



Dispute Settlement Body
25 November 2013

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 25 NOVEMBER 2013

Chairman: Mr. Jonathan Fried (Canada)

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1 REAPPOINTMENT OF ONE APPELLATE BODY MEMBER

1.1. The Chairman said that, on 12 November 2013, he had sent a fax to all delegations reporting that there was a consensus to reappoint Mr. Peter Van den Bossche as Appellate Body member for a second four-year term. This was the result of a process that the DSB had first begun to discuss as early as March 2013. As previously indicated, he noted that the reappointment of an Appellate Body member for a second four-year term was not automatic and required the formal consideration by, and the formal decision of, the DSB. Thus, the DSB had adopted a decision on 24 May 2013 in which Members had directed the Chair to carry out consultations on the possible reappointment of Mr. Peter Van den Bossche, whose first four-year term of office would come to an end on 11 December 2013. He recalled that the DSB had acknowledged in the 24 May decision that the DSU provided that each person may be reappointed once. Mr. Van den Bossche had indicated in April that he would be interested in being reappointed. Subsequently, as Members had directed him to do, the Chair had consulted with numerous delegations on this matter and he had ensured, in particular, that Members and delegations with a wealth of experience in WTO dispute settlement matters had had ample opportunity to provide input. He said that he was fortunate to have been able to draw on and seek the advice and counsel of many, including those that had deep and special expertise. He trusted that Members would agree that he had kept them informed of the progress of his consultations in successive DSB meetings. Therefore, based on his extensive consultations, he wished to propose that, at the present meeting, the DSB agree to reappoint Mr. Peter Van den Bossche for a second four-year term of office starting on 12 December 2013.

1.2. The DSB agreed to reappoint Mr. Peter Van den Bossche for a second four-year term of office starting on 12 December 2013.

1.3. The Chairman said that he appreciated the cooperation and thoughtful advice that had been offered to him by many delegations in the course of his consultations and, on behalf of all delegations, he thanked Mr. Peter Van den Bossche for his willingness to serve another term in the Appellate Body.

1.4. The representative of Brazil said that his country had followed carefully the process of consultations regarding the reappointment of Mr. Peter Van den Bossche for a second four-year term of office in the Appellate Body. Brazil congratulated Mr. Van den Bossche on his reappointment and reiterated its view that Members must continue to endeavour to ensure the integrity and independence of the Appellate Body. This would enable Members to continue to have professionals of the highest standard in the Appellate Body and to benefit from the AB impartiality and rules-based decisions. According to the DSU, the reappointment of an AB member was not automatic. However, Brazil believed that whatever reappointment process Members were to follow, any such process should respect the integrity and independence of the Appellate Body. Brazil also believed that the process followed in this instance did not set a precedent for future reappointment processes.

1.5. The representative of the European Union said that the EU welcomed the reappointment of Mr. Peter Van den Bossche as Appellate Body member and wished him all the best in his second term in this very important function. With regard to the important issues raised by Brazil regarding the need to ensure the independence and integrity of the Appellate Body and its members, the EU was certain that all Members shared these principles, which were enshrined in the DSU. Therefore, the EU fully endorsed them.

1.6. The representative of the United States said that his country would like to echo the comments made by other delegations in congratulating Mr. Peter Van den Bossche on his reappointment, and to thank the Chairman for his able management of this process so that the DSB could reach a decision on reappointment at the present meeting. The United States said that it thought that the way the process had been handled this time around was particularly useful and hoped that future reappointments would be handled similarly.

1.7. The representative of Mexico said that his country thanked the Chairman for conducting the process and congratulated Mr. Peter Van den Bossche on his reappointment. Mexico agreed with the statement made by Brazil. In Mexico's view, the Appellate Body was the cornerstone of the WTO dispute settlement system. In that respect, the impartiality and independence of the Appellate Body must be maintained and must continue to be respected. Thus far, the process for the reappointment of an Appellate Body member for a second term had been dealt with differently

by different DSB Chairs. In Mexico's view, where there were no agreed rules and no reason why reappointment should not take place, it must be agreed by the DSB without any difficulties. Nevertheless, in Mexico's view, reappointment was not automatic.

