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18 November 2011

MINUTES OF MEETING

Held in the Centre William Rappard
on 18 November 2011

Chairperson: Mrs. Elin Østebø Johansen (Norway)

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1. Appointment of Appellate Body members

1. The Chairperson recalled that at its meeting on 24 May 2011, the DSB had agreed to the Chair's proposal on procedures for selecting two new Appellate Body members. Those procedures were as follows: (i) to launch as from 24 May 2011 the selection process for the appointment of two new members of the Appellate Body to replace Ms. Lilia Bautista and Ms. Jennifer Hillman whose terms of office would expire on 10 December 2011; (ii) to set a deadline of 31 August 2011 for Members' nominations of candidates for those two positions; (iii) to agree to establish a Selection

Committee, based on the procedures set out in document WT/DSB/1, consisting of the Director-General and the 2011 Chairpersons of the General Council, the Goods Council, the Services Council, the TRIPS Council and the DSB, to be presided by the 2011 DSB Chair; (iv) to request the Selection Committee to conduct interviews with candidates and to hear views of Members in September/October 2011; and, (v) to make recommendations to the DSB by no later than 10 November 2011 so that the DSB could take a final decision at the latest at its regular meeting in November 2011.

2. The Chairperson recalled that, by the agreed deadline of 31 August 2011, four candidates had been nominated by three different WTO Members. Curricula Vitae of the candidates had been circulated as Job documents to all delegations. Subsequently, on 26 and 27 September 2011, the Selection Committee had conducted interviews with the four candidates. Then, on 31 October, 1 and 2 November 2011, the Committee had met individually with 43 delegations to hear their views on the candidates. The Committee had also received the views of two delegations in writing. To arrive at its final recommendation, the Selection Committee had carried out its work in accordance with the guidelines set out in the applicable DSU provisions and document WT/DSB/1 governing the selection and appointment of Appellate Body members. The Selection Committee's task had been very challenging given the outstanding calibre and impressive qualifications of the candidates. On behalf of the Selection Committee and the entire WTO Membership, she thanked the candidates who had participated in the process and their respective Governments for having nominated them. As had been communicated by fax to all delegations on 7 November 2011, the Selection Committee had recommended that Mr. Ujal Singh Bhatia of India and Mr. Thomas Graham of the United States be appointed as members of the Appellate Body for four years beginning on 11 December 2011. She, therefore, proposed that the DSB take a decision to accept the Selection Committee's recommendation.

3. The DSB so agreed.

4. The Chairperson said that, on behalf of the Selection Committee and the entire WTO Membership, she once again thanked all the candidates and their respective Governments, and congratulated Mr. Bhatia and Mr. Graham on their appointments.

5. The representative of India said that his country thanked Members for the appointment of Mr. Ujal Singh Bhatia as a member of the Appellate Body. In particular, India thanked the Selection Committee for its recommendation, the Secretariat for its assistance and WTO Members for their encouragement and support. In addition, India wished to commend Pakistan for having nominated an extremely capable and well-qualified candidate to the Appellate Body. Pakistan's nomination provided Members with depth, variety and an alternative in the selection process. India also wished to congratulate the United States on the appointment of Mr. Thomas Graham to serve on the Appellate Body. The Appellate Body was the conscience keeper of the WTO. It protected the rights of Members and reminded them of their obligations. While expressing their faith in the two selected candidates, WTO Members had also put a tremendous responsibility on them. India was confident that with their calibre and capability, the two new members of the Appellate Body would fulfil their responsibility in an independent, impartial and objective manner and would live up to Members' expectations and faith. India also wished to take this opportunity to put on record its appreciation for the contribution made to the Appellate Body by Ms. Bautista and Ms. Hillman. Their sincerity, hard work and commitment helped to preserve a strong, fair and independent Appellate Body and provided predictability and certainty to the dispute settlement mechanism. India wished them well in their future endeavours.

