WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/279
31 March 2010

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Dispute Settlement Body
18 February 2010

MINUTES OF MEETING

Held in the Centre William Rappard
on 18 February 2010

Chairman: Mr. John Gero (Canada)

Prior to the adoption of 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 the United States said that his country wished to propose that the Agenda of the present meeting be adopted without item 5, which referred to the EU's request for authorization to suspend concessions or other obligations in the dispute: "US – Laws, Regulations and Methodology for Calculating Dumping Margins" (DS294). He recalled that on Friday, 12 February 2010, the United States had filed its objection to the level of suspension of concessions or other obligations proposed by the EU and its claim that the EU's proposal did not follow the principles and procedures set forth in Article 22.3 of the DSU. The US document had recently been circulated to Members as WT/DS294/36 and was included with the documentation for the present meeting. In light of the US filing, item 5 was unnecessary, and the United States, therefore, proposed that the Agenda be adopted without that item. The United States recalled that an identical situation had been presented at the 21 January 2008 DSB meeting[3]. At that time, Japan had requested authorization to suspend concessions or other obligations, the United States had objected to that request before the meeting, and the DSB had adopted its Agenda without the item relating to Japan's recourse to Article 22.2 of the DSU. Copies of the minutes of the 21 January 2008 DSB meeting were available at the present meeting. Thus the United States proposed that the DSB do the same thing as it had done then, and adopt the proposed Agenda without item 5.

The representative of the European Union said that it was well known that there were differences of views between the EU and the United States on whether or not the DSB should take action with regard to a matter to be referred to arbitration. The EU had placed this item on the Agenda of the present meeting and would object to the withdrawal of this item. The EU disagreed with the United States on the interpretation and considered that it was for the DSB to refer the matter to arbitration. It was the DSB's action that marked the start of the proceedings referred to in Article 22.6 of the DSU. She recalled that the United States had made reference to the minutes of the 28 January 2008 DSB meeting when Japan and the United States had agreed to withdraw the item

[3] WT/DSB/M/245.

from the Agenda. The EU pointed out to the minutes of the 8 February 2008 DSB meeting[4] when the GMO request for retaliation had been considered and the item had remained on the Agenda.

The representative of Japan said that, while Article 22.6 of the DSU did provide explicitly that the granting of authorization to suspend concessions and other obligations was to be made by the DSB's decision, the text did not say that the referral of the matter to arbitration must be decided by the DSB. The relevant part of that provision read as follows: "if the Member concerned objects to the level of suspension proposed, or claims that principles and procedures set forth in paragraph 3 have not been followed …, the matter shall be referred to arbitration". Thus, once the condition set forth in the "if" clause was met, the matter was, as a consequence, referred to arbitration and, then, the DSB was no longer in a position to grant authorization pursuant to Article 22.6. In the DS322 case, which the United States had mentioned, the matter had properly been referred to arbitration, in accordance with the text of Article 22.6 without a DSB decision. This had been done without prejudice to Japan's rights under the DSU provisions, as reflected in the minutes of the DSB meeting, to which the United States had referred.[5]

The representative of the United States said that his country noted the EU's comments, as well as the comments made by Japan. In light of the EU's position, it appeared that the matter would be addressed again later in the course of the meeting.

The DSB took note of the statements.

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.87)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.87)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.62)

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.25 – WT/DS293/31/Add.25)

(e) United states – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/34/Add.6)

(f) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.5)

(g) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.2)

(h) China – Measures affecting the protection and enforcement of intellectual property rights: Status report by China (WT/DS362/14/Add.1)

[4] WT/DSB/M/246.
[5] WT/DSB/M/245.

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.

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.87)

2. The Chairman drew attention to document WT/DS176/11/Add.87, 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 5 February 2010, in accordance with Article 21.6 of the DSU. As had been noted, a number of legislative proposals that would implement the DSB's recommendations and rulings in this dispute had been introduced in the First Session of the current (111th) Congress. The Second Session of the 111th Congress had begun in January 2010. The US administration was working with Congress to implement the DSB's recommendations and rulings.

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

5. The representative of Cuba said that his country regretted that this case was still on the DSB's Agenda and that, at the present meeting, the United States had not provided Members with any significant information. Nor had the EU provided anything new or suggested that it was taking any action to end this dispute. Cuba and other Members had often expressed deep concern about the prolonged non-compliance and its impact on the trading system. He recalled that the Appellate Body, which comprised eminent persons with technical expertise in the area of law and international trade who were not affiliated with any government, had found that Section 211 violated the fundamental principles of national and most-favoured-nation treatment. It had been eight years since the DSB had adopted the recommendations and rulings in this dispute. He recalled that, on 18 February 2002, the United States had informed the DSB of its intention to implement those recommendations and rulings. But, on 18 February 2010, Cuba was still asking the United States to comply with those recommendations and rulings. Members must bear in mind that, in accordance with Article 21.3 of the DSU, only if it was impracticable to comply immediately, the Member concerned could be granted a reasonable period of time for implementation. In this connection, the Award of the Arbitrator in the case: "Canada – Patent Protection of Pharmaceutical Products" stated that, implicit in the wording of Article 21.3 of the DSU was the assumption that Members would comply with the DSB's recommendations and rulings "immediately". The United States should explain why it had maintained Section 211 in force for eight years, in spite of the DSB's ruling. Not only the United States continued to apply legislation that was contrary to the TRIPS Agreement and the Paris Convention, it was also encouraging companies like Bacardi to engage in unfair competition by selling products under the Havana Club trademark and even attempting to register that trademark.

