

Dispute Settlement Body
20 July 2011

MINUTES OF MEETING

Held in the Centre William Rappard
on 20 July 2011

Chairperson: Mrs. Elin Østebø Johansen (Norway)

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

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1. Surveillance of implementation of recommendations adopted by the DSB

- (a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.104)
- (b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.104)
- (c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.79)
- (d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.42)
- (e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.22)
- (f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.19)
- (g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/38/Add.13)
- (h) China – Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products: Status report by China (WT/DS363/17/Add.6)
- (i) European Communities and its Member States – Tariff treatment of certain information technology products: Status report by the European Union (WT/DS375/18 - WT/DS376/18 - WT/DS377/16)

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

- (a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.104)

2. The Chairperson drew attention to document WT/DS176/11/Add.104, 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 7 July 2011, in accordance with Article 21.6 of the DSU. Several 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.

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

5. The representative of Cuba said that each month the United States was presenting the same status report regarding the Section 211 dispute. In Cuba's view, the US status report was not in line with the provisions of Article 21.6 of the DSU, which required the submission of status reports on progress in the implementation of the DSB's recommendations and rulings. The United States had not reported on any "progress". The only difference between the most recent status report and those submitted two years ago was a reference to the number of sessions of the US Congress. No progress had been made even though, in March 2010, a hearing on Section 211 had been held for the first time in the House of Representatives Committee on the Judiciary. It was irresponsible on the part of the United States to repeat the same information at every DSB meeting without making any commitment as to when it would comply with the DSB's recommendations and rulings. Cuba, as well as other Members, continued to reiterate their concerns about US non-compliance, but the United States paid no heed to them and disregarded the concerns expressed by some important US institutions on compliance with international intellectual property rules.

6. At the March 2010 hearing in the House of Representatives Committee on the Judiciary, the President of the National Foreign Trade Council, which represented 250 US companies, had stated that Section 211 was inconsistent with the long-standing principles of the US trademark legislation and gave no benefit to US businesses. Accordingly, he had urged the US Congress to repeal Section 211 in its entirety. Similarly, the Global Intellectual Property Centre of the US Chamber of Commerce had also advocated that Section 211 be repealed. The United States must respect the DSB's work, the DSU provisions, the TRIPS Agreement as well as other Members. Cuba believed that the only acceptable way of doing so was to fully repeal Section 211. Any attempt to disguise and perpetuate the measure would amount to a political manipulation of the US Congress by anti-Cuban circles in Miami, which used the dispute between Cuba and the United States as a vehicle for their political careers.

7. Cuba would continue to reiterate its position that Section 211 had been put into place and remained in force to satisfy the interests of Bacardi, which was relentless in its attack against the Cuban revolution. One of its objectives was to illegally appropriate the Havana Club trademark and the US Government had followed it in this game. It not only allowed Bacardi to continue to sell rum produced in Puerto Rico using the Cuban trademark, but shielded its attempts to usurp the mark by applying Section 211 against Cubaexport, the owner of the right since 1976. Many would wonder why Bacardi was interested in the trademark. The most obvious answer was that at the end of 2010, Havana Club ranked twenty second out of the 100 drinks with the highest sales in the world and, at present, the trademark was registered in 160 countries, which testified to the wide international recognition that the Cuban trademark enjoyed, and the quality of the product. Accordingly, Cuba asked that the Office of Foreign Assets Control issue the licence for renewal of the Havana Club rum trademark so that the Cuban company could renew the trademark in the United States. Cuba reiterated its request that the United States undertake immediate and effective measures to repeal Section 211.

8. The representative of the Bolivarian Republic of Venezuela said that her country supported Cuba's statement on Section 211. Venezuela welcomed the US status report but regretted, once again, that its content was not different from the previous status reports submitted by the United States. In Venezuela's view, this constituted "action without results". Section 211 was contrary to the TRIPS Agreement and was inconsistent with the principles of national and most-favoured-nation treatment. Apart from the harm caused to Cuba, Section 211 undermined the credibility of the DSB. Venezuela

hoped that the United States would comply with the DSB's recommendations. As it had done on previous occasions, Venezuela urged the United States to put an end to its policy of economic, commercial and financial blockade against Cuba and recalled the US commitment to respect the DSB by complying with its recommendations.

