# WORLD TRADE ORGANIZATION

RESTRICTED

**WT/DSB/M/275**
22 December 2009

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**Dispute Settlement Body**
**23 October 2009**

**MINUTES OF MEETING**

Held in the Centre William Rappard
on 23 October 2009

*Chairman: Mr. John Gero (Canada)*

Prior to the adoption of the Agenda[1]

Subjects discussed: Page



[1] See page 2.

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

Prior to the adoption of the Agenda, the representative of Mexico said that his delegation wished to request that a corrigendum be added under item 4 of the Agenda, which had been circulated on 13 October in document WT/DS386/7/Corr.1. The Chairman proposed that, as requested by Mexico, document WT/DS386/7/Corr.1 be added to the Agenda under item 4.

The DSB so agreed.

Also prior to the adoption of the Agenda, the representative of Australia said that her delegation wished to place an item under "Other Business" concerning the Memorandum of Understanding (MOU), which had been notified jointly by the EC and the United States to the DSB, on 25 September 2009, and had been circulated on, 30 September 2009, to all Members. The MOU concerned the EC - Beef Hormones dispute.

The representative of New Zealand said that her delegation had no item to add to the Agenda, but would appreciate the opportunity to make an intervention under the item that Australia had proposed to raise under "Other Business".

The representative of Argentina said that, like New Zealand, his delegation also would wish to make a brief statement regarding the item requested by Australia under "Other Business".

The representative of Uruguay said that his country also wished to make a statement regarding this matter.

The representative of Brazil said that his country would also wish to make a short statement regarding the matter raised by Australia.

The representative of the United States said that his delegation had some concern with the number of delegations that intended to make a statement under Australia's proposed item. Under Rule 25 of the DSB rules of procedure under "Other Business", the DSB shall limit itself to taking note of "the announcement by the sponsoring delegation", as well as "any reactions to such an announcement by other delegations directly concerned". In this instance the only delegations directly concerned would seem to be the United States and the EC. Furthermore, since other delegations had already announced that they intended to make a statement, it was not clear how those statements could be a reaction to Australia's statement. The United States, therefore, requested that the meeting be suspended briefly to permit delegations to confer on how to proceed.

The DSB agreed to suspend the meeting.

Following the resumption of the meeting, the Chairman said that for the benefit of other Members, he wished to state that it had been decided that each of the delegations (Australia, New Zealand, Argentina, Uruguay and Brazil) would put this matter under "Other Business", and they would speak first. Subsequently, the United States and the EC would react to those statements.

The DSB took note of the statements and adopted the Agenda, as amended.

## 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.83)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.83)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.58)

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities (WT/DS291/37/Add.21 – WT/DS293/31/Add.21)

(e) European Communities – Regime for the importation, sale and distribution of bananas: Second recourse to Article 21.5 of the DSU by Ecuador: Status report by the European Communities (WT/DS27/96/Add.9)

(f) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/34/Add.2)

(g) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.1)

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

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.83)

2. The Chairman drew attention to document WT/DS176/11/Add.83, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

3. The representative of the United States said that his country had provided a status report in this dispute, on 12 October 2009, in accordance with Article 21.6 of the DSU. As noted in that status report, a number of legislative proposals that would implement the DSB's recommendations and rulings in this dispute had been introduced in the current Congress, which convened in January 2009. The US administration was working with Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Communities said that, at the present meeting, the United States was presenting its eighty-third status report in this dispute. The EC hoped that the new US authorities would take steps to finally implement the DSB's ruling and resolve this matter.

5. The representative of Cuba said that, once again, his country regretted the lack of compliance in this dispute. The United States ignored the findings contained in the Appellate Body Report, which had been circulated in 2002. Month after month, the United States provided the same status report which contained reference to "adequate legislative measures" that would solve this matter and that the US administration would work with the US Congress. On several occasions, Cuba had requested the United States to provide details regarding those measures, but had received no response. The US written and oral reports pertaining to the Section 211 dispute had shown no progress in the implementation of the recommendations, which was in violation of Article 21.6 of the DSU. He recalled that Section 211 had come into force in October 1998, preventing the registration and renewal of certain Cuban trademarks. In terms of intellectual property rights, this was clear evidence of the economic, trade and financial blockade, which the United States had been imposing on Cuba since 1962. The assault on the registration of well-known Cuban trademarks like HAVANA CLUB had serious trade implications. The power of trademarks, the only intellectual property assets that could remain in force indefinitely, was common knowledge. He noted that HAVANA CLUB was a brand of Cuban rum, which was sold every year in increasing quantities and was marketed in 124 countries. That brand of Cuban rum had been usurped in the United States by the Bacardi company. In allowing Bacardi to sell rum under the HAVANA CLUB trademark, the US authorities promoted the most unfair international trade practices. In its 2002 Report, the Appellate Body had noted that Section 211 violated two core principles of the multilateral trading system: i.e. the most-favoured-nation principle and the principle of national treatment. The purpose of the pretexts used to postpone implementation of the ruling in this dispute was to turn it into dead letter. Section 211 continued to violate the TRIPS Agreement and other obligations. Both the complainant and the respondent in this dispute were aware of the significance of not complying with the rulings. The Understanding between the EC and the United States, of which Cuba had become aware in July 2005, demonstrated the lack of action and indifference in the face of a situation of non-compliance with fundamental principles. The parties demonstrated a blatant lack of will to settle this dispute. It was important to emphasize that the settlement of disputes had an impact on the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members. The EC had recently assured that it was "committed to improve the international legal framework for intellectual property protection". Therefore, Cuba urged the EC to follow up on that statement and to take immediate action to resolve this dispute, which undermined the most comprehensive multilateral agreement on intellectual property signed to date.

