

**Dispute Settlement Body**  
**24 May 2011**

## **MINUTES OF MEETING**

Held in the Centre William Rappard  
on 24 May 2011

*Chairperson: Mrs. Elin Østebø Johansen (Norway)*

Prior to the adoption of the Agenda, the item concerning the Panel Report in the case on: "United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China" (DS399) was removed from the proposed Agenda following China's decision to appeal the Report.

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

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# **1. Surveillance of implementation of recommendations adopted by the DSB**

- (a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.102)
- (b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.102)
- (c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.77)
- (d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.40)
- (e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.20)
- (f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.17)
- (g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/38/Add.11)
- (h) China – Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products: Status report by China (WT/DS363/17/Add.4)

1. The Chairperson 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. She proposed that the eight 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.102)

2. The Chairperson drew attention to document WT/DS176/11/Add.102, 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 May 2011, in accordance with Article 21.6 of the DSU. Legislative proposals that would implement the DSB's recommendations and rulings had been introduced in the current 112th Congress. In the Senate, S. 603 had been introduced on 16 March 2011. This bill had been referred

to the Senate Committee on the Judiciary. In the House of Representatives, H.R. 1166 had been introduced on 17 March 2011. This bill had been referred to the House Committee on the Judiciary. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

4. The representative of the European Union said that the EU thanked the United States for its status report and hoped that the US authorities would very soon take steps towards implementing the DSB's ruling and resolve this matter.

5. The representative of Cuba said that it had now been nine years since Section 211 had been found to be inconsistent with the TRIPS Agreement. At the present meeting, the United States was submitting its 103<sup>rd</sup> status report on non-compliance, which only confirmed the US disregard for WTO rules. Every month, the United States was being criticized by a number of delegations both in the DSB meetings as well as in other forums. Over the past few years, in the context of the Doha Round negotiations, the US position was intransigent while demands placed on developing countries far outweighed what the United States was ready to offer. Cuba believed that one should not disassociate the work of the DSB from the other work of the WTO at the time when Members were negotiating the improvements to the DSU provisions. In fact, this dispute proved that it would be necessary to put into place additional provisions to enable Members to deal with situations of non-compliance. An improved dispute settlement mechanism would provide all Members with a useful tool to settle their disputes. Therefore, the United States should repeal Section 211 fully and rapidly and stop giving excuses for its systematic violations of international law. Cuba asked if the United States considered that it was entitled to follow different rules than those that it had undertaken when it had signed the WTO Agreement. A Member should not be allowed to violate WTO rules which, although not perfect, were the result of considerable efforts over a long period of time. The US violation of WTO rules undermined the main objectives of the multilateral trading system. The prolonged non-compliance and status reports without any substantive content discredited both the United States and the multilateral trading system. The United States should not postpone the implementation of the decision that was consistent with the principles advocated by the United States in the area of intellectual property rights. Cuba would continue to request that the United States take rapid and firm action to put an end to this dispute and to repeal Section 211 which, without any legal basis, served to deprive a Cuban-French company of its legitimate rights to the HAVANA CLUB trademark in the United States.

6. The representative of the Dominican Republic said that his country thanked the United States for its status report pertaining to the Section 211 dispute. The Dominican Republic noted the US statement to the effect that the draft bill had recently been presented to the US Congress and, once again, urged the United States to take the necessary measures to ensure compliance with the DSB's rulings, since long delays in implementation undermined the WTO credibility.

7. The representative of Zimbabwe said that his country thanked the United States for its status report on the implementation of the DSB's recommendations and rulings in this dispute. The US status report acknowledged that, in February 2002, "the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in connection with this matter". However, despite the US assurances made nine years ago, the situation remained unchanged. Zimbabwe urged the United States to redeem that pledge for the sake of the WTO's credibility and the long-suffering people of Cuba. Members had waited a long time for the implementation of that important decision.

