



Dispute Settlement Body
23 July 2013

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 23 JULY 2013

Chairman: Mr. Jonathan Fried (Canada)

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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.128)
- B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.128)
- C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.103)
- D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.66)
- E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.15)
- F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.14)
- G. United States – Measures affecting the production and sale of clove cigarettes: Status report by the United States (WT/DS406/11/Add.7)
- H. United States – Measures concerning the importation, marketing and sale of tuna and tuna products: Status report by the United States (WT/DS381/18/Add.3)
- I. China – Certain measures affecting electronic payment services: Status report by China (WT/DS413/9/Add.1)

1.1. The Chairman noted that there were nine sub-items under this Agenda item, which referred to status reports submitted by various delegations pursuant to Article 21.6 of the DSU. He recalled that Article 21.6 of the DSU required that the issue of implementation of recommendations and 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. He urged delegations to provide new information about compliance and looked forward to comments that would be considered constructive and focused on new developments, suggestions and ideas on progress towards the resolution of disputes. With these introductory remarks, the Chairman proposed to turn to the first status report on the Agenda of the present meeting.

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.128)

1.2. The Chairman drew attention to document WT/DS176/11/Add.128, 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 11 July 2013, in accordance with Article 21.6 of the DSU. As noted in the US status report, at least five bills had been introduced in the current Congress in relation to the recommendations and rulings of the DSB. These included H.R. 214, H.R. 778, H.R. 872, H.R. 873, and S. 647. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

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

1.5. The representative of Cuba said that, for the past 12 years, her country had continued to make statements, once a month, before the DSB in order to condemn the continued US failure to comply with the DSB's rulings in this dispute. Unfortunately, Cuba noted that under the mechanism of the surveillance of implementation of recommendations and rulings adopted by the DSB, as set out under Article 21 of the DSU, the US non-compliance continued. Cuba regretted that the current provisions of the DSU failed to provide a developing country, such as Cuba, an effective mechanism to end this dispute. The United States had taken advantage of the DSU shortcomings with regard to effective compliance. The US company, Bacardi, continued with impunity to use the "Havana Club" trademark to market a line of rum, which was not of Cuban origin. The counterfeiting of this well-known Cuban brand was fully supported by the US government and its domestic legislation. At the same time and paradoxically, the United States was one of the strongest advocates of the enforcement of intellectual property rights, as demonstrated by the new strategic plan released by the White House in June 2013 with the purpose of protecting US intellectual property rights, and taking bold measures against piracy and counterfeiting both on US territory and abroad. Furthermore, it had been announced that the US Administration intended to intensify its efforts to ensure that other countries protected and respected intellectual property. In 2010, the first version of this strategic plan had been released, which was sought to be endorsed under the EU-US Transatlantic Trade and Investment Partnership (TTIP). The plan had also established that the Office of the USTR would, in conjunction with other Members, strengthen its efforts to advance the objectives of the controversial Anti-Counterfeiting Trade Agreement (ACTA).

1.6. Cuba noted that the United States felt entitled to publicly present its intellectual property requests with respect to certain Members while systematically breaching its WTO commitments in this area. This reaffirmed one of the characteristic features of the incoherent US foreign policy, namely, double standards. Cuba found it ironic that the United States was drafting strategic plans and international agreements on intellectual property while maintaining violations such as Section 211. Cuba questioned whether the new USTR's agenda would include a provision on the enforcement of Cuban intellectual property rights. The United States had a legal and moral obligation to resolve the issues pending before the DSB. These included Section 211, the full repeal of which, without further delay, was the only way of putting an end to this dispute. Cuba would continue to denounce the situation of non-compliance, which undermined the WTO dispute settlement system and constituted an infringement of intellectual property rights. In Cuba's view, this situation demonstrated the need to introduce far-reaching amendments to the DSU provisions and to put in place specific provisions in order to ensure effective compliance with the DSB's rulings.

1.7. The representative of India said that his country thanked the United States for its status report and its statement made at the present meeting. India noted that there was no change in the situation and that the status report repeated the pattern of previous reports showing lack of progress. India, once again, was compelled to stress that the principle of prompt compliance was missing in this dispute. India renewed its systemic concern about the situation of continued non-compliance by Members, as this undermined the credibility and the confidence that Members reposed in the system. India urged the United States to report full compliance in this dispute without any further delay.

1.8. 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 regretted that the United States did not provide any substantive information on this dispute, other than reiterating that relevant draft legislation had been introduced in the US Congress, as had already been mentioned in the past three DSB meetings. As Argentina had stated several times before, this lack of progress was inconsistent with the principle of prompt and effective compliance stipulated in the DSU provisions, in particular since the interests of a developing-country Member were affected. Argentina, therefore, supported Cuba and other previous speakers in their requests and called on both parties to the dispute, in particular the United States, to take the necessary measures so as to finally remove this item from the DSB's Agenda.

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

1.10. The representative of the Plurinational State of Bolivia said that, as his country had noted for the past ten years, the US status report did not contain any new information on progress towards solving this dispute. Bolivia reiterated its concern about the US failure to comply with the DSB's recommendations and rulings. Bolivia was also concerned about the US lack of political will to resolve this dispute. This situation of non-compliance undermined the credibility of the multilateral trading system and harmed the interests of a developing-country Member. Bolivia, once again, urged the United States to comply with the DSB's recommendations and rulings and to take measures to lift the restrictions imposed under Section 211. Bolivia supported the concerns expressed by Cuba at the present meeting.

