indonesia, therefore, believed that there was merit in giving the consultations a further opportunity to seek possible solutions. In Indonesia's view, requesting the establishment of a panel did not serve the purpose of the monitoring function of the WTO to discuss all issues exhaustively before proceeding to dispute settlement provisions. Thus, Indonesia was not in a position to agree to the establishment of a panel at the present meeting as it believed that further progress could still be achieved.

6.6. The DSB took note of the statements and agreed to revert to these matters.

## 7 CHINA – MEASURES RELATED TO DEMONSTRATION BASES AND COMMON SERVICE PLATFORMS PROGRAMMES

### A. Request for the establishment of a panel by the United States (WT/DS489/6)

7.1. The Chairman drew attention to the communication from the United States contained in document WT/DS489/6, and invited the representative of the United States to speak.

7.2. The representative of the United States said that his country was concerned that China appeared to be providing export subsidies through a program establishing the Foreign Trade Transformation and Upgrading Demonstration Bases and the Common Service Platforms. In that program, China first identified enterprises across seven industries based on, *inter alia*, export performance. China grouped them into clusters it called Demonstrations Bases. China then appeared to provide export-contingent subsidies to these enterprises in the Demonstration Bases through free or discounted services or through grants. China delivered the free or discounted services to the enterprises in the Demonstration Bases through designated suppliers that were collectively referred to as Common Service Platforms. The United States said that the SCM Agreement prohibits subsidies contingent upon export performance. Accordingly, the United States was concerned that China's measures appeared to be in breach of an important WTO obligation. The United States had held consultations with China on two separate occasions on this matter. However, those efforts had not resolved the dispute. As set out in the US request for the

establishment of a panel, because the Demonstration Base/Common Service Platform program and export subsidies under that program were subsidies contingent upon export performance provided to enterprises located in China, the measures appeared to be inconsistent with Article 3.1(a) of the SCM Agreement, and China appeared to have acted inconsistently with Article 3.2 of the SCM Agreement. Claims related to prohibited export subsidies were subject to special or additional dispute settlement rules and procedures under Article 4 of the SCM Agreement. Accordingly, the United States respectfully requested that the DSB establish a panel immediately, pursuant to Article 4.4 of the SCM Agreement, to examine the matter referred to in the US panel request.

7.3. The representative of China said that his country wished to express its strong disappointment with the US decision to request the establishment of a panel to examine this dispute. The United States had filed a request for consultations on this matter with China on 11 February 2015, one week before China's Spring Festival national holiday, listing 182 documents as the measures at issue. Those measures at issue not only included 16 documents promulgated by China's central government but also included numerous documents issued by various levels of sub-central government of China. Despite the stringent time pressure and the enormous workload, China had made tremendous efforts to eventually make itself available for a round of substantive consultations with the United States in early April 2015. China had participated in those consultations with the United States in good faith, with the intention of finding a mutually satisfactory solution as preferred by the DSU. China had been sincere and unequivocal in clarifying a number of important questions concerning the measures at issue and had provided abundant information as requested by the United States. Notably, China had reiterated its steadfast stance on respecting and abiding by the WTO subsidy discipline, and had signalled its willingness to continue its work to gather information and resolve any WTO-inconsistency concerns of the United States, if substantiated. The United States had showed the similar intention to resolve the concerns through dialogue and consultations. Against that backdrop, it was to China's surprise, and indeed, dissatisfaction that the United States had chosen to file a request for the establishment of a panel just 7 days after the round of amicable consultations. Under the DSU, Members reaffirmed their resolve to strengthen and improve the effectiveness of the consultation procedures. In addition, finding a mutually agreed solution was recognized as the preferred approach to dispute settlement. China had done its part by according sympathetic consideration to, and affording, adequate opportunities for consultations. China regretted the US failure to act in a similar spirit. It was particularly problematic at a time when the WTO dispute settlement system was facing serious constraints in resources. Such a decision, if it became a widely adopted practice, would effectively diminish the value of consultations by discouraging Members to engage in constructive and good-faith consultations. In sum, China regretted that the United States had decided to move this dispute into the panel proceeding stage. China stood ready to safeguard its rights under the DSU and the covered agreements.

7.4. The representative of the European Union said that the EU had a strong interest in this dispute, which raised important systemic issues. The EU shared the concerns expressed by the United States on the use of subsidies by the Chinese authorities and was currently evaluating the merits of this highly complex case.