9. The representative of China said that her 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 principle of prompt and effective implementation stipulated in the DSU, in particular since the interests of a developing-country Member were affected. China, therefore, supported Cuba and joined previous speakers in urging the United States to implement the DSB's rulings and recommendations without any further delay.

10. The representative of the Plurinational State of Bolivia said that her country had, once again, noted that the US status report did not contain any information on progress in this dispute. Bolivia, therefore, wished to reiterate its concern about the current situation in this dispute and the US failure to comply with its WTO obligations. This type of situation undermined the credibility and integrity of the multilateral trading system, caused serious harm to a developing country and had systemic implications for the WTO. Bolivia, once again, urged the United States to comply with the DSB's rulings and to take steps to remove the restrictions imposed under Section 211. Bolivia supported the concerns raised by Cuba at the present meeting.

11. The representative of Zimbabwe said that his country thanked the United States for its status report. However, Zimbabwe noted that the United States had, once again, reported non-compliance. Despite the US assurances that this matter was before Congress, this dispute had remained on the DSB's Agenda for almost a decade. The Appellate Body had concluded that Section 211 violated the national treatment and most-favoured nation principles under the TRIPS Agreement and the Paris Convention. Zimbabwe again called on the United States to promptly implement the DSB's decision in order to preserve the WTO's credibility and to return the rights to Cuban owners. In that regard, Zimbabwe supported the statement made by Cuba and urged the United States to make progress on this matter.

12. The representative of Angola said that her country thanked the United States for its status report. However, Angola regretted that no concrete progress had been made in the implementation of the DSB's decision and the Appellate Body's conclusion of 12 February 2002 with regard to Section 211. As Members were aware, the delay in the implementation of this decision affected the security and predictability of the multilateral trading system, and set a negative precedent for other cases. Thus, Angola hoped that concrete actions would be undertaken to bring this measure into conformity with WTO rules, without any further delay.

13. The representative of Ecuador said that his country thanked the United States for its status report, but regretted that no progress had been made towards implementation of the DSB's recommendations in this dispute. As Ecuador had stated on previous occasions, the prompt compliance with the DSB's recommendations was essential for the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members. Due to its systemic interest, Ecuador urged the United States to take the necessary actions to ensure compliance with the DSB's recommendations as soon as possible.

14. The representative of Brazil said that his country thanked the United States for its status report pertaining to this dispute. Brazil remained concerned about the prolonged situation of non-compliance with the DSB's recommendations and rulings in this dispute. Once again, Brazil urged the United States to accelerate its efforts and comply with its multilateral obligations without further delay.

15. The representative of Mexico said that his country thanked the United States for its report. Mexico urged the parties to solve this dispute through legal remedies provided under the DSU provisions. Mexico noted that any Member could initiate a dispute if it considered that its rights were being impaired or nullified as a result of non-compliance by another Member. Mexico believed that the discussion under this Agenda item could provide useful input for the on-going discussions carried out in the context of the DSU negotiations, in particular with regard to effective compliance.

16. The representative of Paraguay said that his country supported the concerns raised by Cuba about the US failure to comply with the DSB's recommendations pertaining to this dispute. In Paraguay's view, this issue should be discussed in the context of the on-going negotiations on improvements and clarifications to the DSU.

17. 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.104)

18. The Chairperson drew attention to document WT/DS184/15/Add.104, 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.

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

20. 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. As for the remaining part of the DSB's recommendations, Japan hoped that the United States would soon be in a position to report to the DSB on more tangible and concrete progress. Full and prompt implementation of the DSB's recommendations and rulings was "essential to the effective functioning of the WTO and the maintenance of a proper balance of the rights and obligations of Members".² Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

21. 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.79)

22. The Chairperson drew attention to document WT/DS160/24/Add.79, 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.