6. The representative of the United States said that his country thanked the Chairperson and the other members of the Selection Committee for their hard work and recommendation, which had aided the DSB in taking its decision at the present meeting. The United States also wished to thank all

candidates who had been willing to be put forward for this selection process, including, of course, the outstanding candidate from Pakistan. The United States wished thanks also to those delegations that had met with the nominees and had expressed their views to the Committee. Finally, the United States said that it was grateful to the Secretariat for its assistance during the process. The United States wished to take the opportunity to congratulate the two new members of the Appellate Body that the DSB had just appointed and welcomed, first of all, the appointment of Mr. Thomas Graham. As Members were aware, Mr Graham had a long and distinguished career in international trade, including early in his career teaching about the GATT 1947 in Venezuela, being involved in multilateral trade negotiations, and practicing trade law. Mr. Graham would bring to the Appellate Body a broad range of experience and understanding that would serve the Appellate Body and Members well. The United States also welcomed the appointment of former Ambassador Ujal Bhatia to the Appellate Body, noting that of course all Members knew him well personally. The United States was pleased to have had the opportunity to have met him during the selection process. It was evident that his familiarity with the WTO and his impressive knowledge and experiences would contribute significantly to the work of the Appellate Body. The United States was aware that Members would continue to bring the Appellate Body many challenging issues and disputes and the United States was confident that the two new members would be invaluable in helping the Appellate Body carry out its work. The United States said that it looked forward to working with both of them. The United States said that it also owed thanks to two departing members of the Appellate Body. The United States then took the opportunity to thank Ms. Jennifer Hillman for all of her tireless work in furtherance of the many demands placed on the Appellate Body and in helping WTO Members resolve their disputes and very much expressed appreciation for all of her efforts on behalf of the Members and wished her well in the future. Finally, the United States thanked Ms. Bautista for her four years of service on the Appellate Body. The United States said that it very much appreciated the contributions that she had been able to make to the Appellate Body's work. The United States extended its very best wishes to her.

7. The representative of the European Union said that the EU thanked those Members who had participated in the nomination process for allowing a choice amongst high-quality candidates. The EU congratulated Messrs. Bhatia and Graham on their appointment and thanked the Selection Committee for its work and its recommendation, which the EU endorsed. The EU wished the successful candidates good luck in their challenging tasks as members of the Appellate Body. They were taking office at a particularly busy time for the Appellate Body and their hard work would be required from the start. While the candidates that had been under consideration this time were of the highest calibre, the EU had a systemic concern about how Members could, in the future, ensure that they had a choice amongst a sufficient number of candidates in order to maximize the chances of high-quality appointments. As could be seen at the present meeting, the process already produced very good results. However, the EU looked forward to discussing with the Secretariat and interested Members how it could be further improved.

8. The representative of the Bolivarian Republic of Venezuela thanked the Selection Committee for its work during the selection process. Although the Permanent Representative of Venezuela had been absent from Geneva and had not been able to participate in the consultations carried out by the Selection Committee, Venezuela had followed the selection process very closely. Having examined the Selection Committee's conclusions and recommendation of 7 November 2011, Venezuela welcomed the appointment of Mr. Ujal Singh Bhatia, who had spent six years in Geneva as India's Ambassador and Permanent Representative to the WTO. Venezuela warmly welcomed Mr. Bhatia and wished to assure him of its unlimited support and cooperation. Mr. Bhatia was very proactive and had demonstrated a high level of knowledge and leadership. He had contributed to the Doha Round negotiations and had helped to advance the interests of developing-countries. Venezuela was certain that Mr. Bhatia's appointment would improve developing-country representation in the Appellate Body and would ensure greater guarantees for developing-countries in disputes settled by the Appellate Body. Venezuela was pleased that a developing-country representative had been

recommended for Appellate Body membership. Venezuela would have also liked to have seen the appointment of Mr. Manzoor Ahmad (Pakistan) who was another worthy candidate nominated by a developing country. Mr. Ahmad had an excellent profile for participating in the Appellate Body and Venezuela regretted that he had not been recommended. Venezuela hoped that more candidates from developing countries would be considered in the future so as to continue strengthening the presence of developing countries in the various WTO bodies. This would help to reduce asymmetries in the international economic system. Venezuela believed that the composition of the Appellate Body, as well as of the other WTO bodies, must be more balanced. The current situation did not represent the reality of WTO Membership and there was need for greater developing-country representation.