1.11. The representative of Dominica, speaking on behalf of Antigua and Barbuda, thanked the United States for its status report and for its statement made at the present meeting. The US status report was similar to reports delivered at previous meetings, which did not indicate any substantive change in the situation. This continued the situation of prolonged non-compliance. As a country which currently faced the same situation, Antigua and Barbuda could understand the frustration and shared the same systemic concerns about the negative impact that such non-compliance would have on the credibility and confidence that Members placed in the system. Antigua and Barbuda, therefore, supported the calls for full compliance with the DSB's rulings and recommendations without any further delay.

1.12. The representative of the Bolivarian Republic of Venezuela said that his country wished to express its discontent regarding the US lack of effort to resolve this dispute on Section 211. Given the long-standing nature of this dispute, Venezuela had no option but to reiterate its concern that this dispute not only negatively affected the interests of one Member, Cuba, but it would also set a precedent for the future, and other WTO Members could be affected. In light of these facts, Members must reflect on the effectiveness of the WTO rules and the level of compliance with the DSB's rulings. Venezuela hoped that the summer break would help Members in this respect. Venezuela recalled that the DSB was one of the multilateral trading system's major achievements, created precisely to make the system more effective as a whole, and that it was the highest authority to which Members could turn when they believed that trade measures imposed by another Member were causing injury to their trade and economy, as was the case in this dispute which affected Cuba. The DSB had ruled that the United States was violating multilateral rules and caused injury to trade in many of Cuba's export items, one of which was Havana Club rum. In light of these principles and facts, Venezuela wished to remind the United States that it was obliged to comply with the DSB's rulings. Venezuela and other Members, who had expressed similar views at the present meeting, were not asking the United States for a favour or requesting that it comply as an act of good will. They were simply asking it to act in conformity with the WTO rules which the United States should respect as a Member with full rights and obligations.

1.13. The representative of Uruguay said that his country thanked the United States for its most recent status report. Uruguay regretted that the situation in this dispute had not changed and, therefore, it supported the systemic concerns raised by previous speakers at the present meeting. In Uruguay's view, it was important to respect the principles of the multilateral trading system, and in particular the DSU provisions since they constituted the most important elements of the multilateral trading system. Members must fully comply with the DSB's recommendations and rulings. This was essential in order to ensure the proper functioning of the dispute settlement system and its credibility. The system provided legal security and ensured the proper balance of rights and obligations within the multilateral trading system. Uruguay reiterated its concerns and urged the parties to this dispute to step up their efforts and make use of the remedies provided under the DSU provisions to resolve this dispute that had lasted for more than ten years.

1.14. The representative of Nicaragua said that his country, once again, supported Cuba's position with regard to the rights of Cuban owners of the Havana Club Rum trademark. The US status reports, which had been submitted for the past ten years, did not offer any concrete steps towards the implementation of the DSB's recommendations. Nicaragua, therefore, urged the United States to reconsider its economic policy against Cuba, which had a negative impact on its economy. Nicaragua was concerned that the US failure to comply with its obligations undermined the credibility of the DSB and the multilateral trading system. It could also set a precedent with consequences for other Members, in particular developing-country Members. Nicaragua hoped that the US authorities would introduce the necessary reforms without delay so as to comply with the DSB's recommendations and rulings.

1.15. The representative of China said that his country thanked the United States for its status report and the statement made at the present meeting. As it had said at previous DSB meetings, China believed that the prolonged situation of non-compliance in this dispute was highly incompatible with the prompt implementation required under the DSU provisions, in particular since the interests of a developing-country Member were affected. China joined other Members in urging the United States to implement the DSB's rulings and recommendations without further delay.

1.16. The representative of Viet Nam said that his country thanked the United States for its status report. Viet Nam noted that more than ten years had passed, but the United States had not taken any action to implement the DSB's recommendations and rulings. Viet Nam, once again, urged the United States to respect the DSB's recommendation so as to uphold the rule of law and to rectify the situation *vis-à-vis* Cuba.

1.17. The representative of Mexico said that, once again, his country urged the parties to this dispute to take the necessary measures in order to comply with the DSB's recommendations and rulings to the benefit of all Members, as stipulated in Article 21.1 of the DSU.

1.18. The Chairman noted the exchange of views regarding an outstanding measure and said that all delegations should reflect on more constructive ways of moving towards resolution.

1.19. 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.128)

1.20. The Chairman drew attention to document WT/DS184/15/Add.128, 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.

1.21. The representative of the United States said that his country had provided a status report in this dispute on 11 July 2013, 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 in this dispute. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures to resolve the matter.

1.22. The representative of Japan said that his country thanked the United States for its statement and status report submitted on 11 July 2013. Since the content of the report had not changed from the previous report, Japan's position had not changed either as expressed in the previous meetings.

1.23. 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.103)

1.24. The Chairman drew attention to document WT/DS160/24/Add.103, 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.

1.25. The representative of the United States said that his country had provided a status report in this dispute on 11 July 2013, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the EU, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

1.26. The representative of the European Union said that the EU thanked the United States for the status report and statement made at the present meeting. The EU referred to its previous statements regarding its wish to resolve this case as soon as possible.