23. The representative of the United States said that his country had provided a status report in this dispute on 7 July 2011, in accordance with Article 21.6 of the DSU. The US Administration

² Article 3.3 of the DSU.

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.

24. The representative of the European Union said that the EU noted and thanked the United States for its status report. The EU remained keen to work with the US authorities towards the complete resolution of this case.

25. 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.42)

26. The Chairperson drew attention to document WT/DS291/37/Add.42, 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.

27. The representative of the European Union said that, as mentioned at the previous regular DSB meeting, the EU welcomed the continuation of the technical dialogue with the United States which gave both parties 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, including one authorization for cultivation. On 17 June 2011, the Commission had adopted two more authorization decisions³, 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 2011.⁴ The Council would examine those applications in the coming weeks. In April and July 2011, EFSA had adopted other scientific opinions on three GM soybean.⁵

28. 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 past several meetings, the United States had noted concern with delays in the EU approval system affecting dozens of pending biotech applications. Those pending applications included products covered by findings of the DSB that the EU had breached its obligations under the SPS Agreement by unduly delaying the consideration of twenty-one individual product applications.⁶ At the present meeting, the United States said that it would like to return to another set of important DSB recommendations and rulings in this dispute. In particular, the DSB had ruled that six EU member States had adopted nine separate measures that banned biotech products approved by the EU prior to the EU's moratorium on biotech approvals. The DSB had ruled that all of those member State bans had breached the EU's obligations under the SPS Agreement because the measures had not been based on risk assessments.⁷ Unfortunately, elements of the member State bans subject to the DSB recommendations and rulings remained in place. Most notably, Austria continued to ban the cultivation of Mon 810 maize, which was the only biotech maize currently approved to be grown in the EU. Not only had that Austrian ban remained in place

³ Maize MON89034xMON88017 and cotton GHB614.

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

⁵ A5547-127, 356043 and MON87701.

⁶ European Communities – Measures Affecting the Approval and Marketing of Biotech Products, WT/DS291/R (adopted 21 November 2006), para. 8.18.

⁷ European Communities – Measures Affecting the Approval and Marketing of Biotech Products, WT/DS291/R (adopted 21 November 2006), paras. 8.21 to 8.30.

since the adoption of the DSB's recommendations and rulings, but several other member States, including France, Germany, and Hungary, had gone on to adopt cultivation bans on the same product.

29. For well over a year, the EU had been considering proposals to amend its biotech approval laws to address the issue of whether EU member States should respect EU-wide approvals based on scientific risk assessments. The issue was directly related to the implementation of the DSB's recommendations and rulings in this dispute. Earlier in July 2011, the consideration of legislative proposals had reached an important milestone. On 5 July 2011, the EU Parliament had adopted a proposed amendment that, according to the Parliament spokesman, "backs [the] national right to [adopt] cultivation bans". The adoption of this proposed amendment did not appear to move the EU towards implementation of the DSB's recommendations and rulings on member State bans. The United States would follow these developments closely as the proposed amendment proceeded through additional steps of the EU's co-decision process. Aside from these troubling developments, the United States noted that the EU appeared to be taking no other actions to address member State bans on products that had been approved at the EU-level.

30. 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.22)

31. The Chairperson drew attention to document WT/DS322/36/Add.22, 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.

32. The representative of the United States said that his country had provided a status report in this dispute on 7 July 2011, in accordance with Article 21.6 of the DSU. As the United States had explained in its status report, in December 2010 the US Department of Commerce had announced a proposal to change the calculation of weighted average dumping margins and assessment rates in certain anti-dumping proceedings. At the present time, the US Department of Commerce was continuing with its on-going work on the December proposal.