6. Cuba noted that intellectual property rules, in economic and political terms, were now more important than ever before. The matter had been included on the agenda of G8 meetings, new agreements were being negotiated in closed session between the most powerful actors in world trade, and the debate had now extended to other organizations such as the WHO and the WCO. At the end of January 2010, a small group of countries had met to negotiate a new anti-counterfeiting trade agreement (known as ACTA), which was expected to be approved by the end of 2010. The negotiations had been secret, and seriously questioned. The group of negotiating countries included the complainant and the respondent, which had reaffirmed the concern and commitment to the

strictest rules of intellectual property. Cuba did not see how Section 211 could be compatible with those new rules, which were even stricter in the area of intellectual property rules. What Bacardi was doing when it branded its products "Havana Club" constituted a serious infringement of many of the provisions of the new agreement. Cuba, once again, urged the United States and the EC to act swiftly to repeal Section 211, which had been in force for 12 years.

7. The representative of Ecuador said that his country thanked the United States for its status report and endorsed the statement made by Cuba. Ecuador, once again, recalled that Article 21 of the DSU referred expressly to prompt compliance with the DSB's recommendations and rulings, in particular with regard to matters affecting the interests of developing countries. Ecuador, once again, urged the US administration and Congress to speed up compliance with the DSB's recommendations and rulings by repealing Section 211. Furthermore, Ecuador wished to request more detailed information from the EU on the steps it had taken to settle this dispute.

8. The representative of the Bolivarian Republic of Venezuela said that her country noted that, once more, the US status report was the same as the previous reports submitted by the United States. It did not show any progress in the US implementation of the DSB's recommendations. Venezuela was concerned about the US unwillingness to rectify this serious situation, which prevented Cuba from registering or renewing certain trademarks and the EU's reluctance to ensure compliance with the decision adopted by the DSB eight years ago. It was unacceptable that the United States continued to justify its lack of action by stating that it was taking the necessary steps on the domestic front to ensure compliance. In fact, the results were non-existent. Venezuela was concerned about this situation and believed that other Members should also be concerned about it. The lack of compliance suggested that the multilateral trading system could not ensure compliance with the agreements, and that Members' rights and obligations were not respected. Venezuela, once again, urged the United States to comply with the DSB's recommendation without delay, and to start taking effective steps to end the economic, commercial and financial embargo, which had been imposed on Cuba since 1962.

9. The representative of China said that her country thanked the United States for its status report and its statement. However, the US status report did not contain any new information, but had simply confirmed the continuation of non-compliance after more than eight years following the adoption of the relevant reports. This was inconsistent with the principle of prompt implementation under the DSU provisions and undermined the authority and credibility of the WTO dispute settlement system. All Members understood that the United States attached great importance to the protection of intellectual property rights worldwide. China hoped that the United States would set an example with regard to a claim from developing countries, in accordance with the DSU provisions. China registered its support to Cuba and urged the United States to implement the DSB's decision as soon as possible.

10. The representative of Viet Nam said that his country thanked the United States for its status report. Like previous speakers, Viet Nam supported the statement made by Cuba and urged the United States to comply soon with the DSB's rulings and recommendations.

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

12. The representative of Chile said that his country thanked the United States for its status report. Chile, once again, wished to express its systemic concern about the failure to comply with the findings in this long-standing dispute. Chile urged the parties to this dispute, in particular the United States, to take the necessary measures as soon as possible to ensure full implementation.

13. The representative of Argentina said that the US failure to implement the DSB's recommendations had broader systemic implications for all Members not just for the parties to the dispute. From the systemic point of view, the most serious consequence was that the failure to comply cast doubt on the ability of the system to settle disputes and this should be a source of concern to all Members. Argentina, therefore, reiterated its call on the parties, in particular the United States, to ensure that the DSB's recommendations in this case be fully implemented.

14. The representative of Paraguay said that her country wished to express its concern about the US persistent failure to implement the DSB's recommendations. Paraguay supported the statement made by Cuba, as well as the statements made by previous speakers regarding their systemic concerns, which went beyond trade issues. Paraguay urged the United States to repeal Section 211.

15. The representative of Mexico said that his delegation wished to reiterate that Articles 3.3 and 21.1 of the DSU, respectively, stated that prompt settlement of disputes was essential to the effective functioning of the WTO and that prompt compliance with the DSB's recommendations and rulings was essential in order to ensure the effective resolution of disputes to the benefit of all Members. Mexico urged the parties to this dispute to keep those principles in mind and to take the necessary steps to comply with the DSB's recommendations, which would benefit the functioning of the WTO as well as its Members.

16. The representative of Nicaragua said that her country noted the statements made by previous speakers and was concerned about two issues: (i) the violation of two fundamental WTO principles; and (ii) the fact that the Member that was required to take steps to bring its legislation into conformity with WTO rules had, for the past eight years, merely stated that it intended to take those steps. The United States could not justify its eight-year long failure to take action. Nicaragua reiterated its call for speedy compliance.

17. The representative of India said that her country thanked the United States for its status report and its statement. However, India noted that there was no substantive change in the situation and that, unfortunately, the US status report repeated the pattern of the previous reports showing complete lack of progress. India felt compelled, yet again, to stress that the principle of prompt compliance was missing in this dispute. India renewed its systemic concerns about non-compliance, which undermined the credibility and confidence that Members had in the WTO dispute settlement system. India urged the United States to fully implement the DSB's recommendations in this dispute.