1.27. 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.66)

1.28. The Chairman drew attention to document WT/DS291/37/Add.66, 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.

1.29. The representative of the European Union said that the EU, once again, hoped that it would continue on the constructive path of dialogue with the United States. In 2012, the Commission had authorized five new GMOs¹ and had renewed the authorization of a sixth one.² Three of those decisions³ had been adopted only six months after the relevant EFSA opinions had been published, while the decision on MIR162 had been adopted less than four months after the EFSA opinion.⁴ The details were set out in the EU's written statement. Regarding the concerns expressed by the United States on the back-log of approvals, the EU recalled that its 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 just mentioned. The Appeal committee had recently voted for one GMO, where no opinion was rendered.⁵ Three more decisions⁶ had also been presented at recent meetings of the standing committees for discussion and vote, rendering no opinion. Those decisions had been submitted to the Appeal committee on 11 July 2013 and, as there had been no opinion, the Commission would move to adopt all three in the coming weeks.

1.30. The representative of the United States said that his country thanked the EU for its status report, for its statement made at the present meeting and for the information provided in that statement. As it had stated in the DSB before, the United States continued to have serious concerns regarding EU measures affecting the approval of biotech products. As the United States had noted, the relevant EU regulatory committee often skipped its monthly meeting. As the United States understood, the committee had failed to meet in July, and was not scheduled to meet again until September. Under the EU system, a product could not be approved unless and until an approval measure was placed on the agenda of the regulatory committee and the infrequency of committee meetings thus contributed to ongoing delays. As an example, the United States was awaiting a decision on a biotech corn product that had received a favourable EFSA opinion last November. The fact that no meeting of the regulatory committee was scheduled until September meant that a minimum of ten months would have elapsed between the time of the favourable scientific opinion and the first consideration by that committee. Even when the EU's regulatory committee did consider a biotech product, it did not approve the product, in accordance with the scientific opinion and, in fact, this had not happened once in the last ten years. Instead, what happened was that the approval was further delayed as the application was forced to proceed through additional and unnecessary steps. As an example, the three biotech products that the United States had discussed at the June meeting of the DSB had been recently considered by an appeals committee. Even though each of those three products had been supported by a favourable EFSA opinion, there was no action taken by that committee. The United States was hopeful that those three products finally would be approved in the near future, but regretted the many delays that the United States had experienced. As a result of EU delays, the EU measures affecting approval of biotech products continued to cause substantial restrictions on trade. As it had said before, the United States urged the EU to take steps to address these problems.

¹ A5547-127 soybean, 356043 soybean, MON87701 soybean, MON87701 x MON89788 soybean, MIR162 maize.

² 40-3-2 soybean.

³ Authorization decision for 356043 and MON87701 soybeans, MON87701 x MON89788 soybean.

⁴ EFSA opinion: 21 June 2012 EFSA Journal 2012;10(6):2756. Decision on authorization: 18 October 2012.

⁵ Ms8, Rf3 and Ms8xRf3 oilseed rape.

⁶ Maize stack events MON89034 x 1507 x MON88017 x 59122 and GM maize MON89034 x 1507 x NK603 as well as GM maize MON810 pollen.

1.31. The representative of the European Union said that the EU wished to reassure the United States that the three decisions just mentioned would be adopted shortly.

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

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.15)

1.33. The Chairman drew attention to document WT/DS371/15/Add.15, which contained the status report by Thailand on progress in the implementation of the DSB's recommendations in the case concerning Thailand's customs and fiscal measures on cigarettes from the Philippines.

1.34. The representative of Thailand said that, as indicated in its most recent status report, Thailand was continuing to provide additional technical information regarding its implementation, as requested by the Philippines during the informal bilateral consultations held in Bangkok on 3-4 May 2013 regarding the outstanding issues in this dispute. Thailand remained at the Philippines' disposal to answer any further questions the Philippines may have regarding Thailand's implementation. Thailand looked forward to continuing its discussions with the Philippines and to resolving this matter in an amicable manner.

1.35. The representative of the Philippines said that his country thanked Thailand for its status report and for its statement made at the present meeting. In its previous statement at the 25 June 2013 DSB meeting, the Philippines had referred to the fact that it continued to have concerns with a number of issues that affected Thailand's full compliance in this dispute. The Philippines had explained some of those concerns in more detail at the June DSB meeting and had referred Members to its statement as recorded in the minutes of the meeting. Thus, the Philippines would not repeat its position at the present meeting. The Philippines continued to be deeply disappointed that Thailand had failed to comply fully with the DSB's recommendations and rulings. The Philippines was also disappointed that Thailand had failed to provide information that had been promised during the bilateral meeting in May 2013. Thailand's failure to adhere to WTO disciplines concerning customs valuation was of considerable importance, both to the system and to the Philippines. Therefore, the Philippines continued to consider the next steps in this dispute.

1.36. The Chairman noted that the two countries did not agree on the facts. Thailand had stated that additional information had been provided subsequent to the May meeting while the Philippines had stated that they were still waiting for information. He believed that further dialogue on this matter would follow.