9. The representative of Brazil said that his country congratulated Messrs. Ujal Singh Bhatia and Thomas Graham on their appointment as members of the Appellate Body, in a process that had further contributed to the legitimacy and representativeness of the Appellate Body. Brazil wished the new Appellate Body members success in addressing the difficult task ahead of them and was certain of their commitment to the independence of the Appellate Body and confident in their technical skills.

10. The representative of China said that his country thanked the Selection Committee for its efforts devoted to the selection process. China welcomed and congratulated the two new members of the Appellate Body. The impartiality and independence of Appellate Body members were essential to the credibility and effective functioning of the WTO dispute settlement system. As an increasingly substantial participant in the dispute settlement mechanism, China hoped and was confident that the newly appointed Appellate Body members would abide by the principles and rules established under the DSU, the Rules of Conduct and the Working Procedures for Appellate Review, and that they would perform their duties faithfully, independently and impartially. China attached utmost importance to the smooth functioning of the Appellate Body, and would continue to work with the Appellate Body. China thanked the outgoing Appellate Body members, Ms. Lilia Bautista and Ms. Jennifer Hillman, for their remarkable and persevering services and for their contribution over the past years, and wished them well in their future endeavours.

11. The representative of Cuba said that his country thanked the Selection Committee for its work given the high-calibre of the four candidates. Cuba particularly welcomed the appointment of Mr. Bhatia given his qualifications and the role that India played in the multilateral trading system. However, Cuba was concerned that one particular country continued to be represented in the Appellate Body. While Cuba did not question the qualifications of that country's candidate, it was concerned that the country in question was in violation of WTO rules and did not comply with the DSB's rulings. Cuba would have preferred the appointment of Pakistan's candidate, along with Mr. Bhatia. This would have led to a better representation of developing countries in the Appellate Body. That being said, Cuba supported the recommendation of the Selection Committee, which was based on merits.

12. The representative of Singapore said that her country thanked the Selection Committee and the Secretariat for their work towards the selection process. Singapore considered that the multilateral trading system was important and that the dispute settlement mechanism was central to this system. The WTO dispute settlement system had been used by Members to resolve disputes, and it had resolved many of the disputes within the 15-year period of its establishment, arguably more than any other international dispute settlement system. This was testimony of Members' reliance on the system which, with its two-tier dispute settlement mechanism with the Appellate Body at its apex, was unique in international law. The Appellate Body played a fundamental role as the standing body to hear appeals from panel cases. As the number of disputes increased and as disputes became more complex, it was imperative to have well-qualified women and men to serve on the Appellate Body. It was important for the Appellate Body to be sound, objective, and to act on the basis of legal principles, given its role as the credible arbiter between Members in disputes. Singapore had participated in the selection process and had given its views to the Selection Committee on the

strengths of each of the four candidates and how each of them could contribute to the system. Singapore thanked Ms. Bautista and Ms. Hillman for their contributions and congratulated Messrs. Thomas Graham and Ujal Singh Bhatia. Singapore wished them well and looked forward to their contribution to the system.