8. The representative of the Bolivarian Republic of Venezuela said that, once again, her country supported Cuba and requested that the United States put an end to its economic, trade and financial embargo against Cuba. That embargo had led to a series of actions taken by the United States since the 1960s. In particular, it had led to the US failure to implement, for over nine years, the Appellate

Body's ruling that Section 211 was inconsistent with the TRIPS Agreement and the Paris Convention for the Protection of Industrial Property. As a WTO Member and a DSB Member, Venezuela noted with regret that the US status report repeated the same information contained in the previous status reports submitted by the United States. In Venezuela's view, this qualified as "action without results". Therefore, Venezuela requested that the United States provide further details on the work being done with the US Congress. Apart from the harm caused to the Cuban people, Venezuela was concerned that the US non-compliance with multilateral trading rules undermined the credibility of the DSB. As had been done on previous occasions, Venezuela urged the United States to comply with the DSB's recommendations.

9. The representative of China said that her country thanked the United States for its status report and its statement. However, China noted that the situation of non-compliance had not changed since the adoption of the DSB's decision more than nine years ago. In China's view, this was incompatible with the principle of prompt and effective implementation required by the DSU, in particular since the interests of a developing-country Member were affected. China, therefore, urged the United States to implement the DSB's rulings without any further delay.

10. The representative of Brazil said that his country thanked the United States for its status report pertaining to the surveillance of implementation in this dispute. Once again, the United States reported lack of progress, a situation that continued to be a matter of concern to Brazil. In that regard, Brazil urged the United States to expedite its efforts and bring its measures into conformity with its multilateral obligations.

11. The representative of Ecuador said that his country supported Cuba's statement and, once again, noted that Article 21 of the DSU explicitly referred to prompt compliance with the DSB's recommendations and rulings, in particular with regard to matters affecting the interests of developing countries. Ecuador hoped that the United States would accelerate its efforts to ensure compliance with the DSB's rulings pertaining to the Section 211 dispute.

12. The representative of Mexico said that his country thanked the United States for its status report. Mexico noted that the DSU contained provisions on legal remedies, including on compliance. In this regard, Mexico indicated that any Member could initiate a dispute on the same measure if it considered that its rights were being impaired or if no implementation took place. Mexico believed that the discussion under this Agenda item could provide useful input for the ongoing discussions carried out in the context of the DSU negotiations. It could shed more light on how the DSU provisions should be modified, in particular with regard to the issue of effective compliance.

13. The representative of Viet Nam said that her country thanked the United States for its status report. Viet Nam urged the United States to implement the DSB's recommendations and rulings so as to ensure the credibility of the system.

14. The representative of Paraguay said that his country shared the concerns expressed by Cuba and other delegations with regard to the prolonged delay in implementation of the DSB's rulings pertaining to this dispute. This was not only a trade-related concern, but also a systemic one. Paraguay, therefore, urged the United States to comply with the DSB's recommendations and rulings pertaining to this case.

15. 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.102)

16. The Chairperson drew attention to document WT/DS184/15/Add.102, 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.

17. The representative of the United States said that his country had provided a status report in this dispute on 12 May 2011, in accordance with Article 21.6 of the DSU. As of 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. With respect to the DSB's recommendations and rulings that had not already been addressed by the US authorities, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

18. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan took note of the US report that the United States had taken certain measures to implement part of the DSB's recommendations in November 2002. As for the remaining part of the DSB's recommendations, Japan hoped that the United States would soon be in a position to report to the DSB on more tangible progress. Full and prompt implementation of the DSB's recommendations and rulings was "essential to the effective functioning of the WTO and the maintenance of a proper balance of the rights and obligations of Members".<sup>2</sup> Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

19. 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.77)

20. The Chairperson drew attention to document WT/DS160/24/Add.77, 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.

21. The representative of the United States said that his country had provided a status report in this dispute on 12 May 2011, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the EU, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

22. The representative of the European Union said that the EU thanked the United States for its status report and noted that the United States was again reporting non-compliance. As the EU had previously stated, the EU remained keen to work with the US authorities towards the complete resolution of this case.