1.8. The representative of China said that her country wished to join other delegations in welcoming the reappointment of Mr. Peter Van den Bossche as an Appellate Body member. China shared the concerns expressed by Brazil, and stressed that the impartiality, integrity and independence of the Appellate Body were the most important principles to which Members had to adhere. China thanked all Members for their efforts and the Chairman for his leadership in the consultation process.

1.9. The Chairman said that he also wished to take this opportunity to say a few words regarding the other part of the 24 May Decision, namely, the process for filling the vacancy in the Appellate Body. He said that he did not have much to add to what had been announced in his fax of 14 November 2013. As had been stated in that fax, due to the remarkably intense pace of meetings and consultations that had been under way for some time, engaging not only the five Ambassadors that were members of the Selection Committee but the Director-General himself, as a member of the Committee, it had been impossible for the Selection Committee to find adequate time to schedule a meeting where it could complete its deliberations on a recommendation. He assured Members that he had every intention of ensuring that the Committee would resume its deliberations after the Ministerial Conference. He hoped that the Committee would be able to complete those deliberations and make a recommendation as soon as practicable thereafter. On behalf of the other members of the Committee and the Director-General, he wished to thank Members for their patience and understanding regarding these unique circumstances.

1.10. The DSB took note of the statements.

2 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.132)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.132)

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.107)

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.70)

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.19)

F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.17)

2.1. 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 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 and shall remain on the DSB's Agenda until the issue is resolved". In his view, the DSB was developing a healthier practice of ensuring that, as it took stock each time, it was provided with up-to-date information about compliance efforts and that any commentary offered in response focused on pathways towards resolution and on suggestions and ideas for progress, rather than a restatement of well-known positions. He said that the role of the Chair of the DSB was to remind delegations on how to approach this Agenda item in the spirit in which the DSU drafters intended. With these introductory remarks, the Chairman proposed to turn to the first status report on the Agenda of the present meeting.

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.132)

2.2. The Chairman drew attention to document WT/DS176/11/Add.132, 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.

2.3. The representative of the United States said that his country had provided a status report in this dispute on 14 November 2013, in accordance with Article 21.6 of the DSU. As noted in the US status report, and in previous interventions at the DSB, at least five bills had been introduced in the current Congress in relation to the DSB's recommendations and rulings. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

2.4. 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.

2.5. The representative of Cuba said that, since 2002, Cuba had denounced the US non-compliance in this dispute, but the United States continued to maintain its unlawful legislation in violation of the DSB decision. In Cuba's view, the reason for the lack of progress in this dispute was the hostile US economic, commercial and financial embargo policy against Cuba. The United States was disregarding its WTO obligations while exacerbating its unilateral measures against Cuba. In that respect, Cuba informed the DSB that, on 29 October 2013, the resolution entitled "Necessity of Ending the Economic, Commercial and Financial Embargo imposed by the United States of America against Cuba" had been adopted in the UN General Assembly, for the 22nd year, with 188 votes. This demonstrated the international community's total rejection of this unilateral and discriminatory US policy and support for Cuba from a group of countries much larger than the total number of WTO Members. It had become customary for the United States to submit status reports that were devoid of any relevant information, thereby violating Article 21.6 of the DSU. One hundred and thirty-two status reports had been submitted, none of which had provided any solution to settle this dispute. The reports undermined the objectives of Article 21 of the DSU since they lacked substance and did not contain any indication of steps being taken towards "prompt compliance". However, Cuba noted that at recent DSB meetings, the United States had made ambiguous statements in which it had tried to feign progress by alluding to a number of legislative texts introduced in the US Congress. Cuba requested that the United States update its status reports and submit, in writing, details of "its progress in the implementation of the recommendations or rulings", as required under Article 21.6 of the DSU. Listing legislative texts was not enough. The United States must provide information on the concrete results of the steps it had taken to settle this case once and for all. In Cuba's view, this was a situation of permanent disrespect for the rules-based WTO system. In that regard, Cuba reiterated its belief that no country was empowered to ignore the rules of international law and the demands of the international community. Cuba requested that this situation be resolved without further delay. Cuba thanked Members who made statements at each regular DSB meeting to the effect that this dispute be resolved, as well as those who voted annually in the UN General Assembly, in order to end the unfair embargo imposed on Cuba.

