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on 31 August 2012

Chairman: Mr. Shahid Bashir (Pakistan)

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1. Surveillance of implementation of recommendations adopted by the DSB

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(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.92)

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.55)

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(i) European Communities – Definitive anti-dumping measures on certain iron or steel fasteners from China: Status report by the European Union (WT/DS397/15/Add.1)

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

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.117)

2. The Chairman drew attention to document WT/DS176/11/Add.117, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

3. The representative of the United States said that his country had provided a status report in this dispute on 20 August 2012, in accordance with Article 21.6 of the DSU. Legislative proposals had been introduced in the current 112th Congress to implement the recommendations and rulings of

the DSB. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

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

5. The representative of Cuba said that, once again, the United States had presented its status report which clearly demonstrated that the DSB's recommendations with regard to Section 211, issued in 2002, had not yet been implemented. Not only did the situation remain unchanged, but at the past two DSB meetings, the United States, in an attempt to weaken its obligations and undermine the legal reasoning and arguments of the case, had stated that Section 211 was linked to the uncompensated expropriation of assets. In this regard, Cuba wished to emphasize that the Appellate Body's conclusions were clear and precise as to the inconsistency of Section 211 with the national treatment and MFN principles of the TRIPS Agreement and made no reference to the validity or otherwise of assets expropriation. The findings were valid and legally sufficient for the United States to comply with the DSB's recommendations in this dispute. Cuba noted that the issue of expropriation of assets was not under discussion at the present meeting. However, Cuba wished to take this opportunity to reiterate that the nationalization process, which had taken place in Cuba in the early 1960s, was legitimate and consistent with international precepts. Compensation agreements had been negotiated and adopted with all the countries concerned, except for the United States, which had deliberately and consciously deprived its citizens of the right to compensation under Cuban law, due to the economic, commercial and financial blockade imposed on Cuba shortly thereafter. Therefore, the non-compensation of US assets nationalized in Cuba was not the responsibility of the Cuban Government. Cuba had always been willing to negotiate on an equal footing with the United States on this issue, but the only response from the United States was to tighten the blockade, which prevented trade relations between the two countries and the possibility of compensation. In 1994, when the Bacardí family started its action to seize the Havana Club trade mark, the Cuban company, Cubaexport, had already been its legitimate owner for 18 years. Cubaexport had not only obtained ownership of the trade mark in 1976, in accordance with the procedures established by the US Patent and Trade Mark Office (USPTO), it had also renewed its registration in 1986 and 1996. It had done all this unhindered until Section 211 was adopted, in order to seize the Cuban company's rights and to facilitate the commercial fraud by Bacardí. The illegitimacy of Section 211 and the US legal and moral obligation to comply with the recommendations in this dispute were unquestionable. The lack of guarantees for industrial property rights in the United States should be of concern to all WTO Members. Cuba reiterated that it would continue to request the United States to take the appropriate decisions to grant the licence necessary for the renewal of the Havana Club trade mark to its rightful owner. Nothing exempted the United States from complying with its WTO commitments, and the only viable option for resolving this dispute was to repeal Section 211.

6. The representative of China said that her country thanked the United States for its status report and statement made at the present meeting. The prolonged situation of non-compliance in this dispute was highly incompatible with the prompt and effective implementation required under the DSU provisions, in particular when the interests of a developing-country Member were affected. China urged the United States to implement the DSB's rulings and recommendations without further delay.

7. The representative of Brazil said that his country thanked the United States for its status report in this dispute but noted that, once again, the United States reported lack of progress on this issue. 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.

8. The representative of the Plurinational State of Bolivia said that her country had, once again, heard the same status report submitted by the United States, in which the United States did not report on any progress. Bolivia noted the lack of political will to resolve this dispute and reiterated its concern about the US failure to comply with the DSB's recommendations and rulings. Such non-compliance undermined the credibility and integrity of the multilateral trading system, caused serious harm to a developing-country Member and raised systemic concerns. Bolivia urged the United States to comply with the DSB's recommendations and rulings and to take steps to remove the restrictions imposed under Section 211. Bolivia supported the concerns raised by Cuba in its statement made at the present meeting.