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

34. The representative of China said that her country thanked the United States for its status report and its statement. 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 concerned as to how the United States would implement the DSB's decision on zeroing matters remained high. China would follow the US implementation steps closely and urged the United States to take actions to be fully in compliance with the DSB's rulings and recommendations without further delay.

35. 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.19)

36. The Chairperson drew attention to document WT/DS350/18/Add.19, 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.

37. 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 July 2011, and earlier in the discussion under Agenda item 1(e) of the present meeting. The United States referred Members to that report and that statement for further details.

38. 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 within 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.

39. 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.13)

40. The Chairperson drew attention to document WT/DS294/38/Add.13, 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.

41. 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 July 2011, and earlier under Agenda item 1(e) of the present meeting. The United States referred Members to that report and that statement for further details.

42. 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) concerning the US proposal of 28 December 2010.

43. 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.6)

44. The Chairperson drew attention to document WT/DS363/17/Add.6, 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.

45. The representative of China said that her country had provided its status report in this dispute on 7 July 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 with relevant parties.

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

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

- (i) European Communities and its Member States – Tariff treatment of certain information technology products: Status report by the European Union (WT/DS375/18 - WT/DS376/18 - WT/DS377/16)

48. The Chairperson drew attention to document WT/DS375/18 - WT/DS376/18 - WT/DS377/16, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning the EU's tariff treatment of certain information technology products.

49. The representative of the European Union said that, as the EU had explained in its status report and in the notifications made to the three complainants in this dispute, in June 2011, the EU had adopted final measures necessary to comply with the DSB's recommendations and rulings pertaining to the dispute on: "European Communities and its Member States – Tariff Treatment of Certain Information Technology Products (WT/DS375 - WT/DS376 - WT/DS377)". Those measures consisted of: (i) a Commission Regulation amending Annex I to Council Regulation (EEC) no. 2658/78 on the tariff nomenclature and the Common Customs Tariff, Commission Implementing Regulation (EU) no. 620/2011⁸; (ii) the deletion of Explanatory Notes for CN codes found inconsistent with the EU's tariff commitments⁹; and (iii) a statement adopted by the Customs Code Committee on 7 June 2011, and published on 29 June 2011, according to which the Statement on the classification of "multifunctional devices" agreed at the 360th meeting of the Customs Code Committee was to be disregarded. Furthermore, the EU recalled that all the measures concerning flat panel displays that had been examined by the panel had been repealed in 2009 by means of Commission Regulation (EC) 1179/2009 of 26 November 2009¹⁰ and the deletion of Explanatory Notes for CN codes 8528 41 00, 8528 49 10, 8528 49 35 to 8528 49 99, 8528 51 00 to 8528 59 90, 8528 51 00 and 8528 59 10 to 8528 59 90.¹¹ The adoption of these measures ensured the full and timely implementation of the DSB's recommendations and rulings in this dispute.

50. The representative of the United States said that his country thanked the EU for its status report and its statement. The United States welcomed the progress the EU had made to date in attempting to address the duties the EU and member State customs authorities had applied to certain information technology products, contrary to their WTO obligations. Those products were covered by the Information Technology Agreement (ITA), and the EU had committed to provide duty-free treatment to them. Regrettably, the United States said that the measures adopted thus far did not allow the US to share the EU's assessment that it had in fact brought itself into compliance with the DSB recommendations and rulings. Accordingly, the United States and the EU had entered into a sequencing agreement, which had been circulated in document WT/DS375/17. First, some aspects of the measures did not appear to conform to the Panel's findings. For example, with respect to

⁸ OJEU, L 166/16 of 25.06.2011.

⁹ Deletion of Explanatory Notes to CN Codes 8521 90 00, 8528 71 13, 8528 71 19 and 8528 71 90 (2011/C 185/1, published on the OJEU C 185/1 of 25.06.2011).

¹⁰ OJEU L 317/1 of 3.12.2009.