7.5. The representative of the United States said that the SCM Agreement prohibited export-contingent subsidies and provided for an expedited dispute settlement process. The US panel request at the present meeting reflected the urgency of this matter and the importance that the United States attached to enforcing its trading rights. The United States, however, had made great efforts to consult twice with China relating to this program. The United States remained open to further discussions with China on this matter.

7.6. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 4.4 of the SCM Agreement and Article 6 of the DSU, with standard terms of reference.

7.7. The representatives of Australia, Brazil, Canada, the European Union, India, Japan, Korea and the Russian Federation reserved their third-party rights to participate in the Panel's proceedings.

## 8 UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM

### A. Report of the Appellate Body (WT/DS429/AB/R) and Report of the Panel (WT/DS429/R and WT/DS429/R/Add.1)

8.1. The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS429/7 transmitting the Appellate Body Report on: "United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam", which had been circulated on 7 April 2015 in document WT/DS429/AB/R, in accordance with Article 17.5 of the DSU. He reminded delegations that the Appellate Body Report and the Panel Report pertaining to this dispute had been circulated as unrestricted documents. As Members were aware, Article 17.14 of the DSU required that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report".

8.2. The representative of Viet Nam said that her country was pleased to have the opportunity to address the DSB at the present meeting under this Agenda item. Viet Nam thanked the members of the Panel, the Appellate Body division, and their respective Secretariats for devoting the time and effort devoted to this dispute. Viet Nam hoped that, in the context of implementation of the DS429 dispute, the United States would also implement those portions of the Panel's decision resulting from the DS404 dispute, which had not been implemented and which bore on proper implementation of the DS429 dispute, namely the issues of WTO-inconsistent zeroing in the reviews examined in the DS404 dispute and the WTO-inconsistent application of the country-wide rate in those reviews. At the outset, Viet Nam wished to comment on the Appellate Body Report and its implications for implementation of the DS429 dispute. The Appellate Body had not found Section 129(c)(1) of the Uruguay Round Agreements Act to be WTO-inconsistent because of the US representations that it had mechanisms other than Section 129 to address prior unliquidated entries in the context of the implementation of adverse WTO decisions. These mechanisms allowed it to apply implementation to unliquidated entries which had entered the United States prior to the date of implementation[5], entries which could not by law be covered by implementation under Section 129. In order to avoid devoting additional resources of the WTO dispute settlement system to this matter, Viet Nam was requesting the United States to undertake implementation using one of these alternative mechanisms. The use of one of these alternative mechanisms would ensure that Viet Nam did not have to pursue this matter in a compliance panel under Article 21.5 of the DSU, in the event that the United States, as part of implementation, either sunset or revoke the anti-dumping duties in whole or in part. Viet Nam was seeking nothing other than that the United States back up its representations to the Panel and the Appellate Body with actions that were consistent with those representations.

8.3. Viet Nam noted that one of the important aspects of the Panel's findings and conclusions was that the US application of a so-called "country-wide" rate in excess of the ceiling on the "all others" rate was WTO-inconsistent. Since the beginning of the Panel's proceeding, the United States had expanded its discriminatory treatment of state-owned enterprises to the point that, in the most recent review of the shrimp anti-dumping duty order, the Department of Commerce had refused to even include state-owned enterprises in the pool of possible mandatory respondents in the review. While the Panel had found a country-wide rate in excess of the all-others rate to be WTO-inconsistent, Viet Nam hoped that, in implementing this finding, the United States would also seek to avoid further unnecessary dispute settlement proceedings by applying the same rules to state-owned enterprises, except as narrowly authorized in Viet Nam's Accession Protocol, as are applied to private enterprises and would refrain from discriminatory treatment, which was nowhere authorized in the Anti-Dumping Agreement or Accession Protocol. Viet Nam noted that implementation required both elimination of the country-wide rate in the reviews underlying the sunset review and a change in the practices outlined in Import Administration Policy Bulletin No. 05.1 and followed in individual investigations.