9. The representative of Angola said that his country thanked the United States for its status report, which showed political will and represented a step forward in finding a solution to this dispute. However, Angola recalled that the prompt compliance with the DSB's recommendations and rulings was essential to ensure an effective resolution of disputes to the benefit of all Members. As Members were aware, in August 2001, the Panel Report had concluded that Section 211 was inconsistent with Article 42 of the TRIPS Agreement. In February 2002, the Appellate Body Report had confirmed that paragraph A, section 2 and paragraph B of Section 211 violated the national treatment and the most-favoured-nation principles under the TRIPS Agreement and the Paris Convention and had requested the United States to bring Section 211 into conformity with its obligations under the TRIPS Agreement. The delay in the implementation of the DSB's decision affected a central element of the multilateral trading system, which provided security and predictability for all Members. It also set a negative precedent for other cases. Angola believed that concrete signs and actions by the parties in this dispute would send a positive signal of respect for WTO rules.

10. The representative of the Bolivarian Republic of Venezuela said that her country regretted that it had to condemn, once again, what it had been condemning at every DSB meeting over the past years. Venezuela noted that the most recent status report submitted by the United States contained the same information as the previous reports submitted over the past ten years by the United States. Venezuela, once again, supported Cuba's statement and requested the United States to end its policy of economic, trade and financial blockade against Cuba. That policy resulted in the continued application of Section 211, the purpose of which was and continued to be, to usurp the well-known Cuban trade mark, the Havana Club. Venezuela recalled that, in February 2002, the DSB had adopted the Appellate Body's ruling to repeal Section 211, which was inconsistent with the TRIPS Agreement and the Paris Convention. Venezuela was disappointed with the non-compliance and lack of action by the United States. Venezuela, therefore, urged the United States to provide further details regarding the work being done in Congress, so as to keep Members informed and to comply immediately with the recommendations of the Appellate Body, which was the ultimate authority in the dispute settlement process. Venezuela was concerned that the US non-compliance affected Cuba, undermined the credibility of the DSB and had a negative impact on the multilateral trading system. Venezuela reiterated its request for the United States to respect the DSB's decisions.

11. The representative of Argentina said that his country thanked the United States for its status report and statement made at the present meeting. However, Argentina regretted that the United States had, once again, reported non-compliance. The non-compliance was inconsistent with the principle of prompt and effective implementation stipulated in the DSU provisions, in particular since the interests of a developing country were affected. As it had done on previous occasions, Argentina wished to stress that when Members with relatively greater economic weight failed to comply with the DSB's rulings, to the detriment of the interests of developing-country Members, this undermined the credibility of the multilateral trading system, jeopardized its viability and affected trade interests. Argentina, therefore, supported Cuba and joined previous speakers in urging both parties to the dispute, in particular the United States, to take all necessary measures in order to be able to remove this matter from the DSB's Agenda.

12. The representative of Mexico said that Article 21.1 of the DSU required prompt compliance with the DSB's recommendations and rulings in order to ensure the effective resolution of disputes to the benefit of all Members. In that respect, Mexico urged the parties to the dispute to adopt the necessary measures so as to comply with the DSB's recommendations and rulings.

13. The representative of the Dominican Republic said that her country thanked the United States for its status report regarding its progress in the implementation of the DSB's recommendations and rulings concerning the inconsistency of Section 211 with WTO rules, as set out in Article 42 of the TRIPS Agreement. The Dominican Republic, once again, urged the United States to expedite its domestic procedures so as to comply with the DSB's recommendations and rulings. The lack of compliance over a long period of time in this dispute undermined the credibility of the DSB.

14. The representative of Nicaragua said that, once again, her country supported Cuba's concerns about Section 211, which adversely affected the legitimate rights of Cuban owners of the Havana Club Rum trademark. Like at previous meetings, Nicaragua, once again, noted that the US status report was identical to previous reports submitted by the United States over the past ten years. The United States had, for ten years, been telling delegations that it was working on the implementation of the DSB's recommendations in this dispute. Nicaragua was concerned that the US failure to comply with its obligations had become a routine feature of DSB meetings. This undermined the credibility of the DSB and the multilateral trading system and could set a negative precedent for other Members, in particular developing countries. Thus, Nicaragua urged the United States to bring its legislation into conformity with the DSB's rulings and recommendations and to repeal Section 211.

15. The representative of Viet Nam said that his country thanked the United States for its status report and statement made at the present meeting. Once again, Viet Nam was concerned about the US lack of progress in implementing the DSB's recommendations and rulings in this case. Viet Nam urged the United States to implement the DSB's recommendations without further delay.