18. 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.87)

19. The Chairman drew attention to document WT/DS184/15/Add.87, 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.

20. The representative of the United States said that his country had provided a status report in this dispute on 5 February 2010, 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 DSB's recommendations and rulings that had not already been addressed by the US authorities, the US administration would work with Congress with respect to appropriate statutory measures that would resolve this matter.

21. The representative of Japan said that his country thanked the United States for its statement and its latest status report. 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".[6] Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

22. 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.62)

23. The Chairman drew attention to document WT/DS160/24/Add.62, 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.

24. The representative of the United States said that his country had provided a status report in this dispute on 5 February 2010, 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.

25. The representative of the European Union said that the United States had again reported non-compliance and her delegation was again disappointed, especially in light of the importance that the United States attached to intellectual property protection. The EU was 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 EU remained ready to work with the US authorities towards the complete resolution of this case, and hoped that the financial loss suffered by the EU industry could be soon brought to an end.

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

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.25 – WT/DS293/31/Add.25)

27. The Chairman drew attention to document WT/DS291/37/Add.25 – WT/DS293/31/Add.25, 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.

28. The representative of the European Union said that EU regulatory procedures on biotech products continued to work as foreseen in the legislation. With the most recent authorization of four GM maize events, the number of GMOs authorized since the date of establishment of the Panel had risen to twenty-five. The EU remained open to dialogue on issues related to trade in biotech products. The EU and Canada had already formalized such dialogue in the mutually agreed solution reached in 2009 (WT/DS292/40). The EU welcomed the constructive dialogue with Argentina, and hoped that that would allow the parties to soon notify a similar solution to the DSB.

29. The representative of Argentina said that, once again, his country welcomed the EU's status report. As stated by the EU, the constructive dialogue during the implementation phase had enabled

[6] Article 3.3 of the DSU.

the parties to move further towards a mutually agreed solution. Argentina and the EU were still working on the solution and hoped to finalize it shortly.

30. The representative of the United States said that his country thanked the EU for its status report and its statement. The United States recalled its concerns that endemic delays in the EU's operation of its biotech approval process had the effect of blocking Members' trade in important agricultural products. At the January DSB meeting, the United States had highlighted its concerns regarding the delays at the second step of the EU process, which involved the EU's Standing Committee on the Food Chain and Animal Health. The United States wished to draw Members' attention to information which confirmed those concerns. EU law provided that within three months after the EU's scientific authority completed a positive risk assessment – that is a scientific risk assessment that supported the approval of a biotech product – the EU Commission must submit a draft approval of that product to the Standing Committee for its consideration. Although the Standing Committee normally met on a monthly basis, its first meeting of 2010 had not been held until the previous week. Furthermore, the Standing Committee did not consider several of the outstanding biotech applications that had received positive risk assessments three (or more) months ago. For example, one product received a positive assessment in November 2007, over two years ago, but still had not been submitted for the Standing Committee's consideration. With respect to the three biotech applications that the Standing Committee did consider, the risk assessments for each of these products had been issued at least seven months ago. That meant that the EU more than doubled the time set out under its law for the period between the scientific opinion and the Standing Committee's consideration. Furthermore, even though each of these three applications had received positive risk assessments, the Committee had failed to make a decision to approve the products. As a result, each of those applications would be delayed for additional proceedings under the EU system. In particular, the applications would be delayed while the EU submitted the applications for the consideration of the EU Council. If the Council failed to make approval decisions in accordance with the scientific opinions, there could be yet further delays. Unfortunately, the Standing Committee's failure to make decisions in accordance with the EU's own scientific opinions was the norm, not the exception. In fact, the United States understood that the Standing Committee had failed to approve a single biotech product for over ten years. That had resulted in significant delays in the consideration of each biotech product. The United States noted that, the previous week, the new EU Commission had taken office, and that the new Commission had reportedly modified the organizational structure for biotech approvals. The United States urged the new Commission, and the EU as a whole, to address the ongoing problems with biotech approvals.

31. The representative of the European Union said that the position of the Commission had always been very clear. Following the EFSA opinion, the Commission operated on the basis of the three-month delay for the submission to the Standing Committee. When there had been specific issues to clarify, usually related to the scientific assessment, the Commission had taken the responsibility, as risk manager, to acquire all the necessary information before taking a final decision. This had been the case, for instance, for a genetically modified rice (LLRICE62) for which supplementary input had been asked twice to EFSA.

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

(e) United states – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/34/Add.6)

33. The Chairman drew attention to document WT/DS294/34/Add.6, 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.

34. The representative of the United States said that his country had provided a status report in this dispute on 5 February 2010, 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, and would continue to consult with interested parties with regard to the remaining issues. As Members were aware, the EU had requested authorization from the DSB to suspend concessions or other obligations in this dispute, and the United States had objected to the EU's request. Therefore, pursuant to Article 22.6 of the DSU, the matter had been referred to arbitration.

35. The representative of the European Union said that her delegation had recurrently been asking the United States when it intended to put an end to zeroing. In reply, the United States had chosen not to take any action whatsoever to correct the shortcomings in its implementation. The Appellate Body had made the legal situation on zeroing 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 EU could not but encourage, once again, the United States to bring itself into full compliance and without delay.

36. The DSB took note of the statements.

(f) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.5)

37. The Chairman drew attention to document WT/DS322/36/Add.5, 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.

38. The representative of the United States said that his country had provided a status report in this dispute on 5 February 2010, 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.