8.4. Since the sunset review subject to the DS429 dispute was completed, the United States had taken various actions, which it may attempt to use to again find a likelihood of the continuation or recurrence of dumping if the shrimp case was sunset. First, it had withdrawn the regulation

[5] See, e.g. "United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam", AB-2015-1, Report of the Appellate Body, WTO/DS429/AB/R (7 April 2015) at paragraphs 2.26 and 4.13.

governing the application of the weighted average-to-transaction comparison exception under the US law counterpart to Article 2.4.2 of the Anti-Dumping Agreement[6] and again made zeroing the norm in US investigations and reviews.[7] Second, it had reopened the sunset review at issue in the DS429 dispute based on allegations of transhipment of Chinese shrimp through Cambodia (claiming this also applied to Vietnamese shrimp, an assertion with which the court did not agree).[8] Third, it had retroactively applied adverse facts available to a respondent in the 2008-2009 review when the US Department of Commerce was overturned by the US Court of International trade and, on remand, required to undertake a review to determine whether revocation was appropriate. By the time the respondent who had requested the review to determine whether revocation was appropriate finally prevailed in court, it had changed ownership and did not have the necessary records to cooperate. It had therefore withdrawn its request. Rather than simply drop the matter and report to the court that the request for revocation had been withdrawn, the US Department of Commerce had decided to proceed with the review and apply adverse facts available.[9] There was no reason for this action other than to try to use these fabricated margins as a basis for denying revocation in a sunset review. As regards the "reasonable period of time" for implementation, Viet Nam believed that a period no longer than that provided for making redeterminations under US law was appropriate in the instant case. That period was 180 days. Finally, Viet Nam wished to address the comment by the United States that it had offered Viet Nam a settlement to the DS429 dispute. That was true. However, that settlement did not address the country-wide rate, it did not address the margins found using zeroing, and it did not address the requests by individual companies for revocation. It had addressed only the adjustments to the cash deposits of estimated anti-dumping duties for a period of less than one year. Given the Panel's findings and conclusions, this offer could not have even been seriously considered. Viet Nam hoped that the United States was serious about implementation and that it would seek to avoid litigation rather than make decisions which would lead to continued litigation in the DS429 dispute.

8.5. The representative of the United States said that his country thanked the Panel, the Appellate Body, and the Secretariat staff assisting them for their work in this proceeding. While the United States did not agree with every finding in the Panel Report, both the Panel and Appellate Body Reports showed a very welcome and careful engagement with the parties' arguments, contributing to the quality of the Reports. The United States said that it would like at the present meeting to make a few comments on both the Panel and the Appellate Body Reports. Starting with the Panel Report, the United States appreciated the Panel's thorough review of the facts and the legal claims in this dispute. In particular, the United States welcomed the finding by the Panel (affirmed by the Appellate Body) that Viet Nam had failed to establish that Section 129 of the Uruguay Round Agreements Act was inconsistent with the Anti-Dumping Agreement.[10] This was now the third time that a WTO adjudicator had determined that Section 129 did not breach US WTO obligations. The United States also welcomed the Panel's rejection of Viet Nam's "as such" claim with respect to the US Department of Commerce's application of the so-called "zeroing" methodology. The Panel had correctly found that Viet Nam's claim lacked merit because no such measure currently existed following US implementation in other WTO disputes. The Panel had also correctly rejected Viet Nam's claims that Commerce used a prescribed methodology to calculate the anti-dumping duty rate for the non-market economy-government entity or that Commerce systematically based that rate on facts available. In that regard, the Panel had disagreed with the finding of the Panel in the DS404 dispute and had rejected Viet Nam's claim that the anti-dumping duty rate applied to the Viet Nam-government entity in the fourth, fifth and sixth administrative reviews was based on facts available. The United States welcomed the Panel's careful and objective examination of this issue, which Viet Nam had not appealed.

8.6. In fact, Viet Nam had appealed only one issue in this dispute, the Panel's rejection of its claim on Section 129. Viet Nam had alleged that the Panel had breached Article 11 of the DSU in evaluating Viet Nam's arguments. The Appellate Body followed the applicable standard of review

[6] "Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Investigations", 73 Fed. Reg. 74930 (10 December 2008).

[7] See, "Xanthan Gum from China", 78 Fed. Reg. 33351 (4 June 2013).

[8] "Certain Frozen Warmwater Shrimp from the Socialist Republic of Viet Nam: Notice of Reopening of the First Five-Year Sunset Review", 79 Fed. Reg. 15310 (19 March 2014).

[9] "Certain Frozen Warmwater Shrimp from the Socialist Republic of Viet Nam: Preliminary Results of Re-conducted Administrative Review of Grobest & I-Mei Industrial (Viet Nam) Co., Ltd. and Intent not to Revoke"; 2008-2009, 78 Fed. Reg. 56352 (18 September 2013).