¹¹ 2009/C 268/05, published on the OJEU C 268/19 of 10.11.2009.

multifunction machines, the EU had provided for a new tariff of 2.2 per cent on any device with the "principal function" of "digital copying". The recommendations and rulings did not appear to support a new tariff on these products. Second, for all three products at issue, the measures were ambiguous in important respects and raised real concerns for the United States. It was simply not clear how customs authorities in the EU would interpret them, and whether, as a result, they would in fact provide duty-free treatment to the products at issue. Furthermore, even if some EU customs authorities in some member States provided duty-free treatment to some of the products, others may subject the same products to duties.

51. This concern was not without foundation. Many EU member States had themselves already indicated that the measures were unclear, and that they did not provide adequate guidance on how to treat the products at issue. The United States also recalled that, before the measures complained of in this dispute were adopted, there had been considerable divergence in the classification of flat panel displays in the EU. The DSB at that time had ruled that the EU had failed to live up to its obligations, and, approximately four and a half years ago, the EU came before the DSB and informed it that it was rectifying the problem by adopting the very measures that it had now repealed. Without any new measures to take their place, the United States remained deeply concerned that the EU system would again be plagued by inconsistencies. More fundamentally, for purposes of this case, those inconsistencies may mean that ITA products would, depending on the port of entry, continue to be subject to duty when entering the EU. The ITA was an important achievement for developed and developing country Members alike. The duty-free obligations that had resulted from it had expanded trade and spurred innovation and economic development across the globe. In the coming months, the United States would be closely monitoring the situation in the EU to ensure that it adhered to the DSB's recommendations and rulings and honoured the core principles of the ITA.

52. The representative of Chinese Taipei said that his delegation thanked the EU for its status report and its statement, and for its efforts in taking actions towards implementing the DSB's recommendations and rulings. While Chinese Taipei would remain vigilant in the coming months, to monitor whether the measures adopted by the EU with effect from 1 July 2011 would bring it into full compliance with its obligations, it had some preliminary concerns about a certain ambiguity and lack of clarity about the measures adopted by the EU. First, on the subject of flat panel displays (FPDs), the EU had declared all the measures concerning FPDs that had been repealed. FPDs currently benefiting from duty-free treatment were therefore those classified under current CN code 8528.51.00 with description "Of a kind solely or principally used in an ADP system of heading 8471". Nevertheless, it was unclear how it would be determined whether the conditions of the product were met or not. In addition, the Panel had made its findings concerning the scope of FPDs under the so-called "Attachment B concession". The question of whether the Panel's findings were properly reflected in existing measures already taken by the EU needed careful monitoring.

53. Second, on the subject of set-top boxes (STBs), the EU had taken action, including the inclusion of two new duty-free CN codes applicable to STBs. It was still unclear as to how the description "the essential character of STBs, which has a communication function" and "incorporating a modem" would be applied in practice, and how the consistency of the determination would be maintained across all the EU member States. Third, on the subject of multi-functional machines (MFMs), it remained unclear as to how the customs authorities of the EU member States would determine whether "copying" was the principle function of MFMs, in order for it to be given duty-free treatment. Consequently, there was need for clear guidance from the EU to make sure that all the measures complied with the Panel's findings and recommendations, as well as that all the products at issue would be appropriately classified under the zero-tariff category among all the EU member States. Along with other co-complainants, Chinese Taipei looked forward to working cooperatively with the EU on the issue of its full compliance on ITA products. At the same time, in order to govern the procedural aspects of any future requests under Articles 21.5 and 22.6 of the DSU, Chinese Taipei had reached an agreement with the EU on "sequencing" on 6 July 2011. That agreement had been circulated to Members in document WT/DS377/15.