39. The representative of Japan said that his country thanked the United States for its statement and its status report. The United States had stated in its status reports that it "will continue to consult with interested parties in order to address the findings contained in [the Appellate Body and the panel] reports" adopted by the DSB on 31 August 2009. Japan understood that statement as an expression of commitment by the United States to fully implement the DSB's recommendations and rulings. Japan called on the United States to fulfil its commitment by taking immediate and concrete action to that end so as to resolve this dispute.

40. The representative of the European Union said that her delegation wished to reiterate its disappointment over the lack of any progress by the United States on compliance with adverse rulings on zeroing in yet another dispute, and recalled that immediate compliance with DSB's recommendations and rulings was not an option, but an obligation under the DSU provisions.

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

(g) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.2)

42. The Chairman drew attention to document WT/DS350/18/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 the existence and application of zeroing methodology by the United States.

43. The representative of the United States said that his country had provided a status report in this dispute on 5 February 2010, in accordance with Article 21.6 of the DSU. As noted in that status report, the United States had taken steps to implement the DSB's recommendations and rulings in this dispute. With regard to the remaining issues, the United States would continue to consult with interested parties.

44. The representative of the European Union said that it was the third time that the issue of US zeroing was on the Agenda of the present meeting under the item on surveillance of implementation of recommendations adopted by the DSB. Once again, the reasonable period of time for implementation had expired and, once again, despite a clear legal obligation to the contrary, the United States had not brought itself into compliance. In previous meetings the EU had explained in detail why it considered that there were a number of glaring substantive failures in what the United States portrayed as implementation in this case. The EU did not wish to repeat those explanations at the present meeting. The US apparent systematic refusal to abolish zeroing was a matter of great concern to the EU, both on a substantive and on a systemic level. That was why the EU had taken matters one step further in the case on: "US – Laws, Regulations and Methodology for Calculating Dumping Margins" (DS294) as it would explain under Agenda item 5.

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

(h) China – Measures affecting the protection and enforcement of intellectual property rights: Status report by China (WT/DS362/14/Add.1)

46. The Chairman drew attention to document WT/DS362/14/Add.1, 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 the protection and enforcement of intellectual property rights.

47. The representative of China said that, on 20 March 2009, the DSB had adopted the Panel Report in this dispute. On 29 June 2009, China and the United States had agreed and notified the DSB that the reasonable period of time for implementation shall be 12 months and would expire on 20 March 2010. Thus far, a lot of work related to implementation had been undertaken by China. The legislative proposals relating to the amendment of the Copyright Law of China and the Regulations for Customs Protection of Intellectual Property Rights had already been submitted to the State Council for due examination. China would continue working on the amendment of the measures, according to its domestic legislative procedures that would lead to a final resolution of this matter.

48. The representative of the United States said that his country thanked China for its status report and its statement. The United States was very much interested in whether China would complete its implementation by 20 March 2010, which was the date of expiry of the reasonable period of time for China to comply in this dispute. Given that 20 March was only about a month away, the United States would welcome receiving further information from China, including bilaterally, on its progress towards implementation.

49. The representative of the European Union said that her delegation was glad that China had already submitted the relevant legislative proposals to the State Council and that work was ongoing on the necessary amendments to China's Copyright Law and Customs measures. The EU looked forward to the improvements in China's intellectual property rights framework that the faithful implementation of the recommendations would bring about.

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

2. China – Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products

(a) Implementation of the recommendations of the DSB

51. The Chairman recalled that in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the DSB's recommendations and rulings. He recalled that at its meeting on 19 January 2010, the DSB had adopted the Appellate Body Report pertaining to the dispute on: "China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products" and the Panel Report on the same matter, as modified by the Appellate Body Report. He invited China to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

52. The representative of China said that, at its meeting on 19 January 2010, the DSB had adopted the recommendations and rulings in this dispute. In accordance with Article 21.3 of the DSU, China wished to inform the DSB of its intention to implement the DSB's recommendations and rulings. This dispute involved many important regulations on culture products. China, therefore, would need a reasonable period of time to implement the DSB's recommendations and rulings. China stood ready to discuss this matter with the United States, in accordance with Article 21.3(b) of the DSU.

53. The representative of the United States said that his country thanked China for its statement indicating that it intended to implement the DSB's recommendations and rulings in this dispute. China's measures imposed significant market access barriers for importers and distributors of books, music, movies and other products subject to this dispute. The United States, therefore, looked forward to China moving promptly to bring its measures into compliance with its obligations. The United States stood ready to discuss with China, under Article 21.3(b) of the DSU, a reasonable period of time for its implementation.

54. The DSB took note of the statements, and of the information provided by China regarding its intentions in respect of implementation of the DSB's recommendations.

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

(a) Statements by the European Union and Japan

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

56. The representative of Japan said that the latest annual distributions for FY2009[7] showed that the CDSOA still remained operational.[8] Japan urged 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.

57. The representative of the European Union said that, as in many previous meetings, the EU 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 EU also renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit implementation reports in this dispute.

58. The representative of Canada said that her 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.

59. The representative of China said that her country thanked the EU and Japan for, once again, raising this matter 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 and recommendations.