6. The representative of the Bolivarian Republic of Venezuela said that his country noted the US status report and emphasized the need to end the economic, commercial and financial blockade that the United States had imposed on Cuba, including the application of what was known as the Helms-Burton Act. The entire world had rejected the blockade against Cuba, as had recently been noted on more than one occasion at discussions held at the United Nations. In the same vein, the Organization of American States (OAS) had recently repealed the decision to expel Cuba, which had been adopted on 31 January 1962 by the Eighth Meeting of Consultation of Ministers of Foreign Affairs of the OAS. He recalled that the decision to exclude Cuba had been taken at the height of the Cold War, when the OAS complied with mandates dictated by a single member – a time that fortunately appeared to belong to the past. Recent summits of Heads of State and Government, for example those of Latin America and the Caribbean in December 2008 and South America and Africa in September 2009, had adopted declarations and had stated their rejection of the blockade against Cuba. There had to be a link between requirements and compliance, a principle that governed any rule or right, which in turn always entailed duties. The United States was one of the countries that made many demands in the WTO. This, therefore, implied responsibility for the conduct it must adopt in the WTO. Venezuela recalled that those who had the greatest interest in seeing compliance with the rules and decisions by the WTO bodies were small and developing countries, which lacked the economic, political and ultimately inordinate powers to impose their positions. The DSB was among those WTO bodies that had earned the highest praise in the WTO. At the most recent meeting of the General Council, one delegation had raised the systemic problem of the WTO's loss of credibility as a result of repeated failure on the part of two of the key WTO players to comply with the DSB's decisions, and underscored the need to remedy the situation. It was not a matter of complying with one decision or another, or of stating that the WTO's credibility remained intact on account of the number of cases that continued to be brought before it. The latter was devoid of purpose because the agreement was to comply with all recommendations, and this was the reason why rules were laid down. Venezuela, therefore, urged the United States to take steps, as a matter of urgency and necessity, to comply with the obligations incumbent on it under the TRIPS Agreement and to provide clear and concrete evidence of its credibility and respect for multilateral trade.

7. The representative of Ecuador said that his country thanked the United States for its status report, which unfortunately demonstrated little progress on compliance. Ecuador supported the statement made by Cuba, and recalled that Article 21 of the DSU referred explicitly to prompt compliance with the DSB's rulings and recommendations, in particular with regard to matters affecting the interests of developing countries. The United States closely monitored compliance of other Members with their WTO obligations and had expressed, in different WTO Councils and Committees, its systemic concerns about commitments undertaken by them, and had reported on their compliance records in the area of intellectual property. Therefore, if the United States wished to promote compliance, it had to lead by example. Ecuador, once again, urged the US administration and Congress to accelerate their compliance with the DSB's rulings and recommendations by repealing Section 211. Ecuador requested more detailed information from the EC on the steps that had been taken to resolve this dispute.

8. The representative of Viet Nam said that his country thanked the United States for its status report. Viet Nam was concerned about the lack of implementation of the DSB's rulings and recommendations in this dispute and urged the United States to comply with its obligations without delay.

9. The representative of India said that her country thanked the United States for its status report and its statement. India noted that there was no substantive change in the situation and felt compelled, yet again, to stress that the principle of prompt compliance was missing in this dispute. India, therefore, reiterated its systemic concerns about the situation of non-compliance by Members, which undermined the credibility and confidence that Members placed on the WTO dispute settlement system. India urged the United States to fully implement the DSB's recommendations in this dispute.

10. The representative of Chile said that his country thanked the United States for its status report. Chile considered that the general level of compliance under the dispute settlement mechanism was good, but remained concerned about the failure to resolve this long-standing dispute. Chile urged the parties, once again, to take the necessary measures as soon as possible to fully comply with the DSB's rulings and recommendations.

11. The representative of Brazil said that his country thanked the United States for its status report, but remained concerned by the US lack of compliance with the DSB's recommendations and rulings. In this connection, Brazil urged the United States to expedite its efforts and bring its measures into conformity with its multilateral obligations.

12. The representative of Argentina said that his country thanked the United States for its latest status report, and recalled the statement made by Argentina at the September DSB meeting. Argentina reiterated that the failure to implement the DSB's recommendations and rulings undermined the system and called on the parties, especially the United States, to take the necessary measures to ensure the full implementation in this case.

13. The representative of Nicaragua said that her country noted the eighty-third status report presented by the United States. Like on previous occasions, Nicaragua drew attention to the fact that this was practically the same report as the one submitted by the United States in the past. Furthermore, the US status report did not refer to any specific measures to be implemented. Nicaragua noted, with concern, the US statement contained in the status report that the US administration would work with the US Congress, and requested clarification from the United States on this matter. Section 211 had been found in violation of the TRIPS Agreement in relation to the rights of trade-mark holders. It was unacceptable that intellectual property violations persisted in countries for political reasons. There was a need to ensure that the multilateral trading principles were respected. Nicaragua regretted, once again, that there had been no progress and that the failure to comply continued. Furthermore, there was nothing to suggest that prompt compliance would take place. Nicaragua, therefore, urged the United States to inform the DSB as to when it would fully comply with the recommendations.

14. The representative of Angola said that his country thanked the United States for its status report. Angola fully supported the statement made by Cuba and requested the United States to accelerate its implementation process so as to bring its legislation in line with its obligations under the TRIPS Agreement.

15. The representative of China said that his country thanked the United States for its status report and its statement. Since the status report did not contain anything new, and non-compliance still persisted, China supported the statements made by the EC and Cuba and, once again, urged the United States to respect its international obligations and to implement the DSB's decisions without further delay.

16. 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.83)

17. The Chairman drew attention to document WT/DS184/15/Add.83, 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.

18. The representative of the United States said that his country had provided a status report on this dispute on 12 October 2009, in accordance with Article 21.6 of the DSU. As of 23 November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. Details were provided in document WT/DS184/15/Add.3. With respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities by 23 November 2002, the US administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

19. The representative of Japan said that her country thanked the United States for its statement and its latest status report. Japan noted the US statement that it had taken certain measures to implement part of the DSB's recommendations in November 2002. Japan hoped that the United States would soon be in a position to report to the DSB on tangible progress for the remaining part of the DSB's recommendations and rulings. A full and prompt implementation of the DSB's recommendations and rulings was "essential to the effective functioning of the WTO and the maintenance of a proper balance of the rights and obligations of Members".[3] Japan called on the United States to fully implement the DSB recommendations in this long-standing dispute without further delay.