54. The representative of Japan said that his country thanked the EU for its statement and its status report. In the status report, the EU had informed the DSB that "it has adopted the measures necessary to comply with those recommendations and ruling". Japan understood that the measures that had been listed in the report had been adopted before the expiry of the reasonable period of time on 30 June 2011. Japan appreciated the EU's efforts to adopt those measures for its implementation in this dispute within the reasonable period of time. However, whether those measures adopted by the EU had actually achieved full compliance was a separate issue and must be closely scrutinized. The EU had stated in its status report that "the adoption of the measures listed above ensures the full implementation of the DSB [sic] recommendations and rulings of the DSB in this dispute". Unfortunately, at the present time, Japan was not in a position to agree with the EU's claim of full compliance. In fact, like other co-complainants, Japan had several concerns about the measures that had thus far been adopted by the EU. For example, with respect to the tariff treatment of flat panel displays, the EU had stated in its status report that "all the measures concerning flat panel displays that were examined by the panel were repealed in 2009" and "[t]herefore, no further action is required to ensure compliance with the recommendations and ruling of the DSB". However, Japan repeatedly heard concerns from its industry that some of the EU member States were still imposing duties on some of the flat panel displays at issue in this dispute that fell within the scope of the EU's duty-free concession. Japan wondered how some of the EU member States could impose duty despite the EU's claim that all relevant measures or parts thereof had been repealed. These instances could indicate that "further action is required to ensure compliance" with respect to flat panel displays.

55. Furthermore, the revised regulation adopted for multifunctional machines imposed a 2.2 per cent duty on multifunctional "machines having digital copying as principal function". Japan was concerned that the revised regulation may be insufficient. For example, it may not provide clear guidance to ensure that all of the EU member States implemented duty-free treatment to all ITA products. Those were some of Japan's preliminary concerns with respect to the issue of implementation in this dispute. Japan was carefully reviewing the measures adopted by the EU thus far and would also closely monitor the operation and application of those measures. In that respect, Japan noted that, to facilitate the resolution of this dispute and reduce the scope of any procedural disputes, Japan and the EU had concluded a sequencing agreement on 6 July 2011.¹² Japan stood ready to discuss the matter with the EU, together with the other co-complainants, to "ensure effective resolution of"¹³ this dispute.

56. The representative of the European Union said that, with regard to a 2.2 per cent duty on certain multifunctional machines, the Commission Regulation determined the duty treatment in accordance with the objective characteristics of the multifunctional machine in question, as had been established by the Panel Report. All multifunctional machines would receive duty-free treatment, with the only exception of those that were essentially digital copiers, where digital copying was the principal function. With regard to the issue that had been raised on divergent classification between member States, the Commission had taken note of such requests and had already invited member States to provide detailed information on issues that may need clarification. As far as the preparation of further guidance, the Commission would first need to identify, in consultation with member States customs authorities and other stakeholders, which were the issues to be clarified. Finally, on flat panel displays, the EU recalled that all the measures concerning flat panel displays that had been examined by the Panel had been repealed in 2009. Therefore, no further action was required to ensure compliance with the DSB's recommendations and rulings. As a result, the proposals removed all the measures that had been found by the Panel to be inconsistent with the EU's tariff commitments. Therefore, they constituted full implementation of the Panel Report.

57. The representative of the United States said that, in response to the EU's statement that it may adopt clarifications to its measures, the United States welcomed the acknowledgment by the EU and

¹² Circulated to Members on 11 July 2011 as document WT/DS376/17.

¹³ Article 21.1 of the DSU.

its member States that additional clarity was needed. The United States urged the EU to act expeditiously to address all the concerns that had been identified.

58. The DSB took note of the statements.

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

(a) Statements by the European Union and Japan

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 Japan said that, on 29 June 2011, US Customs and Border Protection had published "FY2011 Preliminary CDSOA Amount Available".¹⁴ That latest action showed that the CDSOA remained operational. As US Customs and Border Protection had explained, "the distribution process will continue for an undetermined period".¹⁵ Japan urged the United States to stop the illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report in this dispute.

61. The representative of the European Union said that it 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. Once again, 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 implementation reports pertaining to this dispute.