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

61. The representative of India said that her country thanked the EU and Japan for bringing this issue, once again, before the DSB and shared their concerns. India remained disappointed at the US maintenance of those WTO-inconsistent disbursements. As mentioned by previous speakers, the CDSOA remained fully operational and allowed for disbursement by the US administration to its domestic industry. This fact continued to raise concerns to WTO Members. As reiterated earlier, 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 EU and Japan that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

62. The representative of Thailand said that his country thanked the EU and Japan for, once again, bringing this item before the DSB. Thailand expressed its continued disappointment at the US persistent maintenance of the WTO-inconsistent disbursements. Thailand urged the United States to cease the disbursements, to repeal the Byrd Amendment with immediate practical effect, and to resume providing status reports until such actions were taken and this matter had been fully resolved.

63. 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.

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[7] CDSOA 2009 Annual Reports dated 10 December 2009. According to the reports, some US$248 million have been distributed for FY2009. See US Customs and Border Protection's website at: http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cdsoa_09/report/fy09_annual_report.xml

[8] 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

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 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 it 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.

64. The DSB took note of the statements.

4. European Communities – Export subsidies on sugar

(a) Statements by Australia, Brazil and Thailand

65. The Chairman said that this item was on the Agenda of the present meeting at the request of Australia, Brazil and Thailand. He then invited the respective representatives to speak.

66. The representative of Australia said that, on 19 May 2005, following complaints by Australia, Brazil and Thailand, the DSB had adopted the Reports of the Panel and the Appellate Body in the "EC - Sugar" dispute, which had found that the EU had subsidized the export of sugar in excess of its annual WTO quantity commitment level of 1.2735 million tonnes. The Panel and the Appellate Body in the "EC - Sugar" dispute had found that all sugar exported from the EU was in receipt of export subsidies. As a result of the DSB's rulings and recommendations, the EU was required, and had undertaken, to reduce its subsidized sugar exports to its WTO scheduled commitment level of 1.2735 million tonnes. In that context, Australia was therefore extremely concerned with the EU's recent decision to authorize the export of an additional half a million tonnes of out-of-quota sugar. The EU was now forecasting that it would export almost two million tonnes of out-of-quota sugar in 2009/10. That was a 146 per cent increase over the 2008/9 export figures, and was significantly above the EU's export subsidy quantity commitment levels. The decision by the EU to increase exports was inconsistent with previous EU assurances that all out-of-quota sugar exports would be counted against the EU's WTO export subsidy commitment levels and had been made without any consultation with the complainants in the "EC - Sugar" dispute, which were Australia, Brazil and Thailand. The EU sought to justify its action by asserting that the world price for sugar currently exceeded the EU's cost of production, but the EU had not released any data that would enable WTO Members to make an assessment of the cost of producing sugar in the EU. Furthermore, the EU could not simply take a snapshot of the global and EU sugar markets at an opportune time and unilaterally decide that it was no longer subsidizing its sugar exports. In any event, increased EU exports could only negatively affect market sentiment and drive world prices back down.

67. In Commission Regulation 94/2010 announcing the additional export, the Commission had argued that "exceptionally favourable weather conditions in 2009" had resulted in 500,000 tonnes of out-of-quota sugar being available for export. Yet the Commission's own figures forecasted that beet yields in 2009/10 would be only 3.9 per cent higher than those in 2008/9. A 3.9 per cent increase in yield could not justify a 146 per cent increase in exports compared with 2008/9. Commission figures had also shown that the EU held stocks of 525,000 tonnes of out-of-quota sugar at the end of 2006/7; 693,000 tonnes at the end of 2007/8; and 412,000 tonnes at the end of 2008/9. Yet the EU planned to have no out-of-quota sugar stocks at all at the end of 2009/10. It appeared to Australia that, as at the time of the "EC - Sugar" dispute, the EU had decided to export its overproduction rather than absorb it internally. She said that Australia had raised its concerns with similar behaviour at the DSB meeting on 27 September 2005, following the decision by the EU to export an additional 2 million tonnes of sugar on the world market during the "EC - Sugar" dispute implementation period. It appeared that the EU had again taken the opportunity to dispose of its excess sugar production on to the world

market. That action undermined the reform to the EU sugar regime that had been undertaken by the EU in response to the outcomes of the "EC - Sugar" dispute. The Australian sugar industry had conveyed to the Australian Government its concerns about the increased exports, and the signal that it would send to European producers. Australia noted that to date the EU had not provided any evidence to demonstrate that the situation had changed in such a way as to allow it to ignore the Panel's and the Appellate Body's findings in the "EC - Sugar" dispute. Australia looked forward to continuing its dialogue with the EU on this important issue, and to receiving the data and legal argumentation upon which the EU sought to rely for this action.

68. The representative of Brazil said that his country fully supported Australia's statement. Brazil was concerned about the EU's decision to put in the world market more than 500,000 tonnes of sugar in excess of the quantitative limits bound in the Uruguay Round. The measure had been adopted without prior consultations with Australia, Thailand and Brazil, the co-complainants in the "EC - Sugar" dispute. International markets had quickly computed the impact of the additional sugar exports, and the sugar prices' previous upward trend had been reverted in late January 2010, after the Commission had recommended the EU's Management Committee to authorize those exports. The immediate economic prejudice suffered by Brazil's sugar exporters was estimated in millions of dollars. However, it was the mid- to long-term implications of the EU's decision that preoccupied Brazil and Brazilian producers most. First, European sugar producers would be encouraged to produce more surplus sugar in the following marketing years. Second, markets would – in fact they had already done so – factor the EU's new policy of export surplus sugar in excess of its WTO commitments in future prices' expectations. That situation was not only detrimental to Brazil's trade interests. It was also a violation of WTO disciplines, as clarified by the Panel and the Appellate Body in the "EC - Sugar" dispute. The EU had not provided Brazil with evidence that its sugar exports no longer benefited from subsidies. The mere assertion that sugar beet costs of production were circumstantially below out-of-quota sugar beet prices, or that sugar costs of production were likewise below international prices, fell far short of the EU's burden of establishing that its sugar regime now operated in such a fashion that European sugar exports did not enjoy artificial competitive advantages. Brazil valued its constructive dialogue with the EU on those issues since the adoption of Commission Regulation 94/2010. Nevertheless, time was of the essence if further damage to sugar producers outside the EU were to be prevented.

