



Dispute Settlement Body
18 November 2014

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 18 NOVEMBER 2014

Chairman: Mr. Fernando De Mateo (Mexico)

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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.143)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.143)

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.118)

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.81)

E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.29)

1.1. The Chairman noted that there were five sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. He recalled that Article 21.6 required that: "Unless the DSB decides 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 is resolved". Under this Agenda item, he invited delegations to provide up-to-date information about compliance efforts and to focus on new developments, suggestions and ideas on progress towards the resolution of disputes. In the context of this Agenda item, he also wished to remind delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record". With these introductory remarks the Chairman turned to the first status report under this Agenda item.

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.143)

1.2. The Chairman drew attention to document WT/DS176/11/Add.143, 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.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 6 November 2014, in accordance with Article 21.6 of the DSU. Several bills had been introduced in the current Congress in relation to the DSB's recommendations and rulings in this dispute, some of which would repeal Section 211 while others would modify it. In prior meetings of the DSB, the United States had described the status of each of these bills. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings and resolve this matter with the European Union.

1.4. The representative of the European Union said that the EU thanked the United States for its most recent status report and statement made at the present meeting. The EU hoped that the US authorities would resolve this matter very soon.

1.5. The representative of Cuba said that, for the 23rd consecutive year, on 28 October 2014, the UN General Assembly almost unanimously adopted Resolution A/RES/69/5 entitled: "Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States of America Against Cuba", with 188 countries voting in favour. Once again, the international community had expressed through this vote the overwhelming and almost universal condemnation of the US blockade policy against Cuba. This policy was at the root of the prolonged failure by the United States to comply with the DSB's recommendations and rulings in the Section 211 dispute. Cuba had systematically denounced before the DSB that it was faced with a demonstration of irrational and blatant disregard for the decisions of the international community and, in particular,

the WTO system of rules. Cuba regretted that, neither its failure to comply with the DSB's rulings for more than 12 years nor the discredit that had befallen it in the UN General Assembly appeared to be of any concern to the United States. As had been stated by the Cuban Minister of Foreign Affairs in his speech before the UN General Assembly: "It is a fact that the economic, commercial and financial embargo against Cuba has recently intensified, as has its extra-territorial application in all regions, notably with the imposition of huge and unprecedented fines amounting to US\$11 billion on 38 banks, including France's BNP Paribas, that do business with Cuba and other countries. The accumulated economic damage, which is enormous for a small economy, totals US\$1,112.534 billion at gold value, a value which is being manipulated by the creators of the prevailing pernicious monetary system that is already suffering the effects of an insurmountable crisis that is afflicting the poorest countries. "Cuba urged the United States to respect the vote of the 188 UN Member States, almost all of which were also WTO Members that supported the end of the embargo against Cuba. Furthermore, Cuba urged the United States to comply with the DSB's recommendations and rulings by adopting the appropriate legislative measures to put an end to this non-compliance, which undermined the credibility of the WTO dispute settlement system. Cuba thanked those Members who, every month, spoke in favour of concluding this dispute and who voted every year in the UN General Assembly to remove the unfair and illegal embargo against Cuba.

1.6. The representative of Jamaica said that her country thanked the United States and other delegations for the updates and the status report under this Agenda item. Jamaica noted that the circumstances of this dispute had not changed and that no progress had been reported since the previous DSB meeting. As it had done at previous DSB meetings, Jamaica expressed its concern about the continued US failure to implement the DSB's recommendations adopted on 2 February 2002. The protracted US failure to take the steps necessary to comply with its obligations under the DSU was incompatible with its requirements for prompt and effective implementation of decisions. This was of particular concern in cases such as this where the failure to meet an obligation had a negative impact on the economic interests of a developing-country Member. Jamaica reiterated its deep concern about the systemic implications of any disregard for DSB decisions. Such disregard served to undermine the overall integrity of the dispute settlement system, which remained a key pillar of the WTO. Jamaica joined other Members in urging the United States to take the required steps to promptly implement the relevant DSB decisions. After more than 12 years since the adoption of the DSB's recommendations in this dispute, it was more than reasonable for Members to expect that this matter be resolved and removed from the DSB's Agenda.

1.7. The representative of Zimbabwe said that his country thanked Cuba for its statement and for the additional information it had provided. Zimbabwe, once again, regretted that the United States continued to disregard the DSB's rulings and recommendations in this dispute. Zimbabwe reiterated its support for Cuba and urged the United States to comply with the DSB's recommendations and rulings. While it took note of the Chair's advice that Members should not repeat statements already made in DSB meetings, Zimbabwe stressed that, in the absence of compliance with the DSB's rulings and recommendations, it had no other choice but to come back to the DSB and to make the statements.

1.8. The representative of Ecuador said that his country supported the statement made by Cuba. Ecuador stressed, once again, that Article 21.6 of the DSU specifically referred to prompt compliance with the DSB's rulings and recommendations, in particular since the interests of a developing-country Member were affected. Ecuador hoped that the United States would step up its efforts and implement the DSB's recommendations and rulings regarding Section 211. In Ecuador's view, this dispute highlighted some of the shortcomings of the dispute settlement system.

1.9. The representative of India said that his country noted the US status report and its statement made at the present meeting. India shared the concern expressed by other Members about the lack of progress in the implementation of the DSB's recommendations in this dispute. Article 21.1 of the DSU reiterated that prompt compliance with recommendations or rulings of the DSB was essential in order to ensure effective resolution of disputes. India renewed its systemic concerns about the continued non-compliance as this undermined the confidence that Members placed in a rules-based multilateral trading system, especially in the context of a developing-country Member seeking compliance. India urged the United States to report compliance to the DSB.