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

F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.14)

1.38. The Chairman drew attention to document WT/DS404/11/Add.14, 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.

1.39. The representative of the United States said that his country had provided a status report in this dispute on 11 July 2013, in accordance with Article 21.6 of the DSU. In February 2012, the US Department of Commerce had published a modification to its procedures in order to implement the DSB's recommendations and rulings regarding the use of "zeroing" in anti-dumping reviews. That modification addressed certain findings in this dispute. In June 2012, the United States Trade Representative had requested, pursuant to Section 129 of the Uruguay Round Agreements Act, that the Department of Commerce take action necessary to implement the DSB's recommendations and rulings in this dispute. The United States would continue to consult with interested parties as it worked to address the recommendations and rulings of the DSB.

1.40. The representative of Viet Nam said that his country thanked the United States for its status report and its statement made at the present meeting. Viet Nam noted that the reasonable period of time, mutually agreed by the parties, had expired one year ago. However, the US Department of Commerce had not taken any action to recalculate the anti-dumping duty for the second and third periods of review. This was inconsistent with the DSB's recommendations. Once again, Viet Nam requested that the United States fully comply without any further delay for the benefit of Viet Nam's exporters.

1.41. The representative of Cuba said that her country supported Viet Nam's concerns regarding the lack of progress in this dispute.

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

G. United States – Measures affecting the production and sale of clove cigarettes: Status report by the United States (WT/DS406/11/Add.7)

1.43. The Chairman drew attention to document WT/DS406/11/Add.7, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US measures affecting the production and sale of clove cigarettes.

1.44. The representative of the United States said that his country had provided a status report in this dispute on 11 July 2013, in accordance with Article 21.6 of the DSU. As the United States had reported to the DSB, US authorities had conferred with interested parties and had worked to implement the recommendations and rulings of the DSB in a manner that was appropriate from the perspective of public health. The United States recalled that, in this dispute, the DSB had found that the challenged US measure reflected the overwhelming view of the scientific community that banning clove and other flavoured cigarettes benefited the public health by reducing the likelihood that youth would enter into a lifetime of cigarette addiction. At the same time, the DSB had also found that the US measure provided less favourable treatment to clove cigarettes imported from Indonesia than to menthol cigarettes that had been made in the United States. To come into compliance with the DSB's recommendations and rulings, the United States had taken and was taking a number of actions in relation to menthol cigarettes. At the present meeting, the United States was announcing several actions by US health authorities. First, the US Food and Drug Administration was publishing an Advanced Notice of Proposed Rule Making concerning menthol cigarettes. The Notice initiated a process to receive public comment on potential regulatory options that the Food and Drug Administration might consider and seek additional information. The Notice would be published in the US Federal Register. Second, the US Food and Drug Administration was releasing its Preliminary Scientific Evaluation on the Possible Public Health Effects of Menthol Versus Non-Menthol Cigarettes. The Preliminary Scientific Evaluation addressed the association between menthol cigarettes and various outcomes, including initiation, addiction, and cessation. The Preliminary Evaluation included a finding that the presence of menthol in cigarettes negatively affected cessation and attempts of smokers to quit smoking. The Preliminary Evaluation would be available for public comment.

1.45. Third, the US Food and Drug Administration was announcing the development of a youth education campaign that was designed to prevent and reduce demand for tobacco products and menthol cigarettes. Fourth, the US Department of Health and Human Services was sharing information through the US online hub for tobacco information and cessation tools, called BeTobaccoFree.gov, which had initially been launched in November 2012. This online hub provided information on the health risks posed by menthol cigarettes to raise awareness of those risks. Fifth, the National Cancer Institute was educating the public on the health risks posed by menthol cigarettes through its website designed to help persons quit smoking, which was SmokeFree.gov. The health risks posed by using tobacco were well-documented, and the public health challenges posed by menthol cigarettes in particular were significant. In the United States, approximately 30% of adult smokers and 40% of all youth smokers reported smoking menthol cigarettes. Raising awareness and educating about the health risks of tobacco could be an important means to discourage its use. In light of the significant public health challenges posed by menthol cigarettes, these actions by US health authorities brought the United States into compliance with the DSB's recommendations and rulings in this dispute within the reasonable period of time for compliance, which expired on 24 July 2013. The United States looked forward to continuing to confer with

Indonesia regarding these compliance actions. Bilateral meetings were being arranged to answer any questions Indonesia may have.

1.46. The representative of Indonesia said that his country thanked the United States for its status report, and wished to reiterate its statement made at the 25 June DSB meeting. The reasonable period of time for the United States to implement the DSB's recommendations and rulings in this case would expire on 24 July 2013. To date, Indonesia strongly believed that the United States would make an effort and take positive actions to adopt its law and regulations in a non-discriminatory manner, as stipulated in the WTO Agreements. Indonesia also appreciated the US position to uphold its interest to promote the public health, as had been consistently stated by the United States, as long as the measure was not more trade restrictive than necessary. Therefore, Indonesia urged the United States to abide by the principles and stipulations regulated in the WTO Agreements, in particular, the TBT Agreement and the GATT 1994. Indonesia noted that time was short and thus urged the United States to provide more concrete progress on the implementation of the DSB's recommendations and rulings in this dispute. Indonesia stood ready to resolve this matter and to cooperate more intensively with the United States in order to achieve a mutually satisfactory solution in accordance with the DSU provisions.