69. The representative of Thailand said that his country joined Australia and Brazil in expressing deep disappointment at the EU's recent authorization of the export of out-of-quota sugar set out in Commission Regulation No 94/2010. Like Australia and Brazil, Thailand believed that the out-of-quota sugar exports exceeded the EU's WTO commitments, causing it to breach its WTO annual quantity commitment level of 1.2735 million tonnes by more than half a million tonnes, or more than 50 per cent, in marketing year 2009/10. Thailand regretted that the EU had failed to consult with the co-complainants in advance of authorizing the measure. The EU had claimed in Regulation No 94/2010 that "the export of out-of-quota sugar cannot be considered as being subsidized". However, the EU had not provided concrete data in support of its assertion. Statements in the Regulation referencing "current economic conditions", the "most recent ... exceptionally favourable weather conditions", and "exceptionally high world market prices ... at this time" were not persuasive in light of Commission figures showing sugar overstock of several hundred thousand tonnes per year from marketing year 2006/7 onwards. Thailand was concerned that Regulation No 94/2010 signalled to EU sugar producers that excess out-of-quota sugar could be exported, which could possibly lead to a continuous cycle of overproduction and artificially depressed global prices. Regrettably, Thailand had expressed the same concern to the DSB when the EU had authorized the exportation of 2 million tonnes of excess subsidized sugar in September 2005. As Thailand had mentioned then, the flooding of illegally subsidized exports of sugar from the EU to the world market posed serious consequences for the Thai sugar industry. Depressed sugar prices detrimentally affected the livelihood of 1.5 million farmers' and sugar workers' households, most of whom lived in some of Thailand's lowest income areas. Thailand looked forward to the EU's explanation of its measure and joined Australia

and Brazil in calling on the EU to engage in frank and forthcoming discussions with all the co-complainants in the near future.

70. The representative of the European Union said that her delegation wished to stress that its decision to export 0.5 million tonnes of sugar was a temporary measure, adopted in view of exceptional market conditions at both the EU and world level. World prices were at a record high level and there was a shortage of sugar which was affecting importing developing countries. The EU did not expect those market conditions to last beyond the season 2009-2010. The decision fully respected the EU's international obligations as the quantities on sale were not subsidized. World sugar prices were at the moment higher than EU production costs and EU producers had become much more competitive following the drastic overhaul of the EU Common Market Organisation for sugar. The EU continued to respect its WTO commitments and insisted on its right to engage in international trade – even if competing exporters of other WTO Members would, for rather obvious reasons of commercial interest, have preferred otherwise. To help dispel the doubts of other WTO Members, the EU was ready to provide any necessary technical information underpinning the EU's temporary decision to export sugar.

71. The DSB took note of the statements.

5. United States – Laws, regulations and methodology for calculating dumping margins ("zeroing")

(a) Recourse to Article 22.2 of the DSU by the European Union (WT/DS294/35)

72. The Chairman drew attention to the communication from the European Union contained in document WT/DS294/35, and invited the representative of the European Union to speak.

73. The representative of the European Union said that, nearly three years after the expiry of the reasonable period of time for implementation (9 April 2007), the United States had failed to implement the WTO rulings, to cease zeroing and to stop collecting anti-dumping duties created by zeroing. The United States had had ample opportunities to comply with the WTO findings. It had the opportunity to do so both in the present dispute, the EU's first "Zeroing" dispute with the United States, as well as in the EU second "Zeroing" dispute, where the deadline for implementation, 19 December 2009, had also come and gone without any real action on the part of the United States. Instead of focusing its efforts on complying with past unfavourable rulings, the United States was engaging in new disputes on zeroing with eight other WTO Members. The EU hoped that its first step towards retaliation in the present case would lead the Unites States to finally bring itself into compliance. The continued use of zeroing by the United States in its dumping calculations was having a significant adverse economic impact on EU exporters in various sectors such as steel, ball bearings, chemicals and pasta. Since the entry into force of the WTO Agreements, the United States had collected hundreds of millions of dollars in excess of anti-dumping duties, not to mention the far greater economic harm that such measures had been causing in terms of lost trade. In view of the persistent refusal by the United States to comply with its WTO obligations, and the significant adverse economic impact of US zeroing on EU exporters in various sectors, the EU considered it appropriate to make a request for the DSB's authorization to suspend the application to the United States of concessions or other obligations under the covered agreements. The request was only the first step towards the actual imposition of sanctions. The United States still had the possibility to take action before countermeasures were actually applied. However, any action would have to be expedient and fully compatible with WTO rules. The EU would continue to closely monitor the US implementing action and would not hesitate to exercise its rights should full compliance not be achieved.