13. The representative of Australia said that her country thanked all three WTO Members: Pakistan, India and the United States, for having nominated high- calibre candidates for membership of the Appellate Body. Australia thanked the Secretariat and the Selection Committee for their hard work in conducting the selection process, hearing the views of delegations and bringing the process to a successful conclusion. Australia welcomed and congratulated the two new members of the Appellate Body who had just been appointed, Mr. Singh Bhatia of India and Mr. Thomas Graham of the United States. Australia was confident that they would carry out their duties as Appellate Body members faithfully and impartially, so as to represent the interests of all Members in ensuring the proper functioning of the rules-based multilateral trading system. Australia acknowledged and expressed its appreciation to the two outgoing members of the Appellate Body, Ms. Bautista and Ms. Hillman, for their dedication and hard work which had greatly contributed to the Appellate Body's work.

14. The DSB took note of the statements.

2. Surveillance of implementation of recommendations adopted by the DSB

- (a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.108)
- (b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.108)
- (c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.83)
- (d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.46)
- (e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.26)
- (f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.23)
- (g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/38/Add.17)
- (h) China – Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products: Status report by China (WT/DS363/17/Add.10)

15. 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 2 be considered separately.

- (a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.108)

16. The Chairperson drew attention to document WT/DS176/11/Add.108, 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.

17. The representative of the United States said that his country had provided a status report in this dispute on 7 November 2011, in accordance with Article 21.6 of the DSU. Legislative proposals had been introduced in the current 112th Congress that would implement the recommendations and rulings of the DSB. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

18. 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.

19. The representative of Cuba said that it had been almost ten years since the adoption of the DSB's recommendations and rulings pertaining to the Section 211 dispute, but the United States continued to fail to comply with those rulings. The most recent US status report did not mention any measures that the US Administration was obliged to take in order to solve this dispute. Cuba had systematically denounced this non-compliance and had explained the motives that had led to the imposition of Section 211. One of the most important reasons was to promote the interests of the Bacardi Company by depriving the right holders of the Havana Club trademark of their rights in the US territory. All this was linked to the US policy and blockade against Cuba. Once again, the international community had overwhelmingly rejected the implementation of that blockade at the Sixty-Sixth Session of the UN General Assembly. With 186 votes in favour, the principal and most universal organ of the United Nations had adopted Resolution 65/6, entitled: "Necessity of Ending the Economic, Commercial and Financial Blockade imposed by the United States of America against Cuba". Similarly, the Heads of State and Government of the Ibero-American countries, meeting in Asuncion, Paraguay, on the occasion of the 21st Ibero-American Summit, had reaffirmed, once again, their "emphatic rejection of the implementation of laws and measures contrary to international law, such as the Helms Burton Act, and urged the government of the United States to end its application". Accordingly, they had also requested the United States to "comply with the provisions contained in 20 consecutive resolutions approved by the General Assembly of the United Nations and to end the economic, commercial and financial blockade that it maintains against Cuba". However, the United States continued to ignore the requests from the international community. The violations of international law by the world's leading economy were numerous and affected other Members, not only Cuba. Cuba noted that the Agenda of the present meeting demonstrated that the United States continued to fail to comply with the DSB's rulings in many long-standing disputes. Cuba, once again, called on the United States to repeal Section 211, which had been found, almost a decade ago, to be incompatible with the WTO's fundamental rules and principles. The continued application of Section 211 violated the TRIPS Agreement, the DSB's rulings and the rules of the multilateral trading system. After 50 years of applying the blockade against Cuba, the United States should have realized that its policy had not worked and would not work. The United States had only one option: i.e. to end that hostile, illegal and inhuman policy.

20. The representative of the Bolivarian Republic of Venezuela noted that, once again, the Section 211 dispute concerning Havana Club rum was on the DSB's Agenda. Venezuela also noted that there was no change in the content of the US status report submitted before the DSB at the present meeting. In Venezuela's view, this could be described as "action without results". The United States continued to apply its law that was contrary to the TRIPS Agreement, incompatible with the principles of national and most-favoured-nation treatment and undermined the dispute settlement

mechanism, which was one of the main achievements of the Uruguay Round. Venezuela had observed for almost ten years the US reluctance to comply with the Appellate Body's ruling. Moreover, recently, the international community had overwhelmingly rejected the blockade imposed on Cuba at the Sixty-Sixth Session of the UN General Assembly of the United Nations, by adopting Resolution 65/6 entitled: "Necessity of Ending the Economic, Commercial and Financial Blockade Imposed by the United States of America against Cuba", with 186 votes in favour. However, the United States did not show any sign of compliance. In conclusion, Venezuela called upon the United States, as it had done on many occasions, to end this policy of economic, commercial and financial embargo against Cuba and to respect its commitment towards the Dispute Settlement Body by complying with the DSB's recommendations.