1.10. The representative of the Plurinational State of Bolivia said that as his country noted that, for the past 12 years, the US status reports did not contain any information on progress in this dispute. Therefore, Bolivia reiterated its concern about the systemic implications of the US failure to comply with the DSB's rulings and the lack of political will to resolve this dispute. Such non-compliance undermined the credibility and integrity of the multilateral trading system and affected the economic interests of a developing-country Member. Bolivia, once again, called upon the United States to fully comply with the DSB's rulings regarding Section 211. Bolivia supported the statement made by Cuba at the present meeting.

1.11. The representative of China said that his country thanked the United States for its status report and the statement made at the present meeting. China noted that the United States reported no substantial progress. This prolonged situation of non-compliance was highly incompatible with the principle of prompt implementation required under the DSU provisions, in particular since the interests of a developing-country Member were affected. China urged the United States to implement the DSB's rulings and recommendations without any further delay.

1.12. The representative of the Bolivarian Republic of Venezuela said that her country supported Cuba's statement. Venezuela, once again, noted that the DSB had been addressing this matter every month over a long period of time. Venezuela, like a number of other delegations, noted that the US status report did not contain any information on progress towards compliance with the DSB's rulings regarding Section 211. Venezuela was concerned about the prolonged situation of non-compliance in this dispute, which affected the interests of a developing-country Member. It also affected the dispute settlement system, which was one of the main achievements of the multilateral trading system. Such non-compliance could have a negative effect on the multilateral trading system as well as the WTO and its dispute settlement system. The lack of compliance underscored the US intention to continue the financial and economic blockade against Cuba, a developing country-Member. Venezuela noted that, once again, on 28 October 2014, the UN General Assembly had taken a decision against this blockade, as mentioned by Cuba. Venezuela urged the United States to bring to an end this blatant non-compliance with the DSB's rulings regarding Section 211.

1.13. The representative of the Dominican Republic said that his country thanked the United States for its status report on compliance with the DSB's recommendations and rulings regarding the inconsistency of Section 211 with Article 42 of the TRIPS Agreement. The Dominican Republic noted that this prolonged dispute of 12 years affected Cuba, a country with a small and vulnerable economy. The Dominican Republic urged the United States to step up its internal procedures in order to comply with the DSB's recommendations and rulings. The length of time that had passed since the DSB had adopted its recommendations undermined the credibility of the WTO.

1.14. The representative of Uruguay said that his country thanked the United States for its status report. Uruguay, once again, regretted that there had been no substantive progress in this matter for 12 years. The consideration of this matter by the DSB had become a ritual and had a negative impact on the dispute settlement system.

1.15. The representative of the Russian Federation said that his country regretted that it had to express its concern about the lack of progress in this long-standing dispute. As other Members had noted, this dispute was an example of non-compliance with, and in disregard of, the DSB's recommendations and rulings. As such, it attracted the attention of many Members. Russia believed that timely implementation of the DSB's recommendations and rulings by all Members was essential to maintaining mutual trust and credibility within the entire WTO system. As it had previously stated, Russia urged the parties to this dispute to address their outstanding issues and to resolve this dispute as soon as possible.

1.16. The representative of Trinidad and Tobago said that his country thanked Cuba for its update and the United States for its status report under this Agenda item. Trinidad and Tobago, once again, called for a positive movement towards prompt compliance with the DSB's rulings and recommendations in this dispute concerning Section 211. Trinidad and Tobago strongly encouraged the early resolution of this dispute, which would ultimately lead to the removal of this item from the DSB's Agenda. As it had stated in previous DSB meetings, continuous postponement of a solution to this dispute placed at risk the effectiveness, credibility, and integrity of the dispute settlement and multilateral trading systems. Such a situation undoubtedly affected all Members, in

particular developing countries in the Caribbean like Trinidad and Tobago and Cuba. In that regard, Trinidad and Tobago once again called for prompt compliance with the DSB's rulings and recommendations in order to preserve the integrity of the WTO system.

1.17. The representative of Antigua and Barbuda, speaking on behalf of the OECS countries, said that the OECS countries thanked both the United States and Cuba for their respective statements on this dispute. The OECS countries supported Cuba on this matter and remained concerned about the lack of progress and continued US non-compliance with the DSB's rulings and recommendations. Such non-compliance had a negative impact on the economy of a small developing-country. It also undermined the dispute settlement system and the integrity of the WTO in its capacity as custodian of the multilateral trading system. In that context, OECS countries urged the prompt compliance with the DSB's recommendations and rulings so as to resolve this dispute.

1.18. The representative of Mexico said that, as it had done in the past, Mexico urged the parties to this dispute to adopt the necessary measures to comply with the DSB's recommendations and rulings in accordance with Article 21.1 of the DSU.

1.19. The representative of Nicaragua said that his country supported the request made by Cuba to repeal Section 211 concerning the Cuban brand mark Havana Club. The United States had shown no will or determination to resolve this situation that, as Nicaragua had said on previous occasions, undermined the credibility and efficiency of the multilateral trading system. This created a precedent which would affect other Members, in particular developing-country Members. Nicaragua urged the United States to bring its legislation in line with the DSB's recommendations and rulings in this dispute.