1.47. The Chairman said that there seemed to be an agreement to have more intense engagement as the United States had offered bilateral consultations on the measures it was announcing at the present meeting. He hoped that, during those consultations, there would be a better understanding of the proposed rule-making versus actual changes and how that related to full compliance. In light of this, the DSB may still need to decide, once it heard back from the parties on their bilateral consultations, whether it would revert to this matter at its next meeting.

1.48. The representative of the United States said that the US statement at the present meeting was quite clear in that the United States had taken measures to come into compliance. The United States would be happy to provide Indonesia with more information. In light of this, it was the US view that there was no need to revert to this matter.

1.49. The DSB took note of the statements.

H. United States – Measures concerning the importation, marketing and sale of tuna and tuna products: Status report by the United States (WT/DS381/18/Add.3)

1.50. The Chairman drew attention to document WT/DS381/18/Add.3, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case regarding the US measures concerning the importation, marketing and sale of tuna and tuna products.

1.51. The representative of the United States said that his country had provided a status report in this dispute on 11 July 2013, in accordance with Article 21.6 of the DSU. As was noted in that report, on 13 July 2013, the United States had made effective a final rule that amended certain dolphin-safe labelling requirements⁷ and had brought those requirements into compliance with the recommendations and rulings of the DSB. The amended regulations enhanced documentary requirements for certifying that no dolphins had been killed or seriously injured when tuna were caught to also now cover tuna that had been caught in oceans other than the Eastern Tropical Pacific Ocean (ETP). Those changes ensured that consumers would not be misled or deceived about whether the tuna in a product labelled "dolphin safe" was caught in a manner that had caused harm to dolphins. The final rule brought the United States into compliance with the DSB's recommendations and rulings within the reasonable period of time agreed to by Mexico and the United States. The rule demonstrated that the United States could prevent consumer deception and protect dolphins consistent with WTO rules.

1.52. The representative of Mexico said that his country thanked the United States for its status report. Mexico noted that the measure implementing the DSB's rulings and recommendations, as reported by the United States, had been published in the US Federal Register on 9 July 2013. That measure had entered into effect on 13 July 2013, the date of expiry of the reasonable period of time for implementation, as agreed between Mexico and the United States. Mexico had submitted

⁷ Enhanced Document Requirements to Support Use of the Dolphin Safe Label on Tuna Products: Final Rule, 78 Fed. Reg. 40997 (9 July 2013) (to be codified at 50 CFR pt. 216).

its comments during the US regulatory process. In Mexico's view, the new measure did not comply with the WTO ruling, and it maintained two separate regulatory regimes. The first consisted of highly effective measures agreed at international level to protect dolphins in the zone where Mexico fished (Eastern Pacific). The second one consisted of a lax measure without any enforcement mechanism that had been established unilaterally for other fishing zones where fleets such as the US fleet operated and in which a high level of dolphin mortality continued to be recorded. As Mexico had already stated, the new measure unfortunately did not remove discrimination against Mexican tuna, nor did it eliminate the economic injury caused to the Mexican industry or address the damage caused to the environment and dolphins by fishing fleets from other countries in other oceans. Contrary to the US view, Mexico considered that the new measure adopted under the "dolphin-safe" labelling regime was inconsistent with the DSB's rulings and recommendations. In that regard, Mexico was continuing to examine the measure and to consider all the legal options available to it in order to find an effective solution to this dispute, including the suspension of concessions.

1.53. The representative of the United States said that his country thanked Mexico for its statement, but respectfully took exception to the point on discrimination. As the United States had indicated, the final rule addressed the DSB's recommendations and rulings by increasing documentation requirements for oceans other than the ETP to make those certification requirements commensurate with those applying inside the ETP. In doing so, the United States ensured that there was no discrimination between WTO Members. If it did become necessary, the United States said that it was fully prepared to defend the final rule. The United States remained open to further discussions, as it had noted, to address any concerns.

1.54. The Chairman noted that the best form of dispute settlement was dispute avoidance and thus hopefully a mutual understanding may avoid a compliance panel. He noted the possibility of reverting to this matter under some form at the next DSB meeting. He said that he was not trying to prejudge whether or not this matter would be raised again under Agenda item 1.

1.55. The representative of the United States said that his country noted the delicate nature of the Chairman's phrasing. With respect to both of the last two items discussed, the United States had described actions that did constitute compliance with the DSB's recommendations and rulings. As such, the United States was not required to give further status reports pursuant to Article 21.6 of the DSU. Under that reading of Article 21.6, a Member would be required to provide status reports until the complaining party relieved it of that responsibility. As the United States looked through the history of the DSB, that was not how it had worked previously.

1.56. The Chairman said that he wished to reassure the United States that he did not, in any way, mean to imply any expectation one way or another of a status report. He simply meant that the subject matter may be brought back to the DSB under one or another item.

1.57. The DSB took note of the statements.

I. China – Certain measures affecting electronic payment services: Status report by China (WT/DS413/9/Add.1)

1.58. The Chairman drew attention to document WT/DS413/9/Add.1, which contained the status report by China on progress in the implementation of the DSB's recommendations in the case concerning China's measures affecting electronic payment services.