20. 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.58)

21. The Chairman drew attention to document WT/DS160/24/Add.58, 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.

22. The representative of the United States said that his country had provided a status report in this dispute on 12 October 2009, in accordance with Article 21.6 of the DSU. The US administration would continue to confer with the EC, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

23. The representative of the European Communities said that the United States had again reported non-compliance. The EC was again disappointed, especially in light of the importance the US attached to intellectual property protection. Members were aware that the United States was in favour of strong intellectual property protection throughout the world, and thus hoped that it would lead by example. The EC nevertheless remained ready to work with the US authorities towards the complete resolution of this case, and hoped that the financial loss suffered by the EC industry could be brought to an end soon.

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

[3] Article 3.3 of the DSU.

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities (WT/DS291/37/Add.21 – WT/DS293/31/Add.21)

25. The Chairman drew attention to document WT/DS291/37/Add.21 – WT/DS293/31/Add.21, which contained the status report by the EC on progress in the implementation of the DSB's recommendations in the case concerning the EC's measures affecting the approval and marketing of biotech products.

26. The representative of the European Communities said that EC regulatory procedures on biotech products continued to work as foreseen in the legislation. A vote on draft authorization decisions for four GM maize events had taken place on 19 October 2009. The Commission was now in the position to authorize three of those events and would do so the following month. This would raise to the number of GMOs authorized since the date of establishment of the Panel to twenty-four.

27. The representative of Argentina said that his country, once again, welcomed the EC's status report. Argentina continued to monitor the situation regarding the prohibitions in the EC member States, and urged the EC to move ahead with the events-approval process.

28. The representative of the United States said that his country thanked the EC for its status report and its statement. The United States recalled its discussion at the September 2009 DSB meeting regarding delays that were endemic in the EC system even after the EC's scientific authority had completed an extensive and time-consuming safety assessment. The United States also recalled that, at the September 2009 DSB meeting, the EC had asserted that its regulatory procedures for biotech products continued to work as foreseen and had noted that certain maize events would be subject to a vote on 19 October 2009. The EC had commented on that vote in its statement at the present meeting. On 19 October 2009, EC bodies consisting of member State representatives had considered four of the more than 35 outstanding applications for approval of different biotech maize varieties. The EC's scientific authority had issued favourable opinions for each of these four maize applications. The preparation of the scientific opinions had taken as long as 46 months, and during the risk assessment process, the EC scientific authority had considered and addressed exhaustive comments provided by member States. After issuance of the favourable opinions, the EC Commission – albeit with questionable delays – had proceeded to draft approval measures for each of the four maize varieties. One would expect that the next step would be four approvals, in accordance with the four opinions and the Commission's proposed approval measures – particularly since the member States had participated in the preparation of the scientific opinions. But when the four applications had been submitted to the EC bodies on 19 October, not one of the applications had received the necessary number of member State votes for approval. Instead, those applications would experience yet further delay. The member State voting procedure was non-transparent. The EC did not provide the applicant, the public, or other WTO Members with information on why any particular member State had declined to vote in accordance with the scientific opinion. Indeed, even the positions taken by each of the member States was not set out in any Commission publication. The United States understood, however, that some of the EC member States with the largest populations, and thus with the greatest number of votes, consistently failed to vote in accordance with the scientific opinions. And, as noted, the consistent failure of the EC bodies to adopt the proposed approval measures based on the favourable scientific opinions resulted in additional delays. This was a matter of great concern to the United States. The SPS Agreement provided that approval procedures must be undertaken and completed without undue delay. The United States recalled that the DSB had found the EC to be in breach of this obligation. Votes such as the ones that had taken place on 19 October did nothing to assuage US concerns. The United States thanked the DSB for its attention to this matter.

29. The representative of the European Communities said that, in any event, the GMO regulatory regime was working normally. Its functioning should not be rigidly assessed purely quantitatively and in abstract, in terms of number of authorizations per year, since this was dependent on various product and case specific elements, and in particular on the quality of applications and on the time needed by applicants to answer requests from EFSA on additional scientific information. It was worth noting that these applications were not covered by the Panel's recommendations. The Commission, as risk manager, could decide not to proceed with the authorization of a GMO while scientific doubts on its safe use remained. This was consistent with the EC commitments under the SPS Agreement. According to, *inter alia*, the express terms of Articles 2.2, 3.3, 5.3 and Annex A, paragraph 5 of the SPS Agreement, the EC could set its own acceptable level of protection (ALOP), and reserved the right to temporarily refrain from authorizing a GMO event in circumstances where it had not yet been established, on the basis of the available science and/or other pertinent information, that the risk was zero or merely theoretical.

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

(e) European Communities – Regime for the importation, sale and distribution of bananas: Second recourse to Article 21.5 of the DSU by Ecuador: Status report by the European Communities (WT/DS27/96/Add.9)

31. The Chairman drew attention to document WT/DS27/96/Add.9, which contained the status report by the EC on progress in the implementation of the DSB's recommendations and rulings in the case concerning the EC's regime for the importation, sale and distribution of bananas.

32. The representative of the European Communities said that, as had been indicated at previous meetings, the EC stood ready to implement the Panel's recommendation by means of modifying its bound duty. The EC still hoped that that rebinding could be made in the context of a comprehensive agreement with Latin American suppliers, an agreement that had been sought since the EC initiated GATT Article XXVIII negotiations back in 2004. The EC was fully committed to finding very soon a final solution to this long-standing "banana saga". As indicated in its status report, the EC was fully engaged in negotiations with all Latin American supplying countries with the view of concluding promptly such a comprehensive agreement. The EC hoped that those negotiations could soon lead to a satisfactory agreement for all suppliers.

33. The representative of Ecuador said that his country thanked the EC for its status report. However, once again, the EC did not provide any indication as to when it expected to comply with the DSB's recommendations and rulings in this dispute. The EC had proposed to the MFN banana suppliers an agreement subject to numerous conditions that had gone beyond the Bananas dispute and made more difficult to achieve any understanding on this matter. However, Ecuador remained open to negotiating a solution in the context of the WTO.