21. The representative of the Plurinational State of Bolivia said that his country had, once again, noted that the US status report, which was similar to the previous reports, demonstrated the US failure to comply with the DSB's recommendations and rulings. Bolivia, once again, expressed its concern about the lack of progress in this dispute. Such non-compliance undermined the credibility of the multilateral trading system, caused serious harm to a developing country and raised systemic concerns. Bolivia urged the United States to comply with the DSB's recommendations and rulings and to take steps to remove the restrictions imposed under Section 211. Bolivia commended on the adoption of Resolution 65/6 in the UN General Assembly. This was a step towards putting an end to the US embargo imposed on Cuba. Bolivia urged others to take similar actions and supported Cuba's statement.

22. The representative of the Dominican Republic said that her country thanked the United States for its status report regarding its progress in the implementation of the DSB's recommendations and rulings to the effect that Section 211 was inconsistent with Article 42 of the TRIPS Agreement. In that regard, the Dominican Republic, once again, urged the United States to expedite domestic measures to enable them to finally comply with the DSB's recommendations and rulings. The lack of compliance over a long period of time undermined the credibility of the DSB.

23. The representative of Nicaragua said that his country thanked the United States for its status report regarding the implementation of the DSB's decision and the Appellate Body's findings made in 2002 with regard to Section 211 and its inconsistency with the provisions of the TRIPS Agreement. Nicaragua had faith in the effective operation of the dispute settlement system and attached importance to the credibility of the system. However, Nicaragua regretted that the US report did not reflect any substantive progress and, once again, confirmed the continued failure by the United States to comply with the DSB's recommendations and rulings. This undermined the credibility of the DSB and the multilateral trading system. Nicaragua supported Cuba's statement and called on the United States to comply with the DSB's rulings by removing the restrictions imposed under Section 211 and, more broadly, by lifting the economic, commercial and financial embargo that had been imposed on Cuba for the past 50 years.

24. The representative of China said that his country thanked the United States for its status report and its statement made at the present meeting. China regretted that the United States had, once again, reported non-compliance. This prolonged situation of non-compliance was highly incompatible with the prompt and effective implementation as required under 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 and recommendations without any further delay.

25. The representative of Zimbabwe said that his country thanked the United States for its status report and noted the US willingness to continue to work on a solution to resolve this matter. Zimbabwe wished to be associated with the statements made by the previous speakers in support of Cuba and called on the United States to comply with the DSB's recommendations and rulings by bringing the inconsistent measure into conformity with its obligations under the TRIPS Agreement.

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

27. The representative of Chile said that, in the context of the discussion under this Agenda item, his country wished to make a systemic point. In this regard, Chile wished to stress that the failure to comply with the DSB's rulings and recommendations undermined the credibility of the dispute settlement system.

28. The representative of Mexico said that his country thanked the United States for its status report, which reported non-compliance. Mexico urged the parties to resolve this dispute through one of the legal remedies provided under the DSU provisions. Mexico noted that any Member could initiate its own dispute if it considered that its rights were being impaired or nullified. Mexico also noted that the discussion under this Agenda item could provide useful input for the ongoing discussions carried out in the context of the DSU negotiations, in particular with regard to the issue of effective compliance.

29. 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.108)

30. The Chairperson drew attention to document WT/DS184/15/Add.108, 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.