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

2.7. The representative of India said that his country thanked the United States for its status report and the statement made at the present meeting. India noted that the United States again reported no progress. India continued to be concerned about the non-compliance with the DSB's recommendations and rulings in this dispute. As stated on earlier occasions, the situation of continued non-compliance undermined the credibility and confidence that Members reposed in the WTO dispute settlement system. India requested that the United States report full compliance in this dispute without any further delay.

2.8. The representative of Brazil said that his country thanked the United States for its status report. Brazil noted that, once again, the United States reported lack of progress. Brazil remained concerned about this situation of non-compliance with the DSB's recommendations and urged the United States to bring its measures into conformity with WTO rules.

2.9. The representative of Nicaragua said that, as on previous occasions, his country supported Cuba's statement regarding this dispute, which had been unresolved for more than a decade. Nicaragua urged the United States to come into compliance with the DSB's recommendations and rulings so as to restore the credibility of the DSB.

2.10. The representative of the Bolivarian Republic of Venezuela said that her country, once again, supported Cuba, a developing-country Member that challenged the inconsistency of Section 211. However, the United States had not complied with the DSB's recommendations and rulings. Venezuela was more concerned about the fact that the US non-compliance was part of the US blockade against Cuba that had been maintained for more than 50 years. Venezuela was also concerned about the US lack of interest to address Cuba's concerns despite the fact that many countries had requested this situation to end. Many years had passed and the United States had not yet complied with the DSB's recommendations within the reasonable period of time stipulated in Article 21.3 of the DSU. The United States submitted the same status report at every DSB meeting stating that its Government was working towards compliance with the DSB's recommendations without actually doing so. This situation not only affected Cuba, but also set a negative precedent for the credibility of the WTO and its ability to resolve disputes. In that regard, Venezuela urged the United States to bring this non-compliance to an end and to report on the actions it intended to take so as to comply with the DSB's recommendations and rulings.

2.11. The representative of Ecuador said that his country thanked the United States for its status report. Ecuador noted that prompt compliance with the DSB's recommendations and rulings was essential in resolving disputes amongst Members. In that regard, Ecuador, once again, urged the United States to bring its measures into compliance with the WTO Agreements as soon as possible. This would contribute to the strengthening of the dispute settlement system.

2.12. The representative of Argentina said that his country thanked the United States for its status report and the statement made at the present meeting. Argentina, once again, regretted the lack of progress in this dispute. This lack of progress was inconsistent with the principle of prompt and effective compliance with the DSB's recommendations and rulings stipulated in the DSU provisions, in particular since the interests of a developing-country Member were affected. Argentina, once again, supported the statements made by Cuba and other speakers. Argentina called on the parties to the dispute, and in particular the United States, to take the necessary measures so as to ensure the prompt settlement of this dispute.

2.13. The representative of South Africa said that her country thanked the United States for its status report. South Africa noted that the report contained the same information as previous status reports. In that regard, South Africa referred to its previous statements in which it had stressed its concerns about the systemic effects of non-compliance with the DSB's recommendations and rulings, including undermining the integrity of a critical enforcement pillar of the WTO. In addition, negative economic consequences for a particular developing-country Member were being perpetuated as a result of non-compliance. South Africa, therefore, urged the United States to bring its legislation into compliance with the DSB's rulings and recommendations.

2.14. The representative of Uruguay said that his country thanked the United States for its status report. Uruguay requested that the United States provide further information as to how this issue was being addressed in the US Congress. Uruguay urged the United States to take the necessary measures in order to resolve this dispute once and for all.

2.15. The representative of Mexico said that, once again, his country urged the parties to this dispute to take the necessary measures to comply with the DSB's recommendations and rulings to the benefit of all Members, as provided for in Article 21.1 of the DSU.

2.16. The Chairman said that he noted that a number of delegations had, thus far, highlighted a desire for more detailed information about the legislative progress in the US Congress.

2.17. The representative of Viet Nam said that his country thanked the United States for its status report. Viet Nam noted that more than ten years had passed since the DSB had adopted its recommendations and rulings, but the United States had not taken any action to implement them. Viet Nam, once again, urged the United States to respect the DSB's recommendations and rulings so as to uphold international public law disciplines and for the benefit of Cuba, a developing-country Member.