1.59. The representative of China said that his country had provided a status report in this dispute on 11 July 2013, in accordance with Article 21.6 of the DSU. At the last DSB meeting, the United States had asserted that China's measures had ensured the market dominance of China UnionPay (CUP) and had prevented foreign suppliers from providing this service. As the Panel's ruling on the market access commitment issue was very limited, the US assertion was over generalized and not fully consistent with the Panel's finding. The Panel had concluded that there was no requirement that mandated the use of CUP or established CUP as the "sole supplier" of EPS for all domestic RMB payment card transactions. The Panel had also found that China had not undertaken a market access commitment under mode 1 in Sector 7.B(d) of its Schedule in respect of the services at issue in this dispute. With respect to mode 3 under Article XVI of the GATS, the Panel had rejected the US claim that the imposition of issuer, acquirer and terminal equipment

requirements imposed a limitation on the number of EPS suppliers in China in the form of a monopoly or exclusive service supplier, and thus the Panel was "unable to conclude that the issuer, terminal equipment and acquirer requirements, considered either separately or in combination, are inconsistent with Article XVI:2(a) of the GATS"; by contrast, the Panel had only found that the Hong Kong/Macao requirements imposed a limitation on the number of service suppliers in the form of a monopoly and were thus inconsistent with Article XVI:2(a) of the GATS. That was the only finding of inconsistency with regard to China's market access commitments in this dispute.

1.60. After adoption of the Panel Report by the DSB, the relevant Chinese government agencies had begun to actively work for the purpose of implementing the DSB's recommendations and rulings. On 28 June 2013, five measures at issue in this dispute had been repealed or invalidated by the People's Bank of China Announcement [2013] No.7. On 5 July 2013, the relevant articles of the three other measures at issue in this dispute had been announced not to be implemented anymore by the notice of the People's Bank of China on simplifying cross-border RMB business processes and improving relevant policies. The details of the measures were set out in the status report. Through those efforts, China had fully implemented the DSB's recommendations and rulings within the reasonable period of time.

1.61. The representative of the United States said that his country thanked China for its status report and its statement made at the present meeting. As the United States had described, China's measures affecting electronic payment services (EPS) had been and continued to be of significant concern to the United States. In this dispute, the DSB had found that China instituted measures that discriminated against foreign EPS suppliers at every stage of a card based electronic payment that took place in China in China's domestic currency. China's discriminatory measures had developed China UnionPay, Ltd. (CUP) and protected it from free and fair market competition by blocking foreign EPS suppliers from providing this important service for over ten years. The United States did take note of China's statement in its status report, a statement that had been repeated again at the present meeting, that "it has fully implemented the recommendations and rulings of the DSB within the reasonable period of time". However, the United States was not in a position to agree with that statement at the present meeting. The United States understood that there was a number of additional critical measures affecting the regulation of EPS in China that were material to this dispute, that were close to finalization, and yet were not mentioned in China's status report. The United States did not hear any mention of those at the present meeting either. Recognizing that, the United States would be closely monitoring China's activity in this area, in addition to reviewing the actions described in China's status report and discussed again at the present meeting so that the United States could evaluate whether those actions together constituted full implementation of the recommendations and rulings of the DSB within the reasonable period of time, which was noted to expire at the end of the month on 31 July 2013.

1.62. The representative of China said that, with respect to the implementation of the DSB's recommendations and rulings in this dispute, China wished to confirm again that it had taken all the necessary steps to bring its measures into full compliance. There were nine documents subject to the DSB's rulings and recommendations in this dispute, and China had repealed, invalidated or no longer implemented the relevant articles of eight documents. As the inconsistency of the ninth document (Document no. 17) had been found based on its application in conjunction with Document no. 76, and Document no. 76 had been repealed by the People's Bank of China, China did not need to take any further action with respect to Document no. 17. With respect to the other US concerns, China was open to further discussion with the United States bilaterally.

1.63. The Chairman said that he would not try to find the exact magic phrase, but noted that with regard to clove cigarettes from Indonesia, tuna in the Pacific, electronic payments in China there had been statements of full implementation, which were being examined by the complaining parties and thus, whether the DSB would revert to this, in whatever form, depended very much on the views of the Membership.

1.64. 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

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

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 took place 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 been continuing, Japan, once again, urged the United States to stop the illegal distributions so as to resolve this dispute. 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 thanked the EU and Japan for bringing this issue before the DSB once again. India shared their concerns and supported their views.

2.5. The representative of Canada said that his country shared the concerns expressed by the previous speakers.

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

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

2.8. The representative of the United States said that his country had addressed this issue before and would thus be brief. The United States did not understand the reason that this item continued to be inscribed on the Agenda of the DSB. The United States had been clear and had previously talked about the action taken in February 2006 when the President had signed the Deficit Reduction Act into effect, repealing the Continued Dumping and Subsidy Offset Act. With that enactment, the United States had taken all action necessary to implement the DSB's recommendations and rulings. Furthermore, pursuant to that action, anti-dumping and countervailing duties on current imports were no longer distributed to domestic firms. Accordingly, the United States did not understand why this continued to be an issue on the Agenda of the DSB.

2.9. The Chairman said that the discussion under the various items and sub-items had revealed an interesting horizontal issue as to what constituted full compliance and who should decide on this matter.