62. The representative of Brazil said that his country thanked Japan and the EU for keeping this item on the DSB's Agenda. Brazil urged the United States to discontinue its disbursements pursuant to the CDSOA in order to comply with the DSB's recommendations and rulings in this dispute. Until then, the issue in this dispute could not be deemed "resolved" within the meaning of Article 21.6 of the DSU.

63. The representative of Canada said that his country thanked the EU and Japan for putting this item on the DSB's Agenda. Canada wished to reiterate its view that the CDSOA remained subject to the DSB's surveillance until the United States ceased to administer it.

64. The representative of Thailand said that his country thanked Japan and the EU for continuing to bring this issue before the DSB. Thailand agreed with previous speakers and urged the United States to fully comply with the DSB's rulings and recommendations in this matter.

65. The representative of the United States said that, as his country had already explained at previous DSB meetings, the US President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy

¹⁴ See US Customs and Border Protection's website at:
http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/

¹⁵ 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

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, including the EU and Japan, had acknowledged during previous DSB meetings that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007. The United States therefore did not understand the purpose for which the EU and Japan had inscribed this item on the Agenda of the present meeting. With respect to comments regarding further status reports in this matter, the United States failed to see what purpose would be served by further submission of status reports repeating, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States noted that the EU had made a similar statement under the previous Agenda item. The United States would, therefore, be interested to see whether the EU would provide further status reports on the ITA dispute¹⁶ at future DSB meetings.

66. The DSB took note of the statements.

3. Canada – Certain measures affecting the renewable energy generation sector

(a) Request for the establishment of a panel by Japan (WT/DS412/5)

67. The Chairperson recalled that the DSB had considered this matter at its meeting on 17 June 2011 and had agreed to revert to it. She then drew attention to the communication from Japan contained in document WT/DS412/5, and invited the representative of Japan to speak.

68. The representative of Japan said that his country would not repeat its positions and claims in this dispute at the present meeting, as they had been explained in detail in Japan's panel request and in its statement made at the 17 June 2011 DSB meeting. He said that, in summary, this was a clear case of WTO-inconsistent domestic content requirements. The feed-in tariff program of the Canadian province of Ontario provided for guaranteed, long-term pricing for the output of renewable energy generation facilities that contained a defined percentage of domestic content. Japan considered that the measures at issue were inconsistent with Canada's obligations under Article 3.1(b) and 3.2 of the SCM Agreement, Article III:4 of the GATT 1994, and Article 2.1 of the TRIMs Agreement. This panel request had appeared on the Agenda of the 17 June 2011 DSB meeting. At the present meeting, Japan was, once again, requesting that the DSB establish a panel to examine this matter, as set forth in Japan's panel request, with standard terms of reference in accordance with Article 7.1 of the DSU.

69. The representative of Canada said that her country wished to express its disappointment that Japan had decided to make a second panel request at the present meeting in respect of the Ontario Green Energy and Green Economy Act and the related feed-in tariff program. Canada remained confident that the legislation and the feed-in tariff program were consistent with its WTO obligations. Feed-in tariffs had been used by several WTO Members to encourage the use and development of renewable sources of energy. Ontario's feed-in tariff was no different. It supported Ontario's committed transition away from coal-fired electricity generation, an ambitious energy plan by any measure, but one that had been taken in concert with both industry and the public. Canada understood that a panel would be established at the present meeting and it stood ready to work with Japan to ensure the prompt, fair and effective resolution of this dispute.

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

¹⁶ European Communities and its Member States – Tariff Treatment of Certain Information Technology Products (WT/DS375, WT/DS376, WT/DS377).

71. The representatives of Australia, China, the European Union, Honduras, Korea, Norway, Chinese Taipei and the United States reserved their third-party rights to participate in the Panel's proceedings.