2.18. The representative of the United States said that first his country would like to respond to the intervention made by Cuba, which seemed to have been a pointed criticism of the United States for an alleged violation of Article 21.6 of the DSU. The delegate of the United States said that he was confused by this critique from the delegation of Cuba because if one looked at Article 21.6 of the DSU, the sentence that would seem to apply here was the final one, which stated that: "[a]t least 10 days prior to each such DSB meeting, the Member concerned shall provide the DSB with a status report in writing of its progress in the implementation of the recommendations and rulings". The United States also said that it thought that it was pretty clear and unambiguous that the United States had done that in this instance. The United States had provided a status report on 14 November 2013 as required, which provided information on the legislation that had been introduced in the current Congress. In light of this, it would be useful if Cuba could elaborate for the Members as to what exactly it was alleging at the present meeting.

2.19. With respect to the substance of its status reports, the United States said that it does regret the notion that the United States had not provided sufficient detail. This was something that the delegate from the United States said that he had touched on in a previous DSB meeting, so he would not belabour it at the present meeting. But it was important to note that sometimes it was not appropriate to get into the internal deliberations of a government body in a public document. That could be counterproductive and the lack of additional detail should not be misconstrued to mean that no steps were being taken. There had been other times when the United States had heard similar criticisms about the level of detail in US status reports where Congress had ultimately passed legislation to come into compliance. With respect to those bills currently being considered by Congress, the United States said that it had a very transparent legislative process and those bills were publicly available from the time of introduction. The United States would urge Members to learn about bills that had been introduced. They were all published on the internet. One could track and follow them; it was easy to learn about them through the available online tools. With respect to systemic issues, the facts did not support the accusations. The record showed that the United States had come into compliance, fully and promptly, in the vast majority of its disputes. As for the remaining few instances where its efforts to do so had not yet been entirely successful, the United States had been working actively towards compliance in furtherance of the purpose of the dispute settlement system, and this also applied to this dispute.

2.20. The representative of Cuba said that her country was quite surprised by the statement made by the United States. First, more than 11 years of non-compliance with the DSB's recommendations and rulings had passed. Second, what Cuba was questioning was in line with Article 21.6 of the DSU, which required the Member concerned to inform the DSB of the progress made in the implementation of the DSB's recommendations and rulings. Every month at each regular DSB meeting, the United States had listed five legislative bills, but this did not mean that it had provided information on progress towards implementation. As the United States had stated, there was information from the internet and through other research about the status of the bills in the US Congress. However, those bills had not even been submitted for review by the Senate and to date no action had been scheduled in that regard. Cuba was aware that one of those bills had initiatives very favourable towards trade with Cuba and for resolving this dispute. In that sense, and in a constructive spirit, Cuba asked the United States to provide more specific information in line with the US obligation under Article 21.6 of the DSU. Cuba was not requesting in-depth information, but simply asked the United States to update its status report. It was quite clear from the DSU provisions that the United States should provide information and an updated status report so that Members did not have to listen to the same report every month, in which only the number and the date were changed.

2.21. The Chairman said that the exchange between the United States and Cuba had helped Members to reflect, as he had encouraged them to do, on how best to meet the objectives of the DSU by providing up-to-date information on the one hand and, on the other hand, to ensure that comments were geared in a positive way to moving an outstanding dispute towards resolution.

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

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.132)

2.23. The Chairman drew attention to document WT/DS184/15/Add.132, 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.

2.24. The representative of the United States said that his country had provided a status report in this dispute on 14 November 2013, in accordance with its obligations under 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 not yet been addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

2.25. The representative of Japan thanked the United States for its statement and its status report submitted on 14 November 2013. Since the content of the report was the same as the previous ones, Japan's position remained unchanged as expressed in the previous meetings.

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

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.107)

2.27. The Chairman drew attention to document WT/DS160/24/Add.107, 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.

2.28. The representative of the United States said that his country had provided a status report in this dispute on 14 November 2013, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the EU, and to work closely with the US Congress to reach a mutually satisfactory resolution of this matter.

2.29. 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 regarding its wish to resolve this case as soon as possible.