1.20. The representative of South Africa said that her country took note of the statements made at the present meeting and the US status report. South Africa referred to its previous statements regarding its systemic concerns that this non-compliance with the DSB's rulings undermined the integrity of the enforcement pillar of the WTO. South Africa was concerned that protracted non-compliance with the DSB's recommendations and rulings would compromise the perceived value of the dispute settlement system for new Members and lesser-resourced developing-country Members. In that regard, non-compliance may affect the credibility and legitimacy of the WTO as a whole. South Africa remained particularly concerned that non-compliance with the DSB's recommendations and rulings may perpetuate serious, negative economic consequences for a particular developing-country's economic interests. Therefore, South Africa urged the United States to bring its legislation into compliance with the DSB's rulings and recommendations in this dispute.

1.21. The representative of Brazil said that his country remained concerned about the lack of significant progress in this matter which had been on the DSB's Agenda for many years. Brazil encouraged the United States to engage constructively with Cuba towards a prompt resolution of this matter. Effective implementation of the DSB's decisions was of essential interest to all Members and to the well-functioning of the WTO.

1.22. The representative of El Salvador said that her country, like other delegations, noted with concern the lack of compliance in this dispute which affected the interests of a country with a small economy and the multilateral trading system. El Salvador urged the parties to this dispute to find a solution in order to promptly comply with the DSB's recommendations and rulings.

1.23. The representative of Argentina said that his country thanked the United States for its status report and its statement made at the present meeting. Argentina, once again, noted that no substantive information had been provided on this matter. The US status report only reiterated the existence of bills before the US Congress. As Argentina had stated on previous occasions, the lack of progress was incompatible with the effective and prompt implementation of the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were concerned. Argentina supported Cuba and the previous speakers who urged the parties to the dispute, in particular the United States, to take the necessary steps to resolve this matter and to remove this item from the DSB's Agenda.

1.24. The representative of Angola said that his country thanked the United States for its status report regarding Section 211. Angola noted that this dispute had been discussed for many years without any favourable result for Cuba's legitimate rights. As a result, Cuba continued to be adversely affected. Angola believed that the dispute settlement system depended on its ability to promptly resolve disputes amongst Members in a fair and equitable manner, while preserving Members' rights. Failure to do so would have a negative impact on the dispute settlement system and would affect Members. All Members had the same rights and were subject to the same obligations. Thus, it was only fair that all Members should respect the decisions of WTO bodies. In Angola's view, it was regrettable that the dispute settlement system, which was recognized as one of the main achievements of the multilateral trading system, was undermined by the measures taken by one Member. In that regard, Angola reiterated its support for Cuba's claims and urged the United States to comply with the DSB's recommendations and ruling.

1.25. The representative of Viet Nam said that her country supported Cuba and urged the United States to implement the DSB's recommendations and rulings in this dispute.

1.26. The representative of the United States said that, in response to the comments by Members that this issue raised systemic concerns with respect to the dispute settlement system, the facts simply did not support such assertions or justify such concerns. The United States had come into compliance, fully and promptly, in the vast majority of its disputes where it had been a responding party. In fact, certain Members appeared to be ignoring the fact that at the previous month's DSB meeting, the United States had announced that, working together with other parties, it had successfully resolved both the "US – Upland Cotton" and "US – Clove Cigarettes" disputes. While there were a few remaining disputes where the United States was still working to achieve a solution, such as this dispute between the United States and the European Union, it was not accurate to state that the actions of the United States were somehow undermining the credibility of the system. To the contrary, the United States had a strong record of support for the WTO and its dispute settlement system, including through implementation actions and working with other Members to resolve disputes. The United States would continue to work to implement the DSB's recommendations and rulings in this dispute.

1.27. The representative of Cuba said that her country had heard that the United States was working actively to resolve this dispute and hoped that in the following month, or at least in two months, the United States would submit a substantive report before the DSB indicating that the United States had repealed Section 211. Cuba urged the United States to take note that Article 3 of the DSU stated that the dispute settlement system was a central element in providing security and predictability to the multilateral trading system. If one Member, for 12 years, ignored the DSB's ruling, such action undermined the security and predictability of the dispute settlement system. Cuba questioned the US political will to comply with the DSB's ruling and wondered if the United States had decided not to comply with the DSB's recommendations and rulings with regard to Section 211. Cuba further questioned whether the United States was aware that non-compliance was harming its own image as well as that of the WTO. In Cuba's view, the concerns of 19 Members, including Cuba, could not be ignored. The lack of compliance undermined the credibility, efficiency, and the effectiveness of the DSB. The United States had the obligation to comply with all the pending DSB recommendations and rulings. Cuba reiterated that the WTO was a multilateral organization and Members had been committed to comply with the recommendations and rulings with the necessary political will, based on rules and procedures.

1.28. 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.143)

1.29. The Chairman drew attention to document WT/DS184/15/Add.143, 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.

1.30. The representative of the United States said that his country had provided a status report in this dispute on 6 November 2014, in accordance with Article 21.6 of the DSU. The United States 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. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would continue to work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.31. The representative of Japan said that his country thanked the United States for its statement and status report submitted on 6 November 2014. Japan referred to its previous statements that this outstanding issue should be resolved as soon as possible.

1.32. 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.118)

1.33. The Chairman drew attention to document WT/DS160/24/Add.118, 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.

1.34. The representative of the United States said that his country had provided a status report in this dispute on 6 November 2014, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress to reach a mutually satisfactory resolution of this matter.