34. The representative of Nicaragua said that, in its status report, the EC had, once again, expressed its interest in making "definitive progress towards a satisfactory agreement" but had, once again, failed to mention exactly how and when it planned to put an end to its tariff binding violation and to the discrimination that it persistently exercised. As regards the EC's continued tariff binding violation, Nicaragua did not see how, with a proposal to reduce its tariff by 2020 or later to rates which may or may not be bound, the EC could claim that it was complying promptly with Article II of the GATT 1994. The rebound tariff should have been included in the EC's Schedule and should have been in force since 2006. Any new EC's Schedule must reflect a rebound tariff that would fully restore Latin America's customs duties on bananas. Regarding its persistent discrimination, Nicaragua noted that the EC had decided to opt for silence, which was unlikely to resolve this long-standing dispute. As Nicaragua had pointed out previously, the ACP countries, many of which

were economically better off than Nicaragua, enjoyed zero tariff for unlimited volumes, while with a tariff of close to US$5/crate, Nicaragua was effectively excluded from the market. Nicaragua called on the EC, once again, to end its unjustified discrimination and bring itself into compliance with the WTO. After 13 rulings against the EC, Nicaragua, a developing country and its Latin American neighbours, as well as the entire WTO Membership, expected that the EC would fully comply with its obligations without further delay. Nicaragua would continue to defend its interests in this dispute until the EC ended its discrimination and gave the Nicaraguan producers a fair chance to overcome their poverty through trade.

35. The representative of Colombia said that his country thanked the EC for its status report. For the ninth time since January, the EC had repeated its intention to bring itself in conformity with the DSB's recommendations and rulings by modifying its scheduled tariff commitments on bananas. Colombia had participated in the discussions held with the EC with a view to reaching an agreement on bananas which, among other things, would establish a new bound tariff level for bananas which was an important product for Colombia's economy. Colombia hoped that, as a result of those negotiations, it would be possible to reach a balanced agreement. However, this would require the full commitment on the part of the EC. Like the EC, Colombia hoped that it would soon be possible to put an end to this long-standing dispute. Colombia was confident that the EC would live up to its obligation under the DSU to give special attention to this issue that was affecting the interests of developing countries such as Colombia.

36. The representative the Dominican Republic, speaking also on behalf of the ACP countries, said that ever since this item had been on the DSB's Agenda, the ACP countries had stated that they respected final decisions, even though they continued to disagree with some of the conclusions reached by the Panel and the Appellate Body in this dispute. The ACP countries believed that it was necessary to bear in mind the thrust of the rulings. Both the Panel and the Appellate Body had agreed that the EC's Schedule, at this time, still committed the EC to a tariff-rate quota at a tariff of €75/mt and an out-of-quota tariff of €680/mt. As previously stated, the ACP countries could resign themselves to live with a literal implementation of those conclusions. The EC had, however, indicated that it wished to achieve compliance, and thereby implementation, by changing the structure of its tariff commitments through negotiations with the MFN banana suppliers. The result of that process would likely be an overall reduction of bound and applied duties on bananas. As on previous occasions, the ACP countries recalled that the DSB's recommendations in this dispute did not require an overall reduction of average tariffs; all they required was either a literal implementation or a rearrangement. This meant that a decision to reduce the EC's average banana tariffs did not find its rationale in the need for compliance in this dispute; it would have to find this rationale in another context, namely the DDA negotiations. This should be kept in mind when designing a solution. Any possible solution should be based on the right reasoning and anchored and balanced out in the right context. With this in mind, the ACP countries remained committed to supporting their partners on the way towards an effective and hopefully final solution to the "banana issue".

37. The representative of Panama said that his delegation wished to refer to the statements made by Colombia at previous DSB meetings regarding this matter. Like other Latin American countries, Panama was committed to finding a solution to this dispute; a lasting solution that would take into account the interests of Latin American producers. Any such solution must protect Latin American countries' access and legal rights as well as interests. Before complying with its obligations, the EC was demanding that Latin American producers accept certain preconditions. However, that approach had complicated matters. For example, the EC would be ready to settle the dispute only if Latin American countries accepted to settle various other matters that were unrelated to the bananas case. The EC was demanding that Latin American countries forego certain rights that were provided under the DSU, and was asking for unlimited authority to be able to revert to non-tariff restrictions and to cancel the agreement should other Members express concerns. Those conditions went beyond the framework of the DSU and the Bananas dispute and undermined efforts to ensure compliance.

Panama was ready to support a mutually agreed solution, provided it allowed for compliance by the EC with its obligations under the covered agreements. Once again, Panama called upon the EC to settle the dispute on that basis.

38. The representative of Honduras said that, as a complainant in the Bananas III dispute, his country remained concerned about the EC's continuing non-compliance. The EC's proposed solution would not commit the EC to maintaining a banana import regime in compliance with the rulings and recommendations of the Bananas III dispute. In fact, under its proposed approach, the EC would make no changes at all to its violations unless Honduras and other parties relinquished all their rights under the Bananas III dispute, all claims under Article XXVIII and Article XXIV regarding the EC's enlargements as well as Doha rights on bananas and tropical products. The EC would make no change if other Members raised their objections. However, this approach appeared to be aimed at avoiding compliance. As had previously been stated, Honduras was seeking an outcome that would secure the Bananas III findings, reserve its rights in that proceeding, and restore its legitimate trading interests. Honduras hoped to achieve that outcome without further delay.

39. The representative of the United States said that his country thanked the EC for its status report and its statement. The reasonable period of time for compliance in this dispute had expired more than ten years ago, on 1 January 1999. While the United States noted the EC's efforts to reach agreement with interested parties to resolve the dispute, it also noted that the commercial impact of the EC's non-compliance over this very long period was undeniably large and damaging to a number of WTO Members. The United States called on the EC to resolve this dispute, and until then, renewed its request to the EC to provide a status report with respect to the US dispute.