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

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<sup>2</sup> Article 3.3 of the DSU.

- (d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.40)

24. The Chairperson drew attention to document WT/DS291/37/Add.40, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning its measures affecting the approval and marketing of biotech products.

25. The representative of the European Union said that, as stated at the April 2011 DSB meeting, the EU welcomed the continuation of the technical dialogue with the United States. The dialogue gave the EU and the United States an opportunity to discuss directly issues of their concern regarding biotechnology. The EU hoped that this constructive approach based on dialogue would allow the parties to leave litigation aside. Once again, the EU noted that its regulatory procedures on biotech products continued to work as foreseen in the legislation. The number of GMOs authorized since the date of establishment of the Panel was thirty-four. In 2010, 11 applications had been authorized, more than double the number of authorizations in 2009, including one authorization for cultivation. At the Agriculture Council held on 17 March 2011, two authorizations<sup>3</sup> had been examined, together with the renewal of the authorization of maize 1507. The final adoption by the Commission of these three products was expected in mid-June 2011. Progress had also been made on other applications for authorization. Four more draft applications had been voted in the Standing Committee in February 2011.<sup>4</sup> The Council would examine these applications in the coming weeks. In April 2011, EFSA had adopted another scientific opinion on a GM soybean (A5547-127).

26. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. The United States recalled the constructive discussions held with EU officials in March 2011. At the same time, the United States noted with concern that, since July 2010, the EU had not made any decision on any one of the dozens of pending biotech applications. Many of the pending applications had already received favourable assessments from the EU's own scientific authority. The United States urged the EU to take steps to address these matters.

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

- (e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.20)

28. The Chairperson drew attention to document WT/DS322/36/Add.20, 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.

29. The representative of the United States said that his country had provided a status report in this dispute on 12 May 2011, in accordance with Article 21.6 of the DSU. As the United States had explained in its status report, in December 2010, the US Department of Commerce had announced a proposal to change the calculation of weighted average dumping margins and assessment rates in certain anti-dumping proceedings. Currently, the US Department of Commerce was continuing with its ongoing work on the December proposal.

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<sup>3</sup> Maize MON89034xMON88017 and cotton GHB614MON89034.

<sup>4</sup> MIR604xGA21 maize, BT11xMIR604 maize, 281-24-236/3006-210-23 cotton, Bt11xMIR604xGA21 maize.

30. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan took note of the report that the internal consultation process and ongoing work was under way, based on the proposal announced by the US Department of Commerce on 28 December 2010. While taking the US implementation efforts as a positive step forward, Japan continued to seek prompt and full compliance by the United States with respect to all of the measures at issue that were subject to the recommendations in this dispute. Japan looked forward to an ongoing dialogue with the United States and would closely monitor any developments on this matter. Japan reserved its right under the DSU to take appropriate action, if necessary.

31. The representative of China said that her country welcomed the steps taken by the United States towards the implementation of the DSB's rulings and recommendations on zeroing issues. At the 25 March 2011 DSB meeting, China had provided some comments on the proposal of the US Department of Commerce (USDOC) that had been published in the Federal Register on 28 December 2010. At the present meeting, China wished to repeat those comments again. First, China believed that currently effective dumping margins calculated using zeroing methodology should be eligible for revision to ensure fairness and to avoid prolonged and unnecessary litigations. This would require the USDOC to adopt guidelines for the transition period from the prior to the revised methodology. Second, China believed that the United States should take this opportunity to clarify important issues concerning the use of targeted dumping, and communicate its intention to abide by clear international obligations and prohibit the use of zeroing methodology. The USDOC's proposal of 28 December 2010 did not identify the issue of targeted dumping by name, but did clearly refer to it when explaining the proposed methodology. China also had serious concerns about the appropriateness of the recently-developed practice by the United States. China wished to ask the United States to clarify how the USDOC used the targeted dumping methodology to calculate dumping margins, and why the zeroing methodology was necessary in connection with this alternative method. China looked forward to the US feedback on this matter.