1.35. The representative of the European Union said that the EU thanked the United States for the status report and its statement made at the present meeting. The EU referred to its previous statements made under this Agenda item. The EU wished to resolve this dispute as soon as possible.

1.36. 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.81)

1.37. The Chairman drew attention to document WT/DS291/37/Add.81, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

1.38. The representative of the European Union said that, in recent DSB meetings, the EU had already reported on authorisation decisions and other actions towards approval decisions taken up to October 2014. The EU Standing Committee on the food chain and animal health of 24 October 2014 had voted on draft decisions for authorisations of two cotton products¹, and one oilseed rape² for food and feed uses. The Committee had rendered no opinion on either of the draft decisions. The European Commission would present these draft decisions to the Appeal Committee for vote on 28 November 2014. As stated many times before, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings. The GMO regulatory regime was working normally, as evidenced by the approval decisions and other actions towards approval decisions just mentioned. The details on the relevant products were set out in the EU's written statement.

¹ MON88913 cotton, LLcotton25xGHB614 cotton.

² MON88302 oilseed rape.

1.39. The representative of the United States said that his country thanked the European Union for its status report and its statement made at the present meeting. At recent meetings of the DSB, the United States had noted its increasing concerns with EU measures affecting the approval of biotech products. In fact, the EU had not approved a new biotech product in 2014, and the delays in biotech approvals were continuing to seriously disrupt trade in agricultural products. Under the EU system, biotech approvals should be made by EU regulatory committees, consisting of EU member State representatives. The EU system provided that the regulatory committees should act in accordance with the scientific recommendations of the EU's scientific authority (the European Food Safety Authority, or EFSA). However, not once in the last 10 years had these EU regulatory committees performed their role of taking decisions based on the science-based recommendations. Instead, all of the biotech approval decisions had been left to the political level of the European Commission. But during 2014, even the EU College of Commissioners had failed to act. The Commission had changed as of 1 November 2014, and not once in 2014 had the Commission followed through on its responsibility to approve biotech products in accordance with EFSA recommendations. Furthermore, the United States noted that the new Commission was already signalling that it may decide to engage in further delays, under the guise of yet another re-examination of the EU biotech approval process. The conduct of the EU regulatory committees and the European Commission suggested that the EU authorization process may not be based on the scientific merits of each application, but instead on political considerations. As it had said at other meetings of the DSB, the United States urged the EU to take steps to address these matters.

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

E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.29)

1.41. The Chairman drew attention to document WT/DS404/11/Add.29, 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 shrimp from Viet Nam.

1.42. The representative of the United States said that his country had provided a status report in this dispute on 6 November 2014, in accordance with Article 21.6 of the DSU. As the United States had noted at past DSB meetings, in February 2012 the US Department of Commerce had modified its procedures in a manner that addressed certain findings in this dispute. The United States would continue to consult with interested parties as it worked to address the other recommendations and rulings of the DSB.

1.43. The representative of Viet Nam said that her country thanked the United States for its status report and the statement made at the present meeting. Viet Nam noted that the reasonable period of time mutually agreed by the parties had expired a significant number of months ago. However, the US Administration had not taken any action to recalculate the anti-dumping duty. That was inconsistent with the DSB's recommendations. Viet Nam, once again, requested that the United States fully comply without any further delay to ensure the multilateral trading system's discipline and for the benefit of Viet Nam as a developing-country Member. Viet Nam reserved the right to pursue any legal proceeding under the WTO in order to protect the legitimate benefits of Vietnamese enterprises and farmers who had been affected by the US lack of compliance with the DSB's recommendations and rulings.

1.44. The representative of Cuba said that her country, once again, wished to reiterate the importance of effective and prompt compliance, in particular where the vital economic interests of a developing-country Member, such as Viet Nam, were affected by non-compliance with the DSB's recommendations. Cuba noted that this was another case of non-compliance by the United States, a country with the necessary and sufficient capacity to comply with the DSB's recommendations and rulings. The US status report did not report on any changes or progress in moving towards the resolution of this dispute. Each month Members heard the same report that did not indicate whether there had been any solution to this dispute involving Viet Nam. Cuba urged the United States to take effective measures in order to comply with the DSB's recommendations and rulings in favour of Viet Nam.

1.45. The representative of the Bolivarian Republic of Venezuela said that her country supported Viet Nam and the concerns expressed by Cuba with regard to prompt and effective compliance with the DSB's recommendations and rulings. Venezuela urged the US Administration to take measures that would finally resolve this dispute.

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

2 UNITED STATES – CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

A. Statements by the European Union and Japan

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

2.2. The representative of the European Union said that, once again, the EU requested that the United States stop transferring anti-dumping and countervailing duties to the US industry. Every disbursement that still occurred was clearly an act of non-compliance with the DSB's recommendations and rulings. The EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit status reports in this dispute.

2.3. The representative of Japan said that, since the distributions under the CDSOA had continued, Japan, once again, urged the United States to stop the illegal distributions in order to resolve this long-standing dispute. As it had stated at previous DSB meetings, Japan was of the view that the United States was under obligation to provide the DSB with a status report in this dispute in accordance with Article 21.6 of the DSU.

2.4. The representative of India said that his country shared the concerns of the EU and Japan. The WTO inconsistent disbursements continued unabated to the US domestic industry. India agreed with EU and Japan that the Byrd Amendment should continue to remain subject to the surveillance of the DSB until the United States ceased to administer it. Until such time this matter was resolved, the United States was under an obligation to provide status reports to the DSB. In India's view, this item should continue to remain on the DSB's Agenda until such time as full compliance was achieved in this dispute.