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

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.70)

2.31. The Chairman drew attention to document WT/DS291/37/Add.70, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

2.32. The representative of the European Union said that, in recent DSB meetings, the EU had already reported on authorization decisions taken up to June 2013. On 6 November 2013, the European Commission had adopted two decisions authorizing ten new GM maize and one decision

authorizing MON810 pollen¹, following the absence of an opinion from the Appeal Committee. In September 2013, the standing committee had voted on a draft authorization decision for drought-tolerant maize² and had rendered no opinion. The draft decision had, therefore, been presented to the Appeal Committee on 21 October 2013, which delivered no opinion. In addition, at the beginning of October 2013, the EFSA had published opinions on a GM maize³ and a GM soybean⁴, both for food and feed uses. As stated many times before, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings. The GMO regulatory regime was working normally, as evidenced by the approval decisions and other actions towards approval decisions just mentioned. The details on the relevant products were set out in the EU's written statement.

2.33. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. As it had explained at past DSB meetings, the United States had substantial concerns regarding EU measures affecting the approval of biotech products. These measures continued to result in serious restrictions on trade in agricultural products. The United States believed that one of the things that had been referred to by the EU was that the United States understood that for the first time that calendar year, the EU had finally approved an application for a new biotech product. In particular, the United States understood that the EU had approved two new varieties of biotech corn. Those approvals, however, served to illustrate the problems with the EU measures. Over three years had elapsed between the time that the EU's scientific authority had found that the products were safe and the time that they had finally been approved. The United States noted that a similar situation was preventing trade in a number of other biotech products. And there were about ten pending applications for which a positive safety assessment had been completed but which were still awaiting approval. The United States said that it would urge the EU to take steps to address these matters.

2.34. The Chairman said that Members had heard about some specific progress which, however, the complainant considered fell far short of full compliance with the DSB's recommendations and rulings.

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

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.19)

2.36. The Chairman drew attention to document WT/DS371/15/Add.19, which contained the status report by Thailand on progress in the implementation of the DSB's recommendations in the case concerning Thailand's customs and fiscal measures on cigarettes from the Philippines.

2.37. The representative of Thailand said that in its most recent status report, Thailand had indicated that it was continuing to prepare responses to the Philippines' recent request for additional information regarding certain aspects of Thailand's implementation. Thailand hoped to provide those responses shortly and would discuss the relevant modalities bilaterally with the Philippines. Thailand remained at the Philippines' disposal to answer any further questions the Philippines may have regarding this information. Thailand looked forward to continuing discussions with the Philippines and to resolving this matter in an amicable manner.

2.38. The representative of the Philippines said that his country thanked Thailand for its status report and the statement made at the present meeting. In its statement at the DSB meeting on 22 October 2013, the Philippines had raised concerns about the WTO-consistency of Thai measures taken to comply with the DSB's rulings and recommendations in this dispute. Of particular importance, the Philippines had raised concerns about reports in the Thai press of a recent decision by the Thai Attorney General to prosecute an importer of Philippine goods, and several of the importer's current and former employees, for alleged under-declaration of customs values in the 2003-2007 time period, which included the period covered by the DSB's rulings and

¹ Maize stack events MON89034 x 1507 x MON88017 x 59122 and GM maize MON89034 x 1507 x NK603 as well as GM maize MON810 pollen.

² MON87460 maize.

³ T25 maize.

⁴ MON87708 soybean.

recommendations in this dispute. The Philippines had also highlighted a second compliance issue regarding customs valuation, namely a decision by Thai Customs Board of Appeals to reject the declared transaction values for 210 entries from 2002. On both of these customs valuation issues, the Philippines had put written questions to Thailand. The Philippines regretted to report that it had received no responses to its queries. The failure to engage and provide information was particularly regrettable and heightened the Philippines concerns, given the impact and scale of the matters at hand. Thailand had repeatedly stated in the DSB its commitment to ensure the WTO-consistency of its customs valuation measures. Thailand had also repeatedly reaffirmed its commitment to the bilateral process, and its hope that this dispute could be resolved without returning to litigation. The Philippines shared that sentiment and, for that reason, called on Thailand to act on its commitments. It was only through a full and transparent airing of the facts that the parties could hope to achieve a lasting solution to this dispute.

2.39. The Chairman said that he had one factual question, namely, when had the Philippines submitted its questions to Thailand.