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

(f) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/34/Add.2)

41. The Chairman drew attention to document WT/DS294/34/Add.2, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US laws, regulations and methodology for calculating dumping margins.

42. The representative of the United States said that his country had provided a status report in this dispute on 12 October 2009, in accordance with Article 21.6 of the DSU. As noted in that status report, the United States had already taken a number of steps to implement the DSB's recommendations and rulings in this dispute. With regard to the remaining issues, including those identified in the DSB's recommendations and rulings, the United States would continue to consult with interested parties.

43. The representative of the European Communities said that this was the third status report in this dispute. As was the case with the two preceding reports, the US status report confirmed that the United States had not taken any action to correct the shortcomings in its implementation which, the EC recalled, was due on 9 April 2007. The EC was already well aware that the United States had taken some action in February 2007 to cease zeroing in weighted-average-to-average comparisons in original investigations. The EC welcomed this limited step, but, as the Panel and the Appellate Body Reports in this dispute had confirmed, this was not enough. The real problem was the use of zeroing in reviews, both administrative reviews (on the basis of which a large percentage of anti-dumping duties paid were collected) and sunset reviews, where "zeroed" margins of dumping were used to justify the continuation of duties. This lack of action on the part of the United States regretfully spoke for itself on the US position on zeroing. But the fact that the EC was addressing the lack of implementation in this dispute at the present meeting and the new disputes, which continued to be

brought against US zeroing by WTO Members (developed and developing), should also send a clear message as to the position and intentions of other WTO Members with respect to US zeroing. All the relevant arguments had been aired before the WTO Appellate Body, which had pronounced itself on the question of zeroing on numerous occasions, including this dispute (DS294), EC - Zeroing II (DS350), and most recently in the Japan - Zeroing dispute (DS322). In those rulings, the Appellate Body had made the legal situation crystal clear. Zeroing was prohibited in both original investigations and reviews. In addition, any anti-dumping duties collected after the end of the implementation period must be calculated without zeroing, whenever the goods in question were imported or the review determination made. The EC noted, once again, that the status report did not refer to involving Congress in ending zeroing in administrative reviews. This confirmed the EC's view that such implementation was subject to the discretion of the US administration and could be accomplished by administrative action. The only step left for the United States to take was to bring itself into full compliance without further delay.

44. The representative of the United States said that, as had previously been stated, his country was consulting with interested parties in order to address the findings in this dispute. Furthermore, the United States recognized the difficulties raised by the Appellate Body findings on zeroing and was consulting within the government and with interested stakeholders to find an appropriate solution. With respect to the DSB's recommendations and rulings in other disputes, the United States had in each case expressed its intent to comply with its obligations under the WTO Agreement. The United States would address the recommendations and rulings in those disputes in the DSB at the appropriate time.

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

(g) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.1)

46. Finally, the Chairman drew attention to document WT/DS322/36/Add.1, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US measures relating to zeroing and sunset reviews.

47. The representative of the United States said that his country had provided a status report on this dispute, on 12 October 2009, in accordance with Article 21.6 of the DSU. As noted in the status report, the United States had taken steps to implement the DSB's recommendations and rulings in this dispute. With respect to the outstanding issues, the United States would continue to consult with interested parties in order to address those issues.

48. The representative of Japan said that her country thanked the United States for its statement and its latest status report. Japan regarded the issuance of the status reports as the US recognition that the DSB's recommendations and rulings in this dispute had not been implemented. Japan also noted the US statement that it "will continue to consult with interested parties in order to address the findings contained in the reports of the Appellate Body and the panel". However, Japan had recently learned that the United States had begun to liquidate the entries covered by one of the administrative reviews at issue, so-called Review 4, at the inflated anti-dumping duty rate calculated by using zeroing. Japan had estimated that the excess duties to be collected as a result of these liquidations would amount to several million US dollars. Japan recalled that, on 31 August 2009, the DSB had adopted the Reports of the Panel and the Appellate Body in which Review 4 had been found to be inconsistent with Articles 2.4 and 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994 and was further recommended to be brought into conformity with the WTO obligations. Given the US commitment to address those findings and its clear duty to comply with its obligations, Japan was puzzled and dismayed by the US latest action to enforce this measure. Japan requested the

United States to provide a full explanation for this action. Finally, Japan called on the United States to take immediate and concrete action to fully comply with the DSB's recommendations and rulings in order to resolve this dispute.

49. The representative of the European Communities said that his delegation did not wish to repeat all that had already been stated under the previous Agenda item. The EC did, however, wish to reiterate its disappointment over the lack of any progress by the United States towards compliance with adverse rulings on zeroing in yet another dispute. The EC recalled that immediate compliance with the DSB's recommendations and rulings was not an option, but an obligation under the DSU provisions.

50. The representative of the United States said that his country noted Japan's inquiry regarding the liquidation of duties for entries covered by one of the administrative reviews at issue in this dispute, and would refer that back to capital.

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

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

(a) Statements by the European Communities and Japan

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

53. The representative of Japan said that preparatory work for a new round of distributions under the CDSOA appeared to be well underway.[4] Thus the CDSOA still remained operational.[5] Japan, once again, called on the United States to stop illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute once and for all. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report in this dispute "until the issue is resolved". Japan reserved all its rights under the DSU until the United States came into full compliance.

54. The representative of the European Communities said that, as in many previous meetings, his delegation wished to ask the United States when it would effectively stop the transfer of anti-dumping and countervailing duties to its industry and finally put an end to the condemned measure. The EC also renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit status reports in this dispute.

55. The representative of Brazil said that his country thanked the EC and Japan for keeping this item on the DSB's Agenda. It was clear that the situation of non-compliance in this dispute would persist until the United States ceased all disbursements made pursuant to the Byrd Amendment. Before that, the issue would not have been "resolved" within the meaning of Article 21.6 of the DSU and, therefore, Brazil urged the United States to resume the regular submission of status reports in this dispute.