16. The representative of Ecuador said that his country supported the statement made by Cuba. Ecuador stressed, once again, that Article 21 of the DSU referred to prompt compliance with the DSB's recommendations and rulings, in particular if the interests of a developing-country Member were affected. Ecuador hoped that the United States would step up its efforts in order to ensure immediate compliance with the DSB's recommendations and rulings by repealing Section 211.

17. The representative of Chile said that his country supported the statement made by Cuba. Chile noted that this dispute was of systemic interest to many Members as it concerned compliance with, and respect for, WTO rules. The lack of compliance by WTO Members affected the functioning of the Organization. Chile, as a small country, had a particular interest in strengthening Members' compliance with WTO rules.

18. The representative of the United States said that there had been some questions about the activities being undertaken in the United States to address the recommendations and rulings of the DSB. There were bills pending in the current Congress that would address the WTO findings in this matter in different ways. For example, S. 603 and HR 1166 would modify Section 211 to address the DSB's findings specifically. Other bills, such as HR 1887 and 1888, would repeal Section 211.

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.117)

20. The Chairman drew attention to document WT/DS184/15/Add.117, 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.

21. The representative of the United States said that his country had provided a status report in this dispute on 20 August 2012, in accordance with Article 21.6 of the DSU. As of November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. With respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

22. The representative of Japan said that his country thanked the United States for, and took note of, its statement and status report. Once again, Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

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.92)

24. The Chairman drew attention to document WT/DS160/24/Add.92, 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.

25. The representative of the United States said that his country had provided a status report in this dispute on 20 August 2012, 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, in order to reach a mutually satisfactory resolution of this matter.

26. The representative of the European Union said that the EU noted and thanked the United States for its status report. As it had stated many times in the past, the EU wished to resolve this case as soon as possible.

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.55)

28. The Chairman drew attention to document WT/DS291/37/Add.55, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning its measures affecting the approval and marketing of biotech products.

29. The representative of the European Union said that the EU, once again, wished to express its hope that it would continue on the constructive path of dialogue with the United States. Three technical meetings had taken place since 2011. Those meetings had offered a good opportunity to discuss directly issues of concern to both sides and to follow up closely on developments in the

biotech field. In 2012, the European Commission had already authorized four more GMOs[1] and had renewed the authorization of a fifth one.[2] Three of those decisions[3] had been adopted only six months after the relevant EFSA opinions had been published. In addition, EFSA had adopted an opinion on maize MIR 162, which had been published on 21 June 2012. EFSA had presented the opinion to member States on 16 July 2012. It was foreseen that a proposal would be presented to the regulatory Committee on 10 September 2012. Regarding the concerns expressed by the United States on the back-log of approvals, the EU, once again, recalled that the EU approval system was not covered by the DSB's recommendations and rulings. The EU underlined that the GMO regulatory regime was working normally as evidenced by the approval decisions just mentioned. The functioning of the GMO regime should not be rigidly assessed purely quantitatively and in the abstract, in terms of the number of authorizations per year, since this was dependent on various product and case-specific elements and in particular on the quality of applications and on the time needed by applicants to answer requests from EFSA on additional scientific information.

30. The representative of the United States said that his country would like to thank the EU for its status report and its statement made at the present meeting. The United States said that it continued to remain greatly concerned about the effects of EU delays on US exports of agricultural commodities and food products. These delays had resulted in restrictions on the importation of US agricultural products, including corn and corn products from the current US growing season. Even after the EU had approved a biotech product, individual EU member States had adopted their own product-specific bans. An important example was the biotech variety of corn known as MON810. The DSB had found in this dispute that EU member State bans on MON810 were inconsistent with the EU's obligations under the SPS Agreement.[4] Despite this finding, additional EU member States had adopted bans on MON810. The result had been the loss of market access in additional EU member States, including France and Germany. At the May 2012 meeting of the DSB, the United States had noted that the EU's scientific authority had published a scientific opinion finding that France had provided no scientific evidence in support of its ban. The United States regretted that despite the EU's own findings, the bans on MON810 adopted by France and other EU member States remained in place. The United States urged the EU to take steps to address delays in approvals, and to take action to make EU biotech approvals effective in all EU member States.

31. The representative of the European Union said that the EU wished to underline that this measure had not been addressed in the Panel Report. MON810 was a product currently under renewal procedure under the GMO legislation. The EU was reflecting on the most appropriate course of action within that framework.