2.5. The representative of Brazil said that his country was of the view that the United States had an obligation to provide status reports in this dispute until the matter was resolved in accordance with Article 21.6 of the DSU. Brazil also believed that disbursements made after the repeal of the Byrd Amendment, but related to investigations initiated before it, were not in accordance with the DSB's recommendations and rulings in this dispute and should be discontinued.

2.6. The representative of Canada said that her country thanked the EU and Japan for having put this item on the Agenda of the DSB's meeting. Canada shared their point of view that the Byrd Amendment must still be submitted before the DSB's surveillance until the United States ceased to apply it.

2.7. The representative of the United States said that, as his country had noted at previous DSB meetings, the Deficit Reduction Act, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000, had been enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Furthermore, the United States recalled that, as the EU, Japan, and other Members had acknowledged, the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, which was over seven years ago. As a result of this, it was entirely inaccurate to refer to distributions as occurring unabated. 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, as it had already explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports which would repeat, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Indeed, as some of these very WTO Members had demonstrated

repeatedly when they had been a responding party in a dispute, there was no obligation under the DSU to provide further status reports once a Member announced that it had implemented the DSB's recommendations and rulings, regardless of whether the complaining party disagreed about compliance.

2.8. The DSB took note of the statements.

3 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. Statement by the United States

3.1. The Chairman said that this item was on the Agenda of the present meeting at the request of the United States. He then invited the representative of the United States to speak.

3.2. The representative of the United States said that his country continued to have serious concerns that China had failed to bring its measures into conformity with its WTO obligations. The situation unfortunately had not changed since the United States had first begun raising this matter in the DSB and despite repeated interactions between the United States and China. China continued to maintain a ban on foreign suppliers of electronic payment services ("EPS") by imposing a licensing requirement on them, while at the same time providing them with no procedures to obtain that license. As a result, an enterprise located in China remained the only EPS supplier that could operate in China's domestic market. As required for consistency with its WTO obligations, China must adopt the regulations necessary for allowing foreign EPS suppliers to operate in China. The United States took note of the recent statement by China's State Council that China would open the EPS market to qualified suppliers. The United States looked forward to the prompt issuance of specific regulations to implement the State Council's statement in a manner that was consistent with the WTO's findings.

3.3. The representative of China said that his country regretted that the United States had, once again, brought this matter before the DSB. China referred to its statements made under this Agenda item at previous DSB meetings. China had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute. China had also further explained that the actions being sought by the United States were beyond the scope of China's compliance obligations. China hoped that the United States would reconsider the systemic implications of its position. Furthermore, with respect to the regulation mentioned by the United States, China reiterated that that regulation was not relevant to the implementation of the DSB's recommendations and rulings in this dispute and that the DSB meeting was not an appropriate forum to discuss this matter.

3.4. The DSB took note of the statements.

4 THAILAND - CUSTOMS AND FISCAL MEASURES ON CIGARETTES FROM THE PHILIPPINES

A. Statement by the Philippines

4.1. The Chairman said that this item was on the Agenda of the present meeting at the request of the Philippines. He then invited the representative of the Philippines to speak.

4.2. The representative of the Philippines said that her country's reasons for requesting this Agenda item were well known to the DSB. While Thailand claimed to have done everything necessary to implement the DSB's recommendations and rulings, there remained a number of outstanding issues that directly affected Thailand's compliance in this dispute. In particular, the Philippines had consistently raised the issue of the Thai prosecution order pending against an importer of Philippine cigarettes for alleged under-declaration of customs value. Yet, the WTO Panel had found that Thailand enjoyed no legitimate grounds to reject the customs values it now asserted were under-declared. In addition, Thai Customs' own Board of Appeals (BoA) had explicitly accepted those customs values, in a separate ruling heralded by Thailand itself as a measure taken to comply. The Philippines had also frequently cited its concerns with another ruling by the BoA, against the same importer subject to the prosecution order, this time concerning 210 entries of cigarettes from 2002-2003 covered by the recommendations and rulings in this

dispute. Thailand had notified the BoA ruling as a measure taken to comply with the DSB's recommendations and rulings. Yet, as the Philippines had previously indicated, the methodology developed by the BoA to calculate customs value implicated multiple WTO inconsistencies. The Philippines was concerned that Thai Customs may use the flawed methodology in future customs valuations concerning related party transactions. The Philippines wished to note that, although some previous DSB statements and minutes had erroneously described the 210 entries from 2002-2003 as being of Philippine origin, the imports were of Indonesian origin. The importer had subsequently shifted to a Philippine supplier and no longer sourced from Indonesia. This error would be corrected by a corrigendum to the April 2014 DSB minutes. However, it also affected the February and March 2014 DSB minutes. At the previous DSB meeting, the Philippines had referred to the systemic implications of Thailand's failure to comply by the rules. The Philippines invited Thailand to resume its role as an important player in the WTO dispute settlement system and to lead by example. As the Philippines had stated at the previous meeting, it was the good faith of its Members who respected the DSU provisions and procedures that ensured authority and credibility to the dispute settlement system.

4.3. The representative of Thailand said that her country took note of the Philippines' statement made at the present meeting. As stated in its previous status reports and at the DSB meetings, Thailand had taken all actions necessary to implement the DSB's recommendations and rulings in this dispute. This was, of course, without prejudice to any other rights of the Philippines under the DSU provisions. Thailand reiterated that it had been, and remained, available to discuss the specific concerns of the Philippines on a bilateral basis, including those not addressed by the DSB's recommendations and rulings.