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[4] On 3 September 2009, the US Customs and Border Protection published the list of certifications received from claimants for the FY2009 distributions. See US Customs and Border Protection's website at:
http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cdsoa_09/

[5] In the words of the US Customs, "the distribution process will continue for an undetermined period". See US Customs and Border Protection's website at:
http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cont_dump_faq.xml

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

57. The representative of Thailand said that her country thanked the EC and Japan for bringing this item before the DSB once more. Thailand renewed its call on the United States to cease its disbursements under the Continued Dumping and Subsidy Offset Act, to repeal the Act with immediate practical effect, and to resume providing status reports until such actions were taken and this matter was fully and finally resolved.

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

59. The representative of India said that her country thanked the EC and Japan for, once again, bringing this issue before the DSB. India shared the concerns expressed by them. India remained disappointed at the US maintenance of the WTO-inconsistent disbursements. As mentioned by previous speakers, the CDSOA remained fully operational and allowed for disbursements by the US administration to its domestic industry. WTO Members continued to be concerned about this situation. As had previously been reiterated, India was concerned that non-compliance by Members led to a growing lack of credibility of the WTO dispute settlement system. India agreed with the EC and Japan that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

60. The representative of the United States said that as his country had explained at previous DSB meetings, the US President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in those disputes. The United States further recalled that Members 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. With respect to comments regarding further status reports in this matter, as had already been explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports repeating the progress the United States had made in the implementation of the DSB's recommendations and rulings.

61. The DSB took note of the statements.

**3. United States – Certain country of origin labelling (COOL) requirements**

(a) Request for the establishment of a panel by Canada (WT/DS384/8)

**4. United States – Certain country of origin labelling requirements**

(a) Request for the establishment of a panel by Mexico (WT/DS386/7 and Corr.1)

62. The Chairman proposed that items 3 and 4 be considered together since they pertained to the same matter. He first drew attention to the communication from Canada contained in document WT/DS384/8 and invited the representative of Canada to speak.

63. The representative of Canada said that the United States had implemented a mandatory Country of Origin Labelling measure (COOL) that imposed additional and unnecessary costs on Canadian beef and pork exporters as a result of the need to segregate animals prior to slaughter and

the onerous record keeping requirements imposed. The fact that, in a few moments, Mexico would make a similar statement was testament to the serious negative impact this measure was having on established North American trading patterns. COOL was discouraging US retailers, processors, feedlots and producers from buying Canadian livestock and meat and the negative impact on Canadian beef, pork and cattle exporters had been significant. Those requirements were so onerous that they affected the ability of Canadian cattle and hog exporters to compete with US producers. That was why Canada had no choice but to pursue dispute settlement. The United States and Canada were each other's largest agricultural trading partners. In 2008, bilateral agricultural trade had totalled approximately US$37 billion. Reducing obstacles to trade had contributed to mutually beneficial supply chains, making both countries more competitive domestically, and internationally. Requesting the establishment of a dispute settlement panel was the latest step in Canada's lengthy engagement with the United States. Since 2002, when the COOL measure was first proposed, Canada had consistently raised its concerns with regard to its impact, not only on the Canadian livestock and meat industries, but also on its highly integrated North American supply chains. This had been through letters, meetings between government officials and at meetings of the WTO Committee on Technical Barriers to Trade. In addition, Canada's Minister of International Trade and Canada's Minister of Agriculture and Agri-Food had raised concerns with their US counterparts regarding the consistency of the measure with the international trade obligations of the United States. Canada was disappointed that, despite those significant efforts on its part, the United States had persevered with this trade-distorting measure. As outlined in its 7 October 2009 letter to the DSB, Canada considered that the US COOL measure was inconsistent with the WTO obligations of the United States, including under the TBT Agreement, the GATT 1994 and the Agreement on Rules of Origin. Canada had held consultations with the United States on this measure in December 2008 and again in June 2009. Regrettably the consultations had not led to a resolution. Consequently, Canada requested that a panel be established with standard terms of reference to examine this matter.

64. The Chairman then drew attention to the communication from Mexico contained in document WT/DS386/7 and Corr.1 and invited the representative of Mexico to speak.

65. The representative of Mexico said that his country had listened carefully to the statement made by Canada. Like Canada, Mexico had held consultations with the United States on 27 February and 5 June 2009 in order to reach a solution regarding the negative impact of the US measures concerning country of origin labelling on a number of agricultural products, including cuts of beef obtained from livestock originating in Mexico. However, since Mexico was not successful in finding a solution to its concerns, it was compelled to request the establishment of a panel with a view to resolving this dispute. He said that Mexico's request was prompted by the negative impact of the US measures on Mexico's calf exports to the United States. This new regulation was inconsistent with the international rules for the determination of product origin and generated costs for the segregation of livestock, which were transferred to Mexican exporters whose livestock prices were significantly reduced on the grounds that the reduction was necessary to cover the costs of implementing the COOL measures. Moreover, as a result of these measures, some US processors either processed Mexican livestock only in plants located close to the border and on specific days of the week, leading to a concentration of outlets and affecting Mexican exporters, or processed solely livestock originating in the United States, since this made it easier for them to comply with the labelling requirements. Although Mexico exported high-quality livestock to the United States, the COOL measures had thus markedly affected Mexico's exporters and their export prices and had created uncertainty in the market. In light of the foregoing, and in view of the fact that the US measures were in breach of the GATT 1994, the TBT Agreement, the SPS Agreement and the Agreement on Rules of Origin, Mexico was forced to request the establishment of a panel, and reiterated that it continued to stand ready to work with the United States, in cooperation and on the basis of mutual support with the Canadian authorities, in order to find a mutually satisfactory solution to Mexico's concerns.

66. The representative of the United States said that his country was disappointed that Canada and Mexico had chosen to move forward with their requests for panel establishment. He said that WTO Members had long recognized that country of origin labelling was a legitimate policy. Indeed, that recognition predated the entry into force of the WTO Agreement. It was common for WTO Members to require that goods be labelled as to their origin. The United States was confident that its measures provided information to consumers in a manner consistent with its WTO commitments. For those reasons, the United States urged Canada and Mexico to reconsider their decisions to request a panel in these disputes. The United States was not in a position to agree to the establishment of a panel at this time.