4. Ukraine – Taxes on distilled spirits

(a) Request for the establishment of a panel by Moldova (WT/DS423/4)

72. The Chairperson recalled that the DSB had considered this matter at its meeting on 17 June 2011 and had agreed to revert to it. She then drew attention to the communication from Moldova contained in document WT/DS423/4, and invited the representative of Moldova to speak.

73. The representative of Moldova said that, at the present meeting, her country wished to bring its panel request to the attention of the DSB for its second consideration. Moldova recalled that at the 17 June 2011 DSB meeting, and in document WT/DS423/4, Moldova had explained in detail its arguments and had requested the establishment of a panel to examine this matter. At the present meeting, Moldova wished to report that following the June DSB meeting no further progress had been made towards finding a mutually acceptable solution to settle this dispute. Moldova, therefore, reiterated its request that a panel be established at the present meeting.

74. The representative of Ukraine said that her county regretted that Moldova had chosen to initiate panel's proceedings without giving due regard to bilateral consultations. Furthermore, this was done in the middle of the exchange of information between the experts from the parties to this dispute. Currently, Ukraine experts were examining and assessing the technical files provided by Moldova at the request of Ukraine. Such technical examination was a logical and unavoidable action and the results of this examination could encourage an agreeable conclusion between the parties. Ukraine was disappointed that Moldova had decided not to wait for findings and response from Ukraine. Ukraine would welcome Moldova's engagement in consultations to seek a positive solution to this matter. Ukraine remained open to further consultations with Moldova, which was an important trading neighbour of Ukraine.

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

76. The representatives of China, Colombia, the European Union and the United States reserved their third-party rights to participate in the Panel's proceedings.

5. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/455)

77. The Chairperson drew attention to document WT/DSB/W/455, which contained additional names proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. She proposed that the DSB approve the names contained in document WT/DSB/W/455.

78. The DSB so agreed.

79. The Chairperson said that, in connection with this Agenda item, she wished to address the issue of updating the curricula vitae (CVs) of persons included on the Indicative List of Governmental and Non-Governmental Panelists. She recalled that previous Chairpersons of the DSB had requested delegations to submit updated CVs. Unfortunately, not many updated CVs had been received to date, with the result that many CVs in the Secretariat's possession were currently out of date. This had proved frustrating for some parties seeking to compose panels because the Secretariat was often unable to provide recent information about potential panelists. Therefore, under those circumstances,

she wished to inform delegations that, as from now on, the Secretariat would request from time to time updated CVs directly from individuals included on the Indicative List, with a view to ensuring that the Secretariat was better able to serve parties seeking to establish panels in the future. She hoped that this way of proceeding was agreeable to all. She noted that the Secretariat had contact details of individuals that had been added more recently to the Indicative List. In that regard, she recalled that in November 2009, in document WT/DSB/44/Rev.7, delegations had been requested to provide to the Secretariat the contact details of individuals being put forward for inclusion on the Indicative List. For individuals for whom the Secretariat did not have any contact details, the Secretariat may seek the assistance of relevant delegations.

80. The DSB took note of the statement.

6. Statement by the Chairperson regarding the process for selecting new members of the Appellate Body

81. The Chairperson, speaking under "Other Business", said that, as she had announced at the outset of the meeting, she wished to make a short statement concerning the 2011 selection process for the appointment of two new members of the Appellate Body. In that regard, the Chairperson recalled that, at its meeting on 24 May 2011, the DSB had agreed to her proposal regarding the 2011 selection process for the appointment of two new members of the Appellate Body. At the present meeting, she wished to remind delegations that, as had been agreed by the DSB, nominations of candidates should be submitted by no later than 31 August 2011. As had been done in the past, nominations along with the curricula vitae of the nominees should be addressed to the Chairperson of the DSB in care of the Council and TNC Division. That information would then be circulated to all WTO Members as Job documents. Following the 31 August 2011 deadline, she would inform delegations about the work of the Selection Committee to be carried out in September and October 2011, with a view to making a recommendation at the latest by 10 November 2011.

82. The DSB took note of the statement.