2.40. The representative of the Philippines said that the questions had been submitted a long time ago, more than a month ago. The Philippines thought that the answers were forthcoming.

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

F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.17)

2.42. The Chairman drew attention to document WT/DS404/11/Add.18, 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.

2.43. The representative of the United States said that his country had provided a status report in this dispute on 14 November 2013, in accordance with Article 21.6 of the DSU. As the United States had noted at past DSB meetings, the US Department of Commerce had published a modification to its procedures in February 2012 in order to implement the DSB's recommendations and rulings regarding the use of "zeroing" in anti-dumping reviews. That modification addressed certain findings in this dispute. The United States would continue to consult with interested parties as it worked to address the DSB's recommendations and rulings.

2.44. The representative of Viet Nam said that his country thanked the United States for its status report. Members were aware that the reasonable period of time mutually agreed by both parties had expired 15 months ago. However, the United States had not taken any action to recalculate and revoke the anti-dumping duty order that was inconsistent with the DSB's recommendation. Viet Nam wished to express its systemic concerns about the US non-compliance with its WTO obligations in this case. Once again, Viet Nam urged the United States to implement, without any further delay, the DSB's recommendations and rulings so as to maintain the multilateral trading disciplines and for the benefit of Viet Nam, a developing-country Member.

2.45. The representative of Cuba said that her country supported the statement made by Viet Nam, a developing-country Member, that had also been affected by the US failure to comply with its obligations. Cuba urged the United States to take effective measures in order to implement the DSB's recommendations and rulings in this case and to remove the measures that adversely affected Viet Nam.

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

3 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

3.1. 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.

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

3.3. The representative of Japan said that the distributions under the CDSOA had been continuing. Japan, once again, urged the United States to stop the illegal distributions so as to resolve this long-standing dispute. Japan was of the view that the United States was under obligation to provide the DSB with a status report in this dispute in accordance with Article 21.6 of the DSU.

3.4. The representative of India said that his country thanked the EU and Japan for, once again, placing this issue on the DSB's Agenda. India shared their concerns. India also agreed that the United States was under obligation to submit status reports in this dispute until such time that full compliance was achieved. India urged the United States to fully comply with the DSB's rulings and recommendations in this dispute.

3.5. The representative of Canada said that, in the interest of time, Canada wished to refer to its previous statements made under this Agenda item. Canada's position had not changed.

3.6. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. As it had been expressed at previous DSB meetings, Brazil was of the view that the United States was under obligation to submit status reports in this dispute until such time that no more disbursements were made pursuant to the Byrd Amendment. Only the end of disbursements would constitute substantial compliance with the DSB's recommendations and rulings. Only then would the issue have been resolved within the meaning of the DSU and the United States would be released from its obligation to provide status reports in this dispute.

3.7. The representative of Thailand said that his country thanked the EU and Japan for bringing this item before the DSB. Thailand continued to urge the United States to cease the disbursements and fully implement the DSB's rulings on this matter.

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

3.9. The DSB took note of the statements.

4 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. Statement by the United States

4.1. 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.

4.2. The representative of the United States said that his country continued to have serious concerns that China had not implemented the DSB's recommendations and rulings in this dispute. Most notably, China still had not permitted any foreign supplier of electronic payment services to do business in China. And China still had not made available any regulatory mechanism under which a foreign supplier could request permission to do business in China. As a result, China Union Pay, China's own domestic champion, was still the only authorized supplier in all of China. This did not reflect implementation of the DSB's recommendations and rulings. To the contrary, the DSB had found that China had both market access⁵ and national treatment⁶ commitments concerning Mode 3 for electronic payment services. The United States called upon China to address these matters.

4.3. The representative of China said that her country regretted that the United States had brought this matter before the DSB once again. At previous DSB meetings, China had stated that it had fully complied with the DSB's recommendations and rulings in this matter. China had further explained that the actions being sought by the United States were beyond the scope of China's compliance obligations in this dispute. Notwithstanding these prior explanations by China, the United States had continued to characterize the actions that it was requesting of China as actions that were necessary to comply with the DSB's recommendations and rulings in DS413. These demands were based on the wrong interpretation, by the United States, of the DSB's rulings and recommendations, and also reflected a clear misunderstanding of the dispute settlement process. It was well established that the dispute settlement process focused on the consistency of specific, identified measures with the relevant provisions of the covered agreements. In a dispute settlement proceeding under the DSU, the complaining Member identified specific measures which it alleged to be inconsistent with specific provisions of the covered agreements. The function of a panel was to evaluate those claims of inconsistency in relation to the identified measures. Where a panel found that an identified measure was inconsistent with one or more obligations under the covered agreements, Article 19.1 of the DSU provided that the panel was to "recommend that the Member concerned bring the measure into conformity with that agreement".