31. The representative of the United States said that his country had provided a status report in this dispute on 7 November 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 recommendations and rulings of the DSB 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.

32. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan noted that the United States had taken certain measures to implement part of the DSB's recommendations in November 2002. Japan hoped that the United States would soon be in a position to report to the DSB on more tangible progress with respect to the implementation of the remaining part of the DSB's recommendations. 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".¹ Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

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

¹ Article 3.3 of the DSU.

- (c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.83)

34. The Chairperson drew attention to document WT/DS160/24/Add.83, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

35. The representative of the United States said that his country had provided a status report in this dispute on 7 November 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.

36. The representative of the European Union said that the EU had taken note of, and thanked the United States for its status report. The EU remained keen to move quickly in resolving this case.

37. 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.46)

38. The Chairperson drew attention to document WT/DS291/37/Add.46, 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.

39. The representative of the European Union said that, as mentioned at the 25 October 2011 DSB meeting, EU and US officials had held another technical meeting on biotechnology issues on 27 September 2011. The continued dialogue gave both 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. On 17 June 2011, the Commission had adopted two more authorization decisions², together with the decision on the renewal of the authorization of maize 1507. Progress had also been made on other applications for authorization. Four more draft applications had been voted in the Standing Committee in February 2011³ and had been transmitted to the Council, which would examine those applications in the coming weeks. Two draft decisions on GM soybeans had been voted at the Standing Committee on the food chain and animal health (SCFCAH) meeting on 14 November 2011.⁴ Two more authorizations on GM soybean would be possibly voted at the Standing Committee on 12 December 2011.⁵ Since September 2011, EFSA had adopted a scientific opinion for food and feed authorization⁶ and one opinion for cultivation.⁷

² Maize MON89034xMON88017 and cotton GHB614.

³ MIR604xGA21 maize, BT11xMIR604 maize, Bt11xMIR604xGA21 maize, 281-24-236/3006-210-23 cotton.

⁴ A5547-127, and the renewal on 40-3-2.

⁵ MON 87701 and 356043.

⁶ Renewal of MON531; MON89034x1507xNK603 maize; MON89034x1507xMON88017x59122 maize.

⁷ MON88017 maize.

40. 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. At the July meeting of the DSB, the United States had recalled the DSB rulings that biotech product bans adopted by six EU member States breached the EU's obligations under the SPS Agreement because the measures were not based on risk assessments.⁸ The United States had further recalled that elements of the member State bans subject to the DSB's recommendations and rulings remained in place. Moreover, the biotech product bans had spread to additional EU member States, including France, Germany, and Hungary. At the present meeting, the United States wished to express particular concern with a broad biotech product ban that had been adopted by Hungary, Hungary had currently banned the cultivation of all biotech products. The ban extended to products that the EU's scientific authority had found to be safe, and that the EU had approved for use. The ban likewise extended to biotech maize varieties specifically covered by the DSB's recommendations and rulings in this dispute. The ban that had been adopted by Hungary had substantial trade impacts, especially in light of the fact that Hungary was a major producer of maize. Furthermore, the economic impact extended beyond biotech maize to sales and planting of non-biotech maize. That past spring, Hungarian officials had ordered the destruction of several thousand hectares of non-biotech maize, on the apparent basis that trace levels of biotech maize had been detected. That action had been taken despite the fact that biotech maize had a proven safety record, had passed rigorous safety assessments by the EU's scientific committees, and had been approved at the EU-level. The action had resulted in substantial economic losses to seed producers, as well as Hungary's own farmers. The United States urged the EU to take steps to address bans, adopted by Hungary and other EU member States, on biotech products that had been approved at the EU level.

41. 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.26)

42. The Chairperson drew attention to document WT/DS322/36/Add.26, 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.