4.4. The DSB took note of the statements.

5 BRAZIL – CERTAIN MEASURES CONCERNING TAXATION AND CHARGES

A. Request for the establishment of a panel by the European Union (WT/DS472/5)

5.1. The Chairman drew attention to the communication from the European Union contained in document WT/DS472/5, and invited the representative of the European Union to speak.

5.2. The representative of the European Union said that the EU wished to request that the DSB establish a panel to examine several Brazilian measures that, in the EU's assessment, were in breach of Brazil's WTO commitments and negatively affected trade. The EU and Brazil had held consultations earlier that year with respect to this matter. Although consultations had helped in clarifying a number of questions concerning these programmes, they could not resolve the dispute. The dispute revolved around a number of programmes in the automobiles, information and communication technologies and automation sectors that granted domestic producers certain tax advantages consisting of the exemption from, or reduction in, taxes and charges levied on the sale of goods. These advantages were contingent upon, *inter alia*, local content requirements, production according to certain processing operations and investment in research and development in Brazil. These advantages resulted in a higher tax burden on imported goods and created incentives to source locally in Brazil. The measures were thus discriminatory and aimed at import substitution. The dispute also addressed tax exemption schemes for Brazilian companies meeting certain export targets, in contravention of the prohibition on export contingent subsidies. This was not the first time that the EU had raised this issue. The EU had expressed in other WTO bodies its concerns about the use by Brazil of indirect taxes as a means to protect and promote domestic production. Certain measures had existed for some time, although in principle they were temporary in nature. However, in recent times, the EU had witnessed a continuous extension and expansion of these measures. In particular, the so-called Lei Informatica, Informatics Law, which covered broad categories of goods such as electronic goods, industrial automated machines, or medical diagnosis equipment, had been again recently prolonged and would in principle expire only in 2029. The EU was similarly concerned about the introduction of new measures to cover an increasing number of economic sectors of major trade importance for the EU, such as the automotive sector. This was the case of INOVAR-AUTO, enacted in 2012, replacing a previous temporary, but equally discriminatory, regime. The EU had hoped that its request for consultations would have triggered some positive consideration from Brazil of the legitimate concerns of trading partners. Yet, the EU had noted with concern the absence of any noticeable attempt to address those concerns and to reverse the measures at issue. In the circumstances, the EU had little choice but to request the establishment of a panel in order to secure a solution to this dispute.

The panel request covered all the measures described in the request for consultations, with the exception of measures relating to the tax treatment of goods produced in Brazil's "free trade zones". Thus, that issue remained at the consultations stage. In that respect, the EU reserved its rights with regard to any possible future actions under the DSU.

5.3. The representative of Brazil said that his country regretted the EU's decision to request the establishment of a panel to examine this matter. During the informal and formal consultations held on this matter, Brazil had provided abundant information and evidence that the measures the EU was now requesting to be taken to the panel stage were consistent with Brazil's multilateral obligations. The dispute called into question programs that had been established as a result of careful analysis of the challenges posed to the most dynamic sectors of the Brazilian economy. These programs had been established in close consultation with the private sector with a view to promoting a paradigm shift in both productivity and technological performance. They were also aimed at fostering innovation and workforce capacity in a rapidly changing global productive structure. These programs benefitted directly, in a non-discriminatory manner, both domestic and foreign investments. Brazil had thus put in place a comprehensive program for promoting each of these aspects in key sectors of its economy: the INOVAR-AUTO for the automotive industry and the Informatics Law (and other legislation) for the IT industry. These programs established certain tax benefits concerning investments in technology and workforce capacity as well as production-step requirements. They did not discriminate on the basis of origin nor were they contingent upon the use of domestic inputs or finished goods benefitting from the programs. The requirements were origin-neutral and designed to generate benefits to domestic and foreign investments alike. Brazil did not wish to restrict trade. This was rather a matter of increasing production and trade with new technological standards. For instance, imports of both electronic products and auto-parts had increased significantly after the establishment of their respective incentive programs.

5.4. With regard to the Special Regime for the Purchase of Capital Goods for Exporting Enterprises (RECAP) and tax suspension to predominantly exporting companies (PEP), these were simply mechanisms to facilitate the redemption of taxes that tended to accumulate. Tax credits, in the case of companies that mainly exported, tended to accumulate because the exported final products were exempt from direct taxes. These credits were not easily offset with other taxes nor were they readily refunded by the tax authorities. In these programs, no benefit was given out by the government. They were not tax programs to promote exports, but merely a mechanism to ensure that exporters were not penalized with unredeemable tax credits in their regular business activities. Finally, Brazil wished to recall that European companies benefitted largely from the programs at issue, and Brazil did not believe that the EU had experienced any negative commercial impact deriving from these measures. For Brazil, these programs were a fundamental tool for the promotion of the sustainable development of its economy, for the promotion of more technological innovation, for enhancing the skills of the workforce and for the increased participation in the international trade flows. In light of the foregoing, Brazil could not accept that a panel be established at the present meeting as had been requested by the EU.

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

6 INDIA – MEASURES CONCERNING THE IMPORTATION OF CERTAIN AGRICULTURAL PRODUCTS

A. Joint request by India and the United States for a decision by the DSB (WT/DS430/7)

6.1. The Chairman drew attention to the joint communication from India and the United States contained in document WT/DS430/7 and invited the representative of India to speak.