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

## 5. European Communities – Certain measures affecting poultry meat and poultry meat products from the United States

(a) Request for the establishment of a panel by the United States (WT/DS389/4)

68. The Chairman drew attention to the communication from the United States contained in document WT/DS389/4, and invited the representative of the United States to speak.

69. The representative of the United States said that, as described in the request that was before the DSB, his country was concerned with restrictions that the EC imposed on the import and marketing of poultry meat and poultry meat products from the United States. In 2002, the United States had requested the EC to approve four pathogen reduction treatments (PRTs) for use in the production of poultry intended for export to the EC. The EC's own scientists had found that the importation and consumption of poultry processed with those four PRTs did not pose a risk to human health. Nonetheless, after more than six years, which had included significant unexplained delays, the EC had not approved any of the four PRTs. Instead, it had rejected the requests for their approval. Adding to the US concerns, the EC had never published or otherwise made available the process it followed for approving substances such as the PRTs in question. As outlined in its panel request, the United States considered that the EC's ban on the import and marketing of US poultry treated with those PRTs was inconsistent with several provisions of the SPS Agreement, the Agreement on Agriculture, the GATT 1994, and the TBT Agreement. The US concerns were not new. Significant US engagement with the EC over many years had failed to result in the lifting of the EC's ban on the import and marketing of US poultry. Accordingly, the United States requested that the DSB establish a panel to examine this matter, with standard terms of reference.

70. The representative of the European Communities said that his delegation regretted that the United States had decided to request the establishment of a panel on this matter, especially in light of the dialogue through which the EC had tried to address the US concerns. The EC felt that the US request was premature at this stage and, therefore, did not agree with the US request for the DSB to establish a panel on this matter.

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

## 6. European Communities – Definitive anti-dumping measures on certain iron or steel fasteners from China

(a) Request for the establishment of a panel by China (WT/DS397/3)

72. The Chairman drew attention to the communication from China contained in document WT/DS397/3, and invited the representative of China to speak.

73. The representative of China said that, in accordance with relevant provisions of the DSU, the GATT 1994 and the Anti-Dumping Agreement, his country requested the DSB to establish a panel to examine certain measures taken by the EC, including Article 9(5) of Council Regulation (EC) No. 384/96 and Council Regulation (EC) No. 91/2009. The legal basis for challenging these measures had been elaborated in China's panel request contained in document WT/DS397/3. China believed that the EC's measures nullified or impaired the benefits that China enjoyed under the Anti-Dumping Agreement, the GATT 1994, the WTO Agreement and China's Protocol of Accession. The Chinese government and industry had, on many occasions, expressed their strong dissatisfaction and registered their serious concerns. Unfortunately, bilateral dialogues and consultations under the DSU had failed to lead to a satisfactory resolution of the matter. Thus, China had to proceed to request the establishment of a panel to safeguard its legitimate interests incurred under the WTO. China, once again, urged the EC to promptly withdraw rules and measures inconsistent with the WTO and cease the disturbance to Sino-EC trade and the impairment of China's interests.

74. The representative of the European Communities said that his delegation noted China's request for the establishment of a panel and regretted the step taken by China. The EC recalled that anti-dumping measures were not about protectionism, but about fighting unfair trade. The EC strictly followed the applicable WTO rules in all its anti-dumping cases. This was also the case for the measures on which China was seeking a panel. The EC was strongly convinced of the strength of its case and stood ready to defend its measures which it considered to be fully consistent with WTO law. At that point in time, the EC had no reason to be hopeful that a mutually agreed solution could still be found. Therefore, the EC accepted China's request for establishment of a panel.

75. 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.

76. The representatives of Canada, India, Japan, Chinese Taipei and the United States reserved their third-party rights to participate in the Panel's proceedings.

## 7. Adoption of the 2009 draft Annual Report of the DSB (WT/DSB/W/413 and Add.1)

77. The Chairman said that, in pursuance of the procedures for an annual overview of WTO activities and for reporting under the WTO contained in document WT/L/105, he was submitting for adoption the draft text of the 2009 Annual Report of the DSB contained in document WT/DSB/W/413 and Add.1. This Report covered the work of the DSB since the previous Annual Report contained in document WT/DSB/47 and Add.1. For practical purposes, the overview of the state of play of WTO disputes covering the period from 1 January 1995 to 30 September 2009, prepared by the Secretariat on its own responsibility, was included in the addendum to this Report. He proposed that after the adoption of the Annual Report at the present meeting, the Secretariat be authorized to update this Report under its own responsibility in order to include actions taken by the DSB at the present meeting. The updated Annual Report of the DSB would then be submitted for consideration by the General Council at its meeting to be held on 17 November 2009.

78. The DSB took note of the statement and adopted the draft Annual Report of the DSB contained in WT/DSB/W/413 and Add.1 on the understanding that it would be further updated by the Secretariat.[6]

[6] The Annual Report was subsequently circulated in document WT/DSB/49 and Add.1.

**8. Memorandum of Understanding (MOU) between the United States and the European Commission regarding the importation of high-quality beef and the dispute: "EC – Measures Concerning Meat and Meat Products (Hormones)"**

(a) Statement by Australia

(b) Statement by New Zealand

(c) Statement by Argentina

(d) Statement by Uruguay

(e) Statement by Brazil

79. The Chairman recalled that, at the outset of the meeting, the representatives of Australia, New Zealand, Argentina, Uruguay and Brazil had requested the inclusion of this matter under "Other Business". He then invited the representatives of the respective delegations to make statements.

80. The representative of Australia, speaking under "Other Business", referred to the 13 May 2009 bilateral agreement between the European Commission and the United States relating to the EC - US/Canada Beef Hormones dispute as notified jointly to the DSB by the EC and the United States on 25 September 2009 and circulated to Members on 30 September 2009. Australia recognized that this agreement sought to find a way forward in the long-running beef hormones dispute. Australia noted that that agreement provided for the establishment of a new tariff-rate quota for high quality beef which opened at the beginning of August 2009. Australia welcomed the EC's assurances that the quota was non-discriminatory, was available on a most-favoured-nation basis (MFN) and was open to all countries. However, Australia noted that to date only the United States had secured access to the quota and had commenced exporting. Australia looked forward to continuing to work constructively with the EC to ensure that the quota was applied in a genuinely MFN basis.