74. The representative of the United States said that, as an initial matter, his country failed to see why this Agenda item was proceeding at the present meeting. As the United States had mentioned at the outset of the present meeting, on 12 February 2010, the United States had filed its objection to the level of suspension of concessions or other obligations requested by the EU and its claim that the EU's request did not follow the principles and procedures set forth in Article 22.3 of the DSU. Under the second sentence of Article 22.6 of the DSU, if the Member concerned (in this case, the United States) made the objection or claim set out in the US filing, "the matter shall be referred to arbitration". There was no decision for the DSB to take at the present meeting, and no action was required of the DSB. In fact, as Japan had noted earlier, Article 22.6 did not refer to any decision by the DSB. As the United States had explained, the better course would have been the one that the DSB had followed in January 2008, when the DSB had adopted its Agenda without the item relating to Japan's recourse to Article 22.2 of the DSU. The minutes of the meeting could be found in document WT/DSB/M/245. Regrettably, the EU had chosen not to follow the common-sense approach of that precedent. The United States, therefore, had no objection if the DSB wished, under this Agenda item, to confirm that it may not consider the EU's request for authorization, since the matter had been referred to arbitration.

75. In addition, the United States had a few reactions to the EU's request and statement. To begin, the United States regretted that the EU had decided to escalate this dispute by requesting authorization to suspend concessions or other obligations in connection with this dispute. As had been explained earlier in the present meeting, the United States was conducting consultations with all interested parties in order to address the findings in this dispute. In addition, the United States strongly disagreed with the EU's specific proposal for the suspension of concessions and other obligations. Those issues would be taken up in the arbitration that was currently underway.

76. There were certain elements of the EU's request, however, on which the United States wished to comment. First, the United States was puzzled by the lengthy reference in the EU's request to the dispute brought by Japan (DS322). The EU did not have any right to suspend concessions or other obligations with respect to the rulings in that dispute. Second, the United States noted that the EU's request referred to Article 6 of the DSU. However, Article 6 did not apply in the present case. Article 6 dealt with the establishment of panels. Despite the fact that the EU referred to an "Article 22.6 DSU arbitration panel", that was incorrect. Article 22 made it clear that the arbitration was conducted by an "arbitrator", not a panel. Of course, the United States had not placed a request for a panel on the Agenda of the present DSB meeting, so no panel was being established nor had the EU requested the establishment of a panel. On a related point, the United States noted that in its request for authorization, the EU discussed at some length possible arbitration under Article 22.6 of the DSU. The EU had even gone so far as to purport to specify the terms of reference of the arbitration. The EU was not in any position to do so. Its request was not made under Article 22.6, but rather under Article 22.2. In fact, the EU was requesting authorization to suspend the application to the United States of concessions or other obligations. The EU was not seeking nor initiating any arbitration. Indeed, presumably the EU would have preferred that its request be granted without arbitration. Those aspects of the EU's request had no procedural basis, nor did they have any basis in the text of the DSU, and they did not affect the arbitration.

77. The representative of Japan said that, as an interested third party, his country had been actively involved in the dispute settlement proceedings in this dispute, as it concerned the same "zeroing" methodology used by the United States, which Japan had challenged in the parallel dispute "US – Measures Relating to Zeroing and Sunset Reviews" (DS322). There was a substantial overlap between the matter referred to arbitration in this dispute and the one in the DS322 case, because both requests by Japan and the EU, which formed part of the matters in the respective proceedings, had addressed the US failure to bring into compliance the same measure, the "zeroing" methodology, that had been found to be WTO-inconsistent in both disputes. Therefore, Japan had a substantial interest in the matter before the arbitration proceeding in this dispute. Japan recalled that, in the DS322 case,

it had, on 10 January 2008, requested the authorization for suspension of concession and other obligations[9], and as a result of the United States' objection,[10] the matter had been referred to arbitration. The arbitration proceeding was being suspended[11] but, after the DSB adopted the Appellate Body Report and compliance Panel Report on 31 August 2009, the arbitration could be resumed upon a request by either party, in accordance with the Confirmed Procedures decided by Japan and the United States.[12] With respect to the issue of whether a DSB decision was required for the referral of the matter to arbitration under Article 22.6, Japan would not repeat its position on this issue but wished to simply refer to its statement made prior to the adoption of the Agenda of the present meeting.

78. The representative of the European Union said that on the procedural point raised by the United States, her delegation wished to reiterate what it had stated previously, namely that it considered that referral to Article 22.6 arbitration was an important procedural step that should be subjected to the DSB's action. Such action was automatic. The DSB's action would serve as a basis for subsequent action by the DSB under Article 22.7 of the DSU; i.e. the authorization of suspension of concessions at the level determined by the Arbitrator, pursuant to Article 22.6 of the DSU. On the substantive points, this matter shall now be referred to arbitration, so it was therefore not appropriate to discuss it in the DSB.

79. The DSB took note of the statements, and it was agreed that the matter raised by the United States in document WT/DS294/36 is referred to arbitration, as required by Article 22.6 of the DSU.

6. United States – Anti-dumping measures on polyethylene retail carrier bags from Thailand

(a) Report of the Panel (WT/DS383/R)

80. The Chairman recalled that, at its meeting on 20 March 2009, the DSB had established a Panel to examine the complaint by Thailand pertaining to this matter. The Report of the Panel contained in document WT/DS383/R had been circulated on 22 January 2010 as an unrestricted document. The Report of the Panel was before the DSB for adoption at the request of Thailand. The adoption procedure was without prejudice to the right of Members to express their views on the Report.