2.10. The DSB took note of the statements.

3 PERU – ADDITIONAL DUTY ON IMPORTS OF CERTAIN AGRICULTURAL PRODUCTS

A. Request for the establishment of a panel by Guatemala (WT/DS457/2)

3.1. The Chairman recalled that the DSB had considered this matter at its meeting on 25 June 2013 and had agreed to revert to it. He drew attention to the communication from Guatemala contained in document WT/DS457/2, and invited the representative of Guatemala to speak.

3.2. The representative of Guatemala said that the parties to this dispute continued to have divergent interpretations in relation to the legality and scope of Peru's price-band system. The parties also disagreed over the interpretation and relevance of the reference made by Peru to the Free Trade Agreement between Guatemala and Peru with regard to the measure at issue. Guatemala had no doubt that Peru's price-band system was inconsistent with the WTO Agreements. Guatemala was also fully convinced that the Free Trade Agreement between the two countries did not release Peru from its WTO obligations in respect of import charges prohibited by the Agreement on Agriculture and the GATT 1994. The Free Trade Agreement should not be construed as an abandonment by Guatemala of the legitimate exercise of its rights under the WTO. Rather, Guatemala regretted the attempts to use the Free Trade Agreement between the two countries with a view to circumventing commitments under the WTO Agreements. The Free Trade Agreement between Guatemala and Peru had been approved by Guatemala's Congress on 4 July 2013 following tireless efforts by its Ministry of the Economy. It demonstrated Guatemala's commitment to strengthening trade and diplomatic relations between Guatemala and Peru. Guatemala, therefore, regretted that, in exercising its rights within the WTO, it was being subjected to criticism and political pressure by Peru. Those political manoeuvres would not persuade Guatemala to relinquish its right to obtain an objective ruling based on WTO law. The key issue was whether the measure concerned was consistent or inconsistent with Peru's obligations under the covered agreements. Guatemala, therefore, requested, for the second time, that the DSB establish a panel. Guatemala was confident of the legitimacy of its rights both under the WTO Agreements and the Free Trade Agreement with Peru.

3.3. The representative of Peru said that his country was disappointed that Guatemala had submitted, for the second time, its request for the establishment of a panel in this case, given that the Peruvian price-band system was fully consistent with Peru's WTO obligations. Peru recalled that it had presented its position with regard to Guatemala's request in its statement made at the DSB meeting on 25 June 2013. Thus, there was no need for Peru to reiterate its position at the present meeting. Peru regretted that Guatemala had chosen to disregard Peru's position on this matter. Peru reiterated that it had provided Guatemala with a significant amount of additional information on the measure both before and during the consultations held in Lima on 14 and 15 May 2013. Peru found it surprising that Guatemala had opted for this unnecessary next step, especially since, on 4 July 2013, Guatemala had ratified, as a matter of pressing national need, a bilateral agreement with Peru, which provided that Peru may maintain its price-band system. Peru drew Members' attention to the fact that a panel had never, in the entire history of the WTO, had to rule on a Peruvian measure. This reinforced what had previously been stated at the DSB, namely that Peru was particularly respectful of its international obligations, including all of its WTO commitments. In that regard, Peru was concerned that Guatemala failed to recognize this key point. While it strongly disagreed with Guatemala's position, Peru recognized that a panel would have to be established at the present meeting. Peru stressed that it remained open to dialogue with Guatemala in order to reach a mutually satisfactory solution, in accordance with the DSU provisions. However, should Guatemala insist on proceeding with the establishment of a panel, Peru was certain that its price-band system would be found to be fully consistent with its WTO commitments.

3.4. The Chairman said that, as both parties had acknowledged, under the provisions of Article 6 of the DSU, given the fact that this was the second meeting at which the request for a panel had been made, and given that there was no mutually agreed solution, the DSB would have to agree to establish a panel, in accordance with the provisions of Article 6 with standard terms of reference. In light of the statements made, the Chair observed two things. First, as the DSU provided, recourse to a panel and having a dispute was not a contentious act, and he had detected that spirit from both parties. Second, the establishment and the unfolding of a panel process did not preclude parallel discussions in order to seek a mutually agreed solution.

3.5. 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.

3.6. The representatives of Argentina, China, El Salvador, the European Union, India and the United States reserved their third-party rights to participate in the Panel's proceedings.

4 STATEMENT BY THE CHAIRMAN REGARDING SOME MATTERS RELATED TO THE APPELLATE BODY

4.1. The Chairman, speaking under "Other Business", said that, as announced at the outset of the meeting, he wished to update delegations on some matters related to the Appellate Body. In this regard, he wished to reassure Members that he was continuing consultations on two aspects. First, as Members had requested him to do, he continued consultations on the possible reappointment of Mr. Peter Van den Bossche for a second four-year term in the Appellate Body.