6.2. The representative of India said that India and the United States had made a joint request to the DSB contained in WT/DS430/7. Taking into account the current workload of the Appellate Body, India and the United States requested, as stated in their joint communication, that the DSB adopt the decision with respect to the dispute: "India – Measures Concerning the Importation of Certain Agricultural Products" (DS430). India acknowledged the current strain on the Appellate Body and took seriously its responsibility to cooperate to alleviate that strain. There had been such similar requests in the past when the Appellate Body had had to deal with an increased workload

issue wherein the DSB had been requested to extend the deadline for adoption or appeal of a Panel Report to allow the Appellate Body to clear its backlog and better manage its workload. India considered that the draft DSB decision, if adopted, would provide greater flexibility in scheduling any possible appeal of the Panel Report in this dispute, which had been circulated on 14 October 2014. Thus, India had made this joint request with the United States and requested the DSB to extend the set deadline to no later than 26 January 2015. India urged and would appreciate the support of the DSB in this matter.

6.3. The representative of the United States said that the United States and India jointly requested that the DSB agree to provide additional time for the adoption or appeal of the Panel Report in this dispute by adopting the draft decision that had been circulated to WTO Members in document WT/DS430/7. The United States said that it would like to make clear that it was not making this request out of concern with the Panel's report. To the contrary, the Panel had conducted a thorough evaluation of the issues in this dispute, in a clear and an efficient manner. The Panel's findings that India had acted inconsistently with its WTO obligations were well-founded in the applicable provisions of the WTO Agreement and the factual record in the dispute. However, after discussions, the two parties agreed to jointly make this request, which would provide for DSB adoption of the Panel Report at the request of either party until 26 January 2015, unless the Report was appealed. Among other things, this proposed DSB decision reflected that the WTO dispute settlement system as a whole was currently facing a significant volume of disputes, including the Appellate Body. The United States understood that, in the absence of agreement by the parties, requesting adoption of the panel report by the DSB at the present meeting would only have exacerbated those problems without any significant change in the timing of the issuance of a report on appeal. Insisting on adoption or appeal at the present meeting therefore would essentially have ensured that the Appellate Body would not be able to adhere to the 90-day deadline that Members had set out in Article 17.5 of the DSU. The United States was therefore determined to cooperate with India to put forward this decision for the DSB's consideration at the present meeting. The United States would expect that other Members in similar circumstances would also take a similarly constructive approach to their disputes. This would help the Appellate Body to manage its workload while adhering to the provisions of the DSU to the maximum extent possible. Those Members that did cooperate to help manage the challenges currently faced by the Appellate Body should not be disadvantaged by other Members choosing not to cooperate and who instead seek to press forward with their appeals to gain some timing or litigation advantage. The United States appreciated the DSB's support for the draft decision.

6.4. The DSB took note of the statements.

6.5. The Chairman proposed that: "The DSB agree that, upon a request by India or the United States, the DSB shall no later than 26 January 2015 adopt the Report of the Panel in the dispute: *India – Measures Concerning the Importation of Certain Agricultural Products* contained in document WT/DS430/R and Add.1 unless (i) the DSB decides by consensus not to do so or (ii) either party to the dispute notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU".

6.6. The DSB so agreed.

7 ADOPTION OF THE 2014 DRAFT ANNUAL REPORT OF THE DSB (WT/DSB/W/531 AND WT/DSB/W/531/ADD.1)

7.1. The Chairman said that, under this Agenda item, he was submitting for adoption the draft text of the 2014 Annual Report of the DSB contained in document WT/DSB/W/531 and Add.1 pursuant to the Procedures for an Annual Overview of WTO Activities and for Reporting under the WTO, contained in document WT/L/105. The Report covered the work of the DSB since the previous Annual Report contained in document WT/DSB/61. In other words, this Report covered meetings of the DSB from 25 November 2013 through 20 October 2014. He noted that the Report was in two parts: a summary report and an addendum, which was the overview of the state of play of WTO disputes covering the period from 1 January 1995 to 31 October 2014, prepared by the Secretariat on its own responsibility. With these words of introduction, he proposed that the DSB adopt the Annual Report and that the Secretariat be authorized to update the Report under its own responsibility in order to include actions taken by the DSB at the present meeting. The updated Annual Report would then be submitted for consideration by the General Council at its meeting scheduled for 10 and 11 December 2014. He then proposed that the DSB adopt the draft

Annual Report of the DSB contained in WT/DSB/W/531 and Add.1 on the understanding that it would be further updated by the Secretariat.

7.2. The DSB took note of the statement and adopted the draft Annual Report of the DSB contained in WT/DSB/W/531 and Add.1 on the understanding that it would be further updated by the Secretariat.³

8 PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/533)

8.1. The Chairman drew attention to document WT/DSB/W/533, which contained one new name proposed by the Dominican Republic for inclusion on the Indicative List of Governmental and Non-governmental Panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the name contained in document WT/DSB/W/533.