81. The representative of Thailand said that his country thanked the Members of the Panel as well as the Secretariat (Rules Division) for their work on this dispute. He said that Members would recall that this dispute involved Thailand's challenge of the use by the United States of "zeroing" in weighted-average to weighted-average price comparisons in an original anti-dumping investigation. Thailand welcomed the adoption of the Panel Report finding that the measures at issue were inconsistent with the first sentence of Article 2.4.2 of the Anti-Dumping Agreement. Thailand noted that the DSB had adopted recommendations and rulings finding the use of this type of "zeroing" to be WTO-inconsistent on several occasions, including the case "US – Measures Relating to Shrimp from Thailand" (DS343). Thailand further noted its long-standing concern about the use of the zeroing methodology in all stages of anti-dumping proceedings, and its consistent position that all forms of zeroing should be eliminated. In addition, Thailand wished to draw Members' attention to the fact that the proceedings in this dispute had involved novel and time-saving procedures, including the foregoing of a panel meeting, as provided for in the procedural agreement concluded between

[9] WT/DS322/23 and WT/DS322/24.
[10] WT/DS322/25.
[11] WT/DS322/30.
[12] WT/DS322/26.

Thailand and the United States circulated in document WT/DS383/4 on 12 January 2010. Thailand expressed its appreciation to the United States, as well as to the third parties, for the cooperative manner in which they had participated in these proceedings. As a developing country, Thailand did not have unlimited resources to expend on dispute settlement, and the procedural agreement had enabled it to expedite those proceedings in an efficient manner. Thailand looked forward to the US prompt implementation of the Panel's findings in this dispute within a reasonable period of no more than six months, in accordance with the procedural agreement, and to continuing the good cooperation that the parties had enjoyed throughout the proceedings.

82. The representative of the United States said that his country thanked the members of the Panel and the Secretariat for their work on this dispute. As it had indicated in its statements on zeroing in the past, the US concerns with findings on the topic had been principally directed at those findings relating to zeroing outside the context of average to average comparisons in investigations. With regard to zeroing in the context of average to average comparisons in investigations, the US Department of Commerce had announced years ago that it would discontinue zeroing in this context as a result of earlier DSB recommendations and rulings. Accordingly, in the present dispute, the United States and Thailand had sought an efficient means of addressing Thailand's claims with a minimal burden on the resources of the parties and the dispute settlement system. The United States believed the procedural agreement reached achieved that goal. The United States appreciated Thailand's cooperation during this dispute and looked forward to continuing that cooperation going forward.

83. The DSB took note of the statements and adopted the Panel Report contained in WT/DS383/R.

7. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/421)

84. The Chairman drew attention to document WT/DSB/W/421, 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. He proposed that the DSB approve the names contained in document WT/DSB/W/421.

85. The DSB so agreed.

8. Colombia – Indicative prices and restrictions on ports of entry

(a) Statement by Colombia

86. The representative of Colombia, speaking under "Other Business", said that, pursuant to the Award of the Arbitrator, which had been circulated on 2 October 2009 in document WT/DS366/13, Colombia had been granted a reasonable period of time for implementation of the DSB's recommendations and rulings in the dispute: "Colombia – Indicative Prices and Restrictions on Ports of Entry". Although it was too soon for the DSB to start its monitoring function under Article 21.6 of the DSU, Colombia, in a gesture of goodwill, wished to inform Members that it had put into place implementing measures before the end of the reasonable period of time. Those measures were as follows: (i) Customs Authority Resolution No. 013518 of 11 December 2009, repealing the measures that had restricted the entry of products from Panama at customs in Bogotá and Barranquilla, authorizing the release of goods where there were doubts as to the declared value, and establishing mechanisms to ensure the payment of customs taxes following a dispute over value; (ii) Government Decree No. 111 of 21 January 2010, establishing various measures, including a new risk control system for customs, and amending Article 128.5 of the Colombian Customs Statute in order to make it consistent with the DSB's recommendations; and (iii) Customs Authority Resolutions Nos. 545,

546, 547 and 548 of 2010, which had given effect to the other DSB recommendations. Colombia would provide the DSB with a status report in writing regarding this matter prior to the expiry of the time-period for reporting on implementation in this dispute, as stipulated in Article 21.6 of the DSU.

87. The DSB took note of the statement.

9. Proposed amendments to the Working Procedures for Appellate Review

(a) Statement by the Chairman

88. The Chairman, speaking under "Other Business", said that, as he had announced at the outset of the present meeting, he would now make a statement concerning the amendments proposed by the Appellate Body to the Working Procedures for Appellate Review, which had been circulated in document WT/AB/WP/W/10. He recalled that he had first raised this matter at the DSB meeting of January 2010. At that time, he had referred to the procedures for consultations between the Chairperson of the DSB and the WTO Members in relation to amendments to the Working Procedures for Appellate Review. He had also indicated that before placing this matter on the DSB's Agenda, it would seem appropriate to allow time for reflection and, as appropriate, informal consultations. Since then, he had made informal contacts with a number of Ambassadors regarding this matter. The consensus view was that, given the complexity of these proposed amendments, Members needed more time to consult with their capitals. They believed that it would, therefore, not be beneficial to try to rush this matter and that further informal consultations were still needed. In addition, he understood that a number of Members had met to begin such informal consultations. In light of this, once Members had indicated that they were ready for consideration by the DSB, he or his successor would conduct informal consultations and then place this matter on the DSB's Agenda so that Members would be able to express their views on the proposed amendments for the record. These views would then be conveyed to the Appellate Body with the request that the Appellate Body take them into account.

89. The DSB took note of the statement.