4.2. Second, the Chairman wished to refer to the workload paper that had been circulated by the Appellate Body on its own initiative, which reflected a description of some of the potential work pressures facing the institution. This had triggered, as many would be aware, a discussion at the informal meeting of the Budget Committee, which had focused not only on the Appellate Body but also on pressures facing the dispute settlement system overall. Ms. Valerie Hughes, Director of the Legal Affairs Division, Mr. Werner Zdouc, Director of the Appellate Body Secretariat, Mr. Johann Human, Director of the Rules Division, and the head of the translation services had been present. An extensive exchange had been held regarding the Secretariat's matters and resource availability, both human and financial. This had taken place within a context where the general view was that it was an era of zero budget increases and thus the challenge for the Secretariat was to look at allocation and reallocation of resources, temporary or permanent, to respond to where the needs were greatest or strongest. The Director of the Human Resources Division had been present and had taken careful note of the discussion. The Chair of the Budget Committee, Mr. Michael Stone (Hong Kong, China), had summed up by saying that there was an issue of allocation and reallocation that was the responsibility of the Secretariat to pursue. The Chairman said that, while some delegations had been present at the Budget Committee meeting, he wished to inform others about the discussion that had taken place at that meeting. In his soundings of the Membership, he was discovering that, in the view of many delegations, internal Secretariat resource allocation and reallocation did not necessarily exhaust all options for addressing what may be a temporary surge, or perhaps a more permanent pressure, on the workload of the Secretariat. However, views ranged widely thus far, on what some of those options might be. From practices that parties themselves might undertake, voluntarily, in parallel to what was occurring at the panel stage, where parties by mutual agreement might agree to shorten the time-period allotted for oral argument or joint filings, or to agreed statements of facts, to suggestions that the Chair of the DSB may put forward to see whether the Appellate Body could improve its working methods, scheduling and so on, to whether there was any interest in thinking a little more carefully about the 60-day period preceding the commencement of an appeal or about the 90-day period for completion of an AB report, a timeline that had not always been met. All of which was to say to those delegations that had not been thinking about these issues, that other delegations were thinking about these issues. The Chairman said that he was under no pressure or artificial deadline to try and force any kind of discussion. In his view, his role was very much to facilitate this thinking among delegations. In that regard, he would continue to take soundings and would welcome delegations coming forward with further views as to whether there was something or anything that he should be doing *vis-à-vis* the Appellate Body or that the DSB should be doing as an institution, alongside what seemed to be under way in the Budget and Administration area.

4.3. Finally, the Chairman wished to underscore one other important aspect related to the Appellate Body. He recalled that there was an Appellate Body vacancy and that the DSB had set out the procedures for filling that vacancy with a formal adoption of a decision in May 2013. At that time, the DSB had agreed that, although nominations were open until 30 August 2013, Members wished to urge delegations to come forward as early as possible with nominees for this position so as to give Members adequate opportunity to consider the merits of such nominees. Thus far, only one nomination had been received by the Secretariat. Once again, he urged Members and through them their capitals to give every careful consideration to potential nominees to the Appellate Body. He also reminded Members that, unlike nominations for the Director-General, there was no restriction of nationality on nominations and Members were free to nominate someone from another country. In that regard, he noted that Canada had, at the start of the WTO, nominated Mr. Julio Lacarte of Uruguayan nationality for the Appellate Body because of his esteem, merit and suitability for the position. Finally he noted that the communication regarding the current sole nominee was contained in document JOB/DSB/CV13/1.

4.4. The DSB took note of the statement.

5 STATEMENT BY THE CHAIRMAN REGARDING THE ANNUAL REPORT OF THE DSB FOR 2013

5.1. The Chairman, speaking under "Other Business", said that he wished to make a statement regarding the Annual Report of the DSB for 2013. In this regard, he noted that the DSB was under an absolute obligation to prepare an annual report as per document WT/L/105. The report would have to be adopted by the DSB and sent to the General Council, where it would form part of the General Council's report to Ministers. Ministers at MC9 would be free to review the Annual Report. In order to meet these requirements, this matter would need to be considered by the DSB at its regular meeting in October. Bearing that in mind, he had looked at previous Annual Reports of the DSB and, with all honesty and respect to the Secretariat, found them not very user-friendly. Therefore, he had reflected on how best to present the same information, but in a way that was more user-friendly and in keeping with the WTO's laudable goal of a paperless Organization. The revised format, which was now being distributed to delegations as a room document, was prepared under his own responsibility. It was much shorter and grouped items thematically rather than chronologically. Given that the document had just been circulated to delegations, he would not go through it in detail. His intention was to give delegations a general idea of what a reformatted and redesigned layout might look like without changing the nature or the type of information to be included. As could be seen from the table of contents, the information had been organized by the nature of the activity: surveillance, panel establishment, panel adoption, rather than case-by-case. In his view, it was more user-friendly and much shorter. The Report would still make reference to a detailed table that would have the state of play on each and every WTO dispute by way of a compilation, should Members wish to have more information. Thus, the state of play table would still be produced. He encouraged delegations to read and reflect on the revised format, keeping in mind his reason for proposing a revision. The Report would be forwarded to the General Council, whose participants were non-specialists, and to Ministers. Thus, it was important that the Report be designed for its readers with all the detail that they might need. He observed that, working backwards, if the DSB was to produce and adopt the Report at its regular meeting in October, having been translated into the three official languages of the WTO and approved before finalization, that meant that the DSB would have to consider this matter early in the fall. Therefore, he urged delegations to provide him directly or through the Secretariat, their reactions and level of comfort, by the end of July, before the summer break. That would enable the production of a draft report that would enjoy some basis of consensus as a first draft.

5.2. The DSB took note of the statement.