32. The representative of the United States said that his country noted the comments from China and would refer them to capital. At the present time, the US Department of Commerce had issued a proposal to change its calculation. The proposal was not final and did not prejudice what might happen in any specific past review, and was subject to comment. The United States was continuing to review the comments it had received.

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

(f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.17)

34. The Chairperson drew attention to document WT/DS350/18/Add.17, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the existence and application of zeroing methodology by the United States.

35. The representative of the United States said that his country had addressed the issue of compliance with the findings in this dispute in the status report provided on 12 May 2011, and earlier in the context of the discussion under Agenda item 1(e) of the present meeting. The United States, therefore, referred Members to that report and to that statement for further details.

36. The representative of the European Union said that the EU thanked the United States for its most recent status report. Since the United States had not reported on any steps to address the concerns raised by the EU in the DSB, the EU referred Members to its statements made at the DSB meetings in January and February 2011. The EU remained ready to engage with the United States in discussions within the WTO and bilaterally in order to ensure that its concerns expressed in the DSB

were addressed by the United States. The EU looked forward to further information from the United States on its intentions.

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

(g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/38/Add.11)

38. The Chairperson drew attention to document WT/DS294/38/Add.11, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US laws, regulations and methodology for calculating dumping margins.

39. The representative of the United States said that his country had addressed the issue of compliance with the findings in this dispute in the status report provided on 12 May 2011, and earlier in the context of the discussion under Agenda item 1(e) of the present meeting. The United States, therefore, referred Members to that report and statement for further details.

40. The representative of the European Union said that the EU thanked the United States for its status report and referred Members to its statement made under Agenda item 1(f) of the present meeting concerning the US proposal of 28 December 2010.

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

(h) China – Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products: Status report by China (WT/DS363/17/Add.4)

42. The Chairperson drew attention to document WT/DS363/17/Add.4, which contained the status report by China on progress in the implementation of the DSB's recommendations in the case concerning China's measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products.

43. The representative of China said that her country had provided a status report in this dispute on 12 May 2011, in accordance with Article 21.6 of the DSU. China had made tremendous efforts to implement the DSB's recommendations and rulings, and had, thus far, completed amendments to most measures at issue. This fully demonstrated China's sincerity towards the implementation of the DSB's recommendations and rulings. China believed that this matter would be resolved properly through joint efforts and mutual cooperation with relevant parties.

44. The representative of the United States said that his country thanked China for its status report and its statement made at the present meeting. The United States remained concerned about the lack of progress by China in bringing its measures relating to films for theatrical release into compliance with the DSB's recommendations and rulings. The United States also had significant concerns about the incomplete progress relative to China's measures relating to audiovisual home entertainment products, reading materials, and sound recordings. The United States was conferring with China on those matters and hoped that China would take steps to resolve this matter soon.

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



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

(a) Statements by the European Union and Japan

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

47. The representative of the European Union said that the EU had already informed the DSB about the annual adjustment in the level of duties applied by the EU in this case in a document circulated on 12 April 2011. At the present meeting, and as it had done many times before, the EU wished to ask the United States when it would effectively stop the transfer of anti-dumping and countervailing duties to the US industry and, hence, put an end to the condemned measure. The fact that the United States had stopped disbursing duties collected after a certain point in time did not achieve full compliance. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations. The EU 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 pertaining to this dispute.

48. The representative of Japan said that his country had learned that US Customs and Border Protection had just started disbursing a certain amount of funds under the CDSOA that it had withheld from distribution for FYs 2006 to 2010 pending domestic litigations.<sup>5</sup> This development appeared to show that the CDSOA remained operational. According to US Customs and Border Protection, "the distribution process will continue for an undetermined period".<sup>6</sup> Japan urged the United States to stop the illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute. 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.