43. The representative of the United States said that his country had provided a status report in this dispute on 7 November 2011, in accordance with Article 21.6 of the DSU. In December 2010, the Arbitrator in the proceeding under Article 22.6 of the DSU in this dispute had issued a communication stating that it had accepted a joint request by the parties to the dispute to suspend its work. On 7 November 2011, in response to a joint request by the United States and Japan, the Arbitrator had issued a communication stating that it had decided to continue further the suspension. The communication of the Arbitrator had been circulated to the DSB in document WT/DS322/40. 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. At the present time, the US Department of Commerce was continuing with its ongoing work on the December proposal.

44. 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 United States is continuing its ongoing work on the proposal" by the US Department of Commerce. As had been stated in the previous DSB meetings, Japan took the US implementation efforts as a positive step forward. However, Japan continued to seek prompt and full compliance by the United States with respect to all

⁸ "European Communities – Measures Affecting the Approval and Marketing of Biotech Products", WT/DS291/R (adopted 21 November 2006), paras. 8.21 to 8.30.

of the measures at issue that were subject to the recommendations in this dispute. As the United States had stated, upon request by the parties, the Article 22.6 Arbitrator "has decided to continue the suspension of its work"⁹ until 30 November 2011. Japan called on the United States to fully comply by then. Japan looked forward to a continued 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.

45. The representative of China said that his country thanked the United States for its status report and its statement made at the present meeting. China welcomed the steps taken by the United States towards the implementation of the DSB's rulings and recommendations on zeroing matters. However, China remained very concerned as to how the United States would implement the DSB's decision on zeroing matters. China would follow the US implementation steps and urged the United States to take action to fully comply with the DSB's recommendations and rulings without further delay.

46. 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.23)

47. The Chairperson drew attention to document WT/DS350/18/Add.23, 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.

48. 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 7 November 2011, and earlier in the present meeting's discussion of Agenda item 1(e). The United States referred Members to that report and statement for further details.

49. 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 taken 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 in the WTO and bilaterally in order to ensure that its concerns were addressed by the United States. The EU looked forward to further information from the United States on its intentions.

50. 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.17)

51. The Chairperson drew attention to document WT/DS294/38/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 US laws, regulations and methodology for calculating dumping margins.

52. 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 7 November 2011, and earlier in the discussion under Agenda item 1(e). The United States referred Members to that report and statement for further details.

⁹ WT/DS322/40.

53. The representative of the European Union said that the EU thanked the United States for its status report and referred Members to its statements made under Agenda item 1(f) of the present meeting.

54. 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.10)

55. The Chairperson drew attention to document WT/DS363/17/Add.10, 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.

56. The representative of China said that his country had provided a status report in this dispute on 7 November 2011, in accordance with Article 21.6 of the DSU. China had made tremendous efforts to implement the DSB's rulings and recommendations and had, thus far, completed amendments to most measures at issue. China believed that this matter would be properly resolved through joint efforts and mutual cooperation by relevant parties.

57. The representative of the United States said that his country thanked China for its status report and its statement made at the present meeting. As it had previously noted, the United States remained concerned by 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 these matters. The United States hoped that China would take steps to resolve this matter soon.

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

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

(a) Statements by the European Union and Japan

59. 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.

60. 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 on implementation in this dispute.

61. The representative of Japan said that FY 2011 distributions appeared to be well underway¹⁰ and, thus, the CDSOA remained operational. As the US Customs and Border Protection had explained, "the distribution process will continue for an undetermined period".¹¹ 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 pertaining to this dispute.

62. The representative of India said that his country thanked Japan and the EU for bringing this item before the DSB. India had mentioned in the past and wished to repeat at the present meeting that the CDSOA remained fully operational, affecting the rights of WTO Members and undermining the credibility of the dispute settlement mechanism. India requested that the United States report full compliance without any further delay.

63. 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 an obligation to submit status reports pertaining to 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 pertaining to this dispute.

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

65. 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 implement the DSB's rulings and recommendations on this matter.

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

67. The DSB took note of the statements.

¹⁰ See US Customs and Border Protection's website at:
http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cdsoa_11/

¹¹ 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