4.4. In the present dispute, the United States had identified a set of measures which it alleged conferred a "monopoly" upon a Chinese provider of the services at issue. The United States had contended that this alleged "monopoly" was inconsistent with China's market access obligations under Article XVI:2(a) of the GATS. The Panel had rejected the US claims under Article XVI in respect of all but one of the measures identified by the United States. The one measure that the Panel had found to be inconsistent with Article XVI:2(a) of the GATS was a measure that concerned the provision of certain services in Hong Kong and Macao. China had brought that measure into conformity with the DSB's recommendations and rulings, and the United States did not appear to contend otherwise. Having brought that measure into conformity with the DSB's recommendations and rulings, China had no further implementation obligations in respect of the Panel's market access findings. There were no other measures that were the subject of the DSB's recommendations and rulings under Article XVI of the GATS. What the United States appeared to be requesting of China went far beyond the measures that had been at issue in DS413. Based on the Panel's finding concerning the classification of the services at issue, the United States appeared to be arguing that China's compliance obligation extended beyond the single measure that the Panel had found to be inconsistent with China's market access commitments. But the Panel's classification finding, and its identification of corresponding market access commitments, was merely a precursor to its evaluation of whether the measures identified by the United States were inconsistent with China's obligations under Article XVI. These findings had not given rise to independent compliance obligations, as the United States appeared to suggest. In all events, the DSB's recommendations and rulings pertained to the specific measure that had been found to be inconsistent with the covered agreements. A responding Member fully discharged its compliance

⁵ "China – Certain Measures Affecting Electronic Payment Services", WT/DS413/R (adopted 31 August 2012), para. 7.575.

⁶ *Id.*, para. 7.678.

obligations when it brought that measure into conformity with the covered agreements, as China had done in this case. China urged the United States to reconsider the systemic implications of its position and remained open to discussing the US requests as part of a bilateral dialogue.

4.5. The DSB took note of the statements.

5 RUSSIAN FEDERATION – RECYCLING FEE ON MOTOR VEHICLES

A. Request for the establishment of a panel by the European Union (WT/DS462/8)

5.1. The Chairman recalled that the DSB had considered this matter at its meeting on 22 October 2013 and had agreed to revert to it. He drew attention to the communication from the European Union contained in document WT/DS462/8, and invited the representative of the European Union to speak.

5.2. The representative of the European Union said that the EU reiterated its request for the establishment of a panel concerning Russia's "recycling fee" on motor vehicles with standard terms of reference. In that regard, the EU referred to its statement made at the previous DSB meeting. The EU continued to await clarifications with regard to implementing rules and on the concrete operation of Russia's measures after the expected entry into force of the Amendment that had been passed recently by the Duma. At the present meeting, the EU had no choice but to request the establishment of a panel to rule on this matter.

5.3. The representative of the Russian Federation said that, once again, his country wished to express its regret that the EU had requested the establishment of a panel to examine this matter. As it had already stated, the consultations with the EU had been held in July 2013 and the Russian Federation had participated in those consultations in good faith with the intention of resolving the matter. As it had informed the DSB at its previous meeting, the President had signed the legislation eliminating and modifying sections of the utilization fee regime that the EU had referred to in its request for the establishment of a panel. That Law would enter into force on 1 January 2014. With that new piece of legislation in place, the EU's request referred to something that no longer existed or was subject to further internal modification. As it had expressed at the previous DSB meeting, the Russian Federation was still not in a position to agree to the establishment of a panel. The Russian Federation believed that the matter may still be resolved through consultations and was ready to engage in such consultations with the EU constructively. However, the Russian Federation was also ready to take all the required actions under the DSU provisions.