[10] Agreement on Implementation of Article VI of the GATT 1994.

for a claim under Article 11 and had appropriately found that Viet Nam had failed to establish that the Panel had breached its duty to conduct an objective assessment with respect to Viet Nam's challenge to Section 129. In that context, the Appellate Body had stated that "[w]hile [a Member] may not agree with the Panel's assessment of the relevancy of … evidence, this, in itself, does not mean that the Panel committed legal error amounting to a violation under Article 11 of the DSU".[11] Further, the Appellate Body had highlighted that "it is incumbent on a participant raising a claim under Article 11 on appeal to explain why the alleged error meets the standard of review under that provision".[12] The United States agreed with these statements and believed they were a useful reminder to Members regarding the proper scope of a claim of error under Article 11, as well as reflecting the limited scope of appellate review under Article 17.6 of the DSU. The United States hoped that Members would keep these statements in mind when considering how to approach potential appeals in other disputes, in particular in light of the significant workload issues facing the dispute settlement system.

8.7. The United States said it would like to also highlight that, not only had the Appellate Body reached the appropriate substantive outcome with respect to Viet Nam's Article 11 challenge, it had also handled the appeal in an efficient manner. The Report did not opine on issues that were not germane to the appeal and the oral hearing had been focused on the specific issues appealed by the parties. This approach had allowed the Appellate Body to issue a concise, high-quality report within the 90-day time frame established under Article 17.5 of the DSU. The United States appreciated the Appellate Body's efforts in this regard. Following this approach in future proceedings would promote the efficient resolution of disputes and help to mitigate workload problems currently facing the WTO dispute settlement system.

8.8. The representative of Korea said that his country welcomed the findings of the Panel and the Appellate Body in this dispute that application of the simple zeroing methodology by the United States in administrative reviews was inconsistent with Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994. Once again, these findings confirmed that the zeroing methodology is WTO-inconsistent, as found repeatedly by a growing number of previous WTO panels, as well as the Appellate Body. Undeniably, the use of zeroing artificially inflated dumping margins, contrary to the fundamental principle of "fair comparison". It was regrettable, however, that the Panel had declined to rule that the simple zeroing methodology used in administrative reviews "as such" was inconsistent with Article 9.3 of the Anti-Dumping Agreement and GATT Article VI:2, on account of the USDOC's modification of its calculation methodology. In addition, it was worrisome that, because the Appellate Body had been unable to find Section 129(c)(1) of the Uruguay Round Agreements Act to be WTO-inconsistent, unliquidated entries which had entered the United States prior to the date of implementation of the DSB's decision in this dispute would continue to be subject to the zeroing methodology. Unavoidably, this would have negative implications for the effective compliance of WTO rulings. Korea emphasized that providing effective remedy to WTO-inconsistent situations was crucial in order to enhance the credibility of the WTO dispute settlement system.

8.9. The representative of Cuba said that her country welcomed the Reports of the Panel and the Appellate Body. Cuba had heard and had listened carefully to the views expressed by both parties. Cuba, once again, urged the United States to implement the DSB's recommendations and rulings in this dispute in order not to prolong the situation of non-compliance, as stated by Viet Nam.

8.10. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Cuba on this matter.

8.11. The DSB took note of the statements, and adopted the Appellate Body Report contained in document WT/DS429/AB/R and the Panel Report contained in document WT/DS429/R and Add.1, as upheld by the Appellate Body Report.

[11] Appellate Body Report, paragraph 4.21.

[12] Appellate Body Report, paragraph 4.23 (citing "China – Rare Earths" (AB), paragraph 5.178 (quoting the EC - Fasteners (China) (AB), paragraph 442)).

## 9 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/545)

9.1. The Chairman drew attention to document WT/DSB/W/545, which contained new names proposed by Cuba for inclusion on the Indicative List of Governmental and Non-Governmental Panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/545.

9.2. The DSB so agreed.

## 10 STATEMENT BY THE CHAIRMAN REGARDING SOME MATTERS RELATED TO THE APPELLATE BODY

10.1. The Chairman, speaking under "Other Business", said that he wished to make a short statement concerning the issue of possible reappointments of two Appellate Body members. In that regard, he drew attention to the fact that the first four-year terms of office of Messrs. Ujal Singh Bhatia and Thomas Graham would expire on 10 December 2015. Both of them were eligible for reappointment to a second and final term of office, pursuant to Article 17.2 of the DSU. The Chairman said that he had recently been informed that Messrs. Bhatia and Graham were interested and willing to serve for a second four-year term, respectively. In light of this, he intended to consult informally with Members on these matters. At the same time his door was open and he invited any delegation with views on this matter to contact him directly, should they wish to do so. He would report back to delegations on the results of his consultations as appropriate.

10.2. The DSB took note of the statement.

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