8.2. The DSB so agreed.

9 STATEMENT BY AUSTRALIA REGARDING "AUSTRALIA – TOBACCO PLAIN PACKAGING" DISPUTES

9.1. The representative of Australia, speaking under "Other Business", said that DSB Members may be aware of recent interventions by complainants in the tobacco plain packaging disputes at the November 2014 meetings of the TRIPS Council and the TBT Committee. Australia was raising this issue under "Other Business" because the November 2014 meeting of the TBT Committee had taken place after the deadline for inscribing items on the Agenda of the present DSB meeting. Australia believed that the actions of Ukraine and Honduras in again placing Australia's measure on the Agenda of the TRIPS Council, and of Ukraine in again placing Australia's measure on the Agenda of the TBT Committee, were not in accordance with the established rules and practices of either the TRIPS Council or the TBT Committee. Importantly for the DSB, these actions were also inconsistent with established principles of the dispute settlement system. The subsequent interventions by some of the complainants in the TRIPS Council and TBT Committee had raised similar concerns. As Australia had stated in the TRIPS Council and the TBT Committee, it was not appropriate for Members to continue to raise items in these WTO bodies when the measure at issue was already subject to dispute settlement proceedings. That was clearly the case in relation to the disputes concerning Australia's tobacco plain packaging measure, where the panel had been composed, a timetable and working procedures had been issued, and the first written submissions by the complainants had been filed. Ordinarily, trade concerns were first raised by Members in bodies such as the TRIPS Council and the TBT Committee. If those concerns remained unresolved Members may then challenge the relevant measures through dispute settlement proceedings. At that point, the focus would turn to the DSB and the dispute settlement process, and the matter would no longer be considered under regular committee processes. This was important for coherence between the WTO's regular committee structure and the dispute settlement system. This was recognised in the text of the TBT and TRIPS Agreements. Article 14 of the TBT Agreement clearly stated that the settlement of disputes "with respect to any matter affecting the operation of this Agreement shall take place under the auspices of the Dispute Settlement Body". Article 64 of the TRIPS Agreement similarly stated that the "[t]he provisions of Article XXII and XXIII of the GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement...".

9.2. The continued discussion of Australia's tobacco plain packaging measure in the TRIPS Council and TBT Committee appeared to be creating a parallel process alongside the ongoing dispute settlement proceedings. There were established rules and procedures for the participation of Members in those disputes. In particular, the 36 Members apart from the complainants had requested participation in the related tobacco plain packaging disputes as third parties. Ukraine's suggestion at the November 2014 TBT Committee that its action in raising Australia's measure was "a matter of transparency and courtesy" to all WTO Members stood at odds with its stance rejecting any transparency arrangements in the current disputes, which would have afforded all Members access to information in the proceedings. Moreover, as the matter was now under the jurisdiction of the DSB, it was, as provided under Article 2.2 of the DSU, a matter for the DSB to "inform the relevant Councils and Committees of any developments in the disputes related to

³ Subsequently, the Annual Report was circulated in document WT/DSB/64 and Add.1.

provisions of the respective covered agreements". In the most recent interventions in the TRIPS Council and TBT Committee, reference had also been made to proposed tobacco plain packaging measures currently being considered by New Zealand, Ireland and the United Kingdom as well as France and Finland. The complainants in Australia's dispute had urged those other Members considering similar tobacco control measures to allow the dispute settlement process with Australia to conclude before implementing their own measures. Therefore, it would seem to Australia that the main purpose of recent statements to the TRIPS Council and TBT Committee was to dissuade other Members from introducing tobacco plain packaging. This would instil a form of regulatory chill, which was a well-known tactic of the tobacco industry to avoid countries implementing tobacco control measures. Australia would continue to defend its tobacco plain packaging measure in any forum, be it in the TRIPS Council, or the TBT Committee, or the DSB. As Australia had stated repeatedly, tobacco plain packaging was a legitimate measure designed to pursue a legitimate objective, the protection of public health. Australia's position on this matter had not changed. Australia's tobacco plain packaging measure was based on a broad range of studies and reports and was supported by leading public health experts and the World Health Organization. Importantly, early indications showed that tobacco plain packaging, as part of Australia's comprehensive suite of tobacco control measures, was having a positive effect. However, Australia considered that the appropriate forum for Members to argue a case currently under consideration by a panel was before that Panel. Unfortunately, the action of the complainants in continuing to place this issue on the agenda of other WTO bodies had forced Australia to again place its views on the record at the present DSB meeting.

9.3. The representative of Ukraine said that his country thanked Australia for placing this item on the Agenda of the present meeting. Ukraine looked forward to the Panel's subjective assessment of the evidence presented by Ukraine as well as to the Panel's analysis of the legal arguments. In that respect, Ukraine expected the dispute settlement proceedings in these disputes to move forward in the most expeditious way possible.

9.4. The representative of Honduras said that her country had taken note of the concerns expressed by Australia. However, she wished to clarify that Honduras had not placed Australia's measure on the agenda of the TRIPS Council. Honduras shared the concerns of the Members that had placed it on the agenda. Honduras as a WTO Member has the right to discuss its interests in the TBT Committee and the TRIPS Council as other countries had done with respect to new measures being considered by Ireland and France. Honduras had always indicated that it hoped that this dispute would be resolved and that the measures would be brought into compliance with the WTO rules. In any event, the Member inscribing this item on the agenda of the TRIPS Council and TBT Committee had done so in accordance with the applicable rules of procedure. Since every Member had the right to include any item when it considered that its rights were being affected.

9.5. Honduras thanked Australia for its interest in this matter, but did not consider that the DSB was the appropriate forum in which to raise its concerns. Honduras noted that Rule 6 of the Rules of Procedures for the General Council meetings stipulated that Members wishing to raise an item under "Other Business" shall provide the other Members directly concerned, whenever possible, advance notice of items intended to be raised under "Other Business". In addition, it was Honduras' understanding that no decision could be taken by the DSB on the matter raised under "Other Business".

9.6. The DSB took note of the statements.