81. The representative of New Zealand said that her country noted that this dispute had a long history and that New Zealand had been a third party throughout the proceedings. New Zealand welcomed the fact that the parties had been making active efforts to progress the matter. As an exporter of beef into the EC, New Zealand, like Australia, had a close interest in the operation and implementation of this new tariff-rate quota for high-quality beef and would continue to monitor developments on this issue closely. New Zealand looked forward to working constructively with the EC and others with a view to seeing the quota applied on a genuinely MFN basis and developed consistently with relevant WTO Agreements.

82. The representative of Argentina said that, like Australia and New Zealand, his country welcomed the agreement reached by the EC and the United States pertaining to this long-standing dispute. It was Argentina's understanding that the quota would be established in accordance with the MFN principle. As a major exporter of high-quality beef, Argentina would like to see that the quota be administered in accordance with that principle. Therefore, Argentina welcomed the possibility of working with the EC in order to obtain details regarding the administration of the quota, which would enable Argentina's exporters to use that quota.

83. The representative of Uruguay said that the EC and the United States had jointly notified the DSB of the Memorandum of Understanding (MOU), to which Australia had referred at the present meeting, and which had been signed in Geneva on 13 May 2009. The notification in question had

been provided more than five months after the Understanding had been agreed between the parties[7], and three months after Uruguay and some other Members had expressed concerns about the potential discrimination and injury that its implementation might entail. Uruguay noted that the MOU had not been notified as a mutually agreed solution pursuant to Article 3.6 of the DSU.[8] For the purpose of implementing the MOU, on 13 July 2009, the Council of the European Union had issued Council Regulation No. 617/2009, opening an autonomous tariff quota for imports of high-quality beef. On the same date, the European Commission had adopted Commission Regulation (EC) No. 620/2009, laying down the rules for the administration of the quota. Finally, on 31 July 2009, the European Commission had published, in the Official Journal of the European Union, the decision concerning "the body authorized to issue certificates of authenticity under Regulation (EC) No. 620/2009". All those three measures defined the tariff quota for high-quality beef in identical terms as those contained in Article VI of the above-mentioned MOU. Uruguay underlined that, until now, the only body authorized to issue certificates of authenticity for eligibility for this high-quality beef quota, in accordance with the notification published by the EC Official Journal, was the Food Safety and Inspection Service of the US Department of Agriculture (USDA).[9] Therefore, Uruguay reiterated its concerns already expressed at the June 2009 DSB meeting, and called upon the EC to adopt without delay the quota administration measures necessary to bring its measures into conformity with Articles XIII:1, XIII:2 and I:1 of the GATT 1994, thereby putting an end to ongoing discrimination that was detrimental to Uruguay's interest.

84. The representative of Brazil said that his country also noted the joint communication regarding the MOU, which had been notified to the DSB by the EC and the United States on 25 September 2009. Pursuant to that MOU, a duty-free tariff-rate quota for high-quality beef had been opened by the EC in August 2009. The MOU also provided that the tariff-rate quota shall be implemented and administered in accordance with Article XIII of the GATT 1994 and the Import Licensing Agreement. Brazil was following with keen interest the administration of the quota and looked forward to its application on a transparent and non-discriminatory basis.

85. The representative of Paraguay said that his country noted the agreement finally reached in the EC - US Hormones dispute. As a result, a new MFN quota had been established. Pursuant to that agreement, the above-mentioned quota would be applied in a non-discriminatory and open manner to all WTO Members. As an exporter of meat to the EC, Paraguay was ready to work constructively towards the implementation of that quota.

86. The representative of the European Communities said that the EC wished to reassure WTO Members that the quota to which the statements had referred was based on an origin neutral definition that could be met by many countries, and that the quota would be administered on a non-discriminatory basis. The EC also wished to make a procedural comment, namely that the EC statement at the present meeting, in reaction to the statements made by other delegations, could have been probably more useful had the EC had more time to prepare. He noted that not all the statements, apart from Australia's statement, seemed to be as basic as would make one believe that there was not some preparatory effort in this regard. It would have been more useful if such statements under "Other Business" were to be circulated in advance, which would enable Members concerned to react in a proper manner. Unfortunately, the EC had not had the time to consult with the authorities in

[7] Joint Communication from the EC and the United States, "EC – Measures Concerning Meat and Meat Products" (WT/DS26/28).

[8] Article 3.6 of the DSU provides that "[m]utually agreed solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements shall be notified to the DSB and the relevant Councils and Committees, where any Member may raise any point relating thereto".

[9] Commission Communication on the body authorized to issue certificates of authenticity under Commission Regulation No. 620/2009. Official Journal of the European Communities, 31 July 2009.

Brussels and could, therefore, not react to the statements made, with the exception of Australia, in a more profound manner.

87. The representative of the United States said that his country thanked Australia, New Zealand, Argentina, Uruguay, Brazil, Paraguay, and the EC for their statements. The United States also thanked Australia for having provided advance notice to the United States and the EC of its intention to make a statement under "Other Business" pursuant to Rule 6 of the DSB Rules of Procedure. Given the statements and the level of interest in this issue, and as noted earlier during the present meeting, it would have provided greater notice, not just to the EC and the United States, but also to the broader Membership, had those items been inscribed on the Agenda with ten days notice pursuant to Rules 2 and 3 of the DSB Rules of Procedure. As had been noted, the United States and the EC notified their MOU to the WTO in September 2009. As the United States had stated at the 19 June 2009 DSB meeting, according to the terms of the MOU, any beef that met the definition's objective requirements on matters such as diet, age, and quality was eligible for the quota regardless of origin. In addition, it was the US understanding that the EC would administer the quota consistently with WTO principles.

88. The DSB took note of the statements.