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

5.5. The representatives of China, India, Japan, Korea, Norway, Turkey, Ukraine and the United States reserved their third-party rights to participate in the Panel's proceedings.

6 UNITED STATES – MEASURES CONCERNING THE IMPORTATION, MARKETING AND SALE OF TUNA AND TUNA PRODUCTS

A. Recourse to Article 21.5 of the DSU by Mexico: request for the establishment of a panel (WT/DS381/20)

6.1. The Chairman drew attention to the communication from Mexico contained in document WT/DS381/20 and invited the representative of Mexico to speak.

6.2. The representative of Mexico said that, on 9 July 2013, the United States had published in the Federal Register a measure to implement the DSB's rulings and recommendations. That measure entered into effect on 13 July 2013, the date of expiry of the reasonable period of time for implementation, which had been agreed by Mexico and the United States. The measure would, however, be enforceable from 1 January 2014. He recalled that on 2 August 2013, Mexico and the United States had reached an understanding regarding the procedures under Articles 21 and 22 of the DSU, which had been circulated to all Members in document WT/DS381/19. Pursuant to that understanding, Mexico was not required to hold consultations before requesting the establishment

of a panel. In that respect, Mexico considered that the United States had not brought the dolphin-safe labelling provisions into compliance with the DSB's recommendations and rulings. Mexico considered the amendments to the "tuna measure" to be inconsistent with the following obligations: (i) the amended measure was inconsistent with Article 2.1 of the TBT Agreement because it continued to accord Mexican tuna products treatment less favourable than that accorded to like tuna products from the United States and like tuna products from any other country; (ii) it was inconsistent with Article I:1 of the GATT 1994 because it continued to confer on tuna products from other countries an advantage which was not accorded immediately and unconditionally to all like tuna products from Mexico; (iii) it was inconsistent with Article III:4 of the GATT 1994 because it continued to accord Mexican tuna products treatment less favourable than that accorded to like tuna products from the United States in respect of all laws, regulations or requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use; and (iv) it nullified or impaired the benefits that accrued to Mexico under the GATT 1994 within the meaning of GATT Article XXIII:1(b). Accordingly, for Mexico, the measures taken by the United States to comply with the DSB's recommendations and rulings did not meet this objective, and were inconsistent with the covered agreements in this dispute. Mexico therefore requested the establishment of a compliance panel with standard terms of reference and that the DSB refer the matter to the original panel, if possible, pursuant to Article 21.5 of the DSU.

6.3. The representative of the United States said that the United States did not agree to Mexico's request for the establishment of a panel. As Mexico had noted in its statement, on 13 July 2013, the United States had made effective a final rule that amended certain US dolphin-safe labelling requirements.⁷ The amended regulations had been carefully designed to address the findings in the adopted reports. Most notably, the final rule enhanced documentary requirements for dolphin-safe labelling by extending the requirements to tuna caught in oceans other than the eastern tropical Pacific Ocean (ETP). These changes ensured that consumers were not misled or deceived about whether the tuna in a product labelled "dolphin safe" had been caught in a manner that caused harm to dolphins. The adoption of this final rule had brought the United States into compliance with the DSB's recommendations and rulings within the reasonable period of time that had been agreed to by Mexico and the United States. The US compliance measure also demonstrated that the United States, as well as other Members, could prevent consumer deception and protect dolphins consistent with WTO rules. The United States was fully prepared to rebut any claims by Mexico that the amended dolphin-safe labelling requirements were somehow inconsistent with WTO rules and with the provisions Mexico had mentioned at the present meeting. At the same time, the United States had been prepared to work with Mexico, outside of a litigation context, to address its concerns with the amended requirements. For those reasons, the United States was disappointed that Mexico had nonetheless decided to request a panel under Article 21.5 of the DSU.

6.4. The Chairman noted that Article 21.5 of the DSU provided that: "Where there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings such dispute shall be decided through recourse to these dispute settlement procedures". This meant that a panel would have to be established at the present meeting unless there was no consensus to do so in the spirit of encouraging further consultations.

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

⁷ Enhanced Document Requirements to Support Use of the Dolphin Safe Label on Tuna Products: Final Rule, 78 Fed. Reg. 40997 (9 July 2013) (to be codified at 50 CFR pt. 216).