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

50. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. As long as the United States continued to make disbursements pursuant to the CDSOA, the situation of non-compliance in this dispute would persist. As this dispute remained unresolved, the United States was required to resume the submission of status reports.

51. The representative of India said that his country thanked the EU and Japan for regularly bringing this issue before the DSB. India shared their concerns and endorsed their views. As mentioned by previous speakers, the CDSOA remained fully operational, allowing for disbursements by the US Administration to its domestic industry. This affected the rights of Members and undermined the credibility of the dispute settlement system. India agreed that this item should continue to remain under the surveillance of the DSB until full compliance was achieved.

52. The representative of Thailand said that his country thanked the EU and Japan for continuing to bring this item before the DSB. Thailand supported the statements made by previous speakers and continued to urge the United States to cease the disbursements and fully comply with the DSB's recommendations and rulings on this matter.

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<sup>5</sup> See US Customs and Border Protection's website at:  
[http://www.cbp.gov/xp/cgov/trade/priority\\_trade/add\\_cvd/cont\\_dump/withheld\\_funds.xml](http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/withheld_funds.xml)

<sup>6</sup> 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](http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cont_dump_faq.xml)

53. The representative of the United States said that, as his country had explained at previous DSB meetings, the US President signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Furthermore, the United States recalled that Members 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, 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 in these disputes.

54. The DSB took note of the statements.

**3. Moldova – Measures affecting the importation and internal sale of goods (environmental charge)**

(a) Request for the establishment of a panel by Ukraine (WT/DS421/4)

55. The Chairperson drew attention to the communication from Ukraine contained in document WT/DS421/4, and invited the representative of Ukraine to speak.

56. The representative of Ukraine said that her country regretted that Moldova maintained measures affecting the importation and internal sale of goods for the reasons of environmental charges, which had been imposed in violation of the national treatment principle of the multilateral trading system. The governmental measure, according to the Law of Moldova "On Charge for Contamination of Environment", imposed a charge on imports of products, the use of which contaminated the environment. It appeared that like domestic products were not subject to this charge. Pursuant to the Law, Moldova also applied "a charge for a plastic or 'tetra-pack' package containing products (except for dairy produce)". It appeared that packages containing domestically produced like products were not subject to this charge. Ukraine considered that the measure was inconsistent with Moldova's obligations under the GATT 1994. Moldova seemed to act inconsistently with Article III:1 and 2 of the GATT 1994, by subjecting the products of the territory of other Members imported into the territory of Moldova, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products and affording protection to domestic production. Moldova also seemed to act inconsistently with Article III:4 of the GATT 1994, by failing to accord to Ukraine's products imported into Moldova treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. Moldova was aware of this problem, since Ukraine had raised this issue several times over the years bilaterally at different levels. Ukraine had been encouraging Moldova to bring its long-standing measure into compliance with the multilateral trading rules. Unfortunately, no WTO-consistent solution had been proposed by Moldova.

57. With a view to seeking additional information from Moldovan experts by establishing a working dialogue, which could have served as a platform for better understanding of the interests of the two sides and, in the long run, would facilitate a mutually satisfactory solution, Ukraine had proposed that consultations be held as soon as possible on a date to be agreed by the parties. She noted that Ukraine's request for consultations had been circulated to Members as document WT/DS421/1 on 21 February 2011. However, it had not been possible for those consultations to be held since Moldova had failed to reply to Ukraine's request within ten days and had not entered into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, as provided for in Article 4 of the DSU. Thus, Ukraine had not been given any opportunity to meet Moldovan authorized trade and other relevant experts as counterparts and consult with them.

This had made it impossible for Ukraine's experts to put questions to their Moldovan colleagues in an open dialogue and get a better understanding of the current situation, and to propose possible solutions to Moldova. Though there had been a technical meeting between the representatives of the Geneva-based missions of both parties on 22 March 2011, one month from the date of the request for consultations, a clear proviso had been stated by the Permanent Representative of Moldova that this meeting was not considered to be consultations in the meaning of the DSU, and that it should rather be considered by Ukraine as a preliminary technical meeting. Two months after the request for consultations had been filed, Ukraine had received an informative descriptive note, which contained no formal signs of dates, venue or authorized persons holding power to assist in resolving the matter at the DSU consultations stage. That document raised more questions regarding substance, but Ukrainian experts still did not have an opportunity to put them to Moldovan authorized counterparts at the consultation stage.

58. At the present meeting, Ukraine was making recourse to its right under the DSU provisions to request the establishment of a panel to examine this matter, having waited for more than 60 days after filing the request for consultations and not seeing any movement towards a resolution of the matter at the consultation stage. Therefore, Ukraine was requesting, pursuant to Article 6 of the DSU, that the DSB establish a panel, with standard terms of reference as set out in Article 7.1 of the DSU, to examine the matter as laid out in Ukraine's panel request, which had been circulated to all Members as document WT/DS421/4 on 13 May 2011. Ukraine remained open to further substantial consultations with Moldova, and hoped that it would be possible to reach a sustainable solution to this matter.

59. The representative of Moldova said that her country objected to Ukraine's request for the establishment of a panel to examine Moldova's measures affecting the importation and internal sale of goods, also called the environmental charge.

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

#### **4. Selection process for appointment of new Appellate Body members**

61. The Chairperson recalled that, at the DSB meeting on 21 April 2011, she had announced her intention to place, on the Agenda of the present meeting, the item concerning the 2011 selection process for the appointment of two new members of the Appellate Body. She further recalled that, at the 21 April 2011 DSB meeting, she had also announced her intention to propose that the DSB agree to four elements with regard to the selection process. She noted that, at the present meeting, a written version of those elements had been made available by the Secretariat outside the room. She then proposed that the DSB agree to the following: (i) to launch as from 24 May 2011 the selection process for appointment of two new members of the Appellate Body; (ii) to set a deadline of 31 August 2011 for Members' nominations of candidates for the two positions; (iii) to agree to establish a Selection Committee, based on the procedure set out in document WT/DSB/1, which would consist of the Director-General and the 2011 Chairpersons of the General Council, Goods Council, Services Council, TRIPS Council and the DSB, which would be presided by the 2011 DSB Chair; (iv) to request the Selection Committee to conduct interviews with candidates and to hear views of WTO Members in September/October, and to make recommendations to the DSB by no later than 10 November 2011, so that the DSB could take a final decision on this matter at the latest at its regular meeting on 21 November 2011.

62. The representative of the European Union said that the EU wished to thank Ms. L. Bautista and Ms. J. Hillman for their service on the Appellate Body. The EU hoped that it would be able express its appreciation more personally to them in future. The EU highly appreciated their efforts, skills and professionalism. The EU took note of the procedure laid out by the Chairperson and did not only hope, but expected, that the process would yield nominations that would provide Members with

sufficient choice to be able to select candidates of the highest standing and quality for these very important positions.

63. The Chairperson said that, since there was no objection to proceed along the lines that she had just outlined, she wished to propose that the DSB agree to her proposal regarding the selection process for the appointment of two new Appellate Body members.

64. The DSB took note of the statements and agreed to the Chairperson's proposal regarding the selection process for the appointment of two new Appellate Body members.

65. The Chairperson said that, as was done in the past, nominations of candidates, together with their curricula vitae, should be addressed to the Chairperson of the DSB in care of the Council & TNC Division, and would subsequently be circulated as Job documents to all WTO Members.

66. The DSB took note of the statement.

**5. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/449)**

67. The Chairperson drew attention to document WT/DSB/W/449, which contained additional names proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. She proposed that the DSB approve the names contained in document WT/DSB/W/449.

68. The DSB so agreed.

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