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

(e) United States – Anti-dumping administrative reviews and other measures related to imports of certain orange juice from Brazil: Status report by the United States (WT/DS382/10/Add.8)

33. The Chairman drew attention to document WT/DS382/10/Add.8, 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 administrative reviews and other measures related to imports of certain orange juice from Brazil.

[1] A5547-127 soybean, 356043 soybean, MON87701 soybean, MON87701 x MON 89788 soybean.
[2] 40-3-2 soybean.
[3] Authorization decision for 356043 and MON87701 soybeans, MON 87701 x MON 89788 soybean.
[4] Panel Report, European Communities – Measures Affecting the Approval and Marketing of Biotech Products, WT/DS291/R, adopted 21 November 2006, paras. 8.24, 8.28.

34. The representative of the United States said that his country had provided a status report in this dispute on 20 August 2012. Pursuant to the sequencing agreement between Brazil and the United States[5], the United States said that it was ready to engage with Brazil should it have any further questions regarding this matter.

35. The representative of Brazil said that his country thanked the United States for its status report. Brazil was following closely the implementation of the final rule published by the US Department of Commerce, which had modified the calculation of dumping margins in reviews. Brazil would consult with the United States with a view to achieving a solution to this dispute.

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

(f) United States – Definitive anti-dumping and countervailing duties on certain products from China: Status report by the United States (WT/DS379/12/Add.7)

37. The Chairman drew attention to document WT/DS379/12/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 US definitive anti-dumping and countervailing duties on certain products from China.

38. The representative of the United States said that his country had provided a status report in this dispute on 20 August 2012, in accordance with Article 21.6 of the DSU. As noted in that status report, on 31 July 2012, the US Department of Commerce ("Commerce") had issued to interested parties final determinations with respect to the issues in this dispute in proceedings undertaken pursuant to Section 129(b) of the Uruguay Round Agreements Act. On 21 August 2012, the US Trade Representative had directed the Department of Commerce to implement its final determinations. On 30 August 2012, a notice had been published in the US Federal Register announcing the implementation of Commerce's final determinations, effective 21 August 2012. That notice could be found at 77 FR 52683. These steps completed the process under US law for implementing the recommendations and rulings adopted by the DSB. As a result of the actions described in the US status report and at the present meeting, the United States had brought the measures at issue in this dispute into full compliance with the DSB's recommendations and rulings.

39. The representative of China said that her country wished to express its concerns about the US implementation of the DSB's rulings and recommendations in this dispute. On 25 March 2011, the DSB had adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body. The reasonable period of time for implementation of the DSB's rulings and recommendations in this dispute was 11 months. However, the United States had not started issuing the questionnaires until five months after the adoption of the Reports and the public body questionnaires had been issued eight months after the adoption of the Reports in this dispute. The final determinations of the Section 129 investigation had been issued on 31 July 2012, more than five months after the originally agreed reasonable period of time. Thus, China wished to express its strong objection to the delayed implementation by the United States in this dispute.

40. Aside from the procedural non-compliance issue, China was concerned as to whether the United States implemented the DSB's substantive rulings and recommendations in good faith. As could be seen from the final determinations, some of the revised countervailing subsidy rates for exporters had increased significantly. For instance, the countervailing subsidy rate for one exporter in the Laminated Woven Sacks investigation had been raised by 182 per cent as compared to the rate it had received in the original investigation. The drastic increase had not been incidental to the particular situation concerning the exporter being investigated. Rather, it had evinced a systematic approach that the United States had undertaken to get around the implementation of the DSB's rulings

[5] WT/DS382/11.

and recommendations in the DS379 dispute, in good faith. China regretted to see that the United States had not only failed to implement the DSB's rulings and recommendations pertaining to this dispute within the agreed reasonable period of time, but that it had also interpreted and applied those rulings and recommendations in a worrisome manner. The US implementation action set a bad example for other Members and would have a negative impact on the dispute settlement system. Therefore, China reserved the right to take any necessary actions to address its concerns about the US implementation in this dispute in due course.

41. The representative of the United States said that his country wished to make two points in response to China's concerns. First, with regard to the issuance of questionnaires, the issues in this dispute were complex and involved several novel matters. The United States needed to consider the findings and recommendations of the DSB carefully in order to bring the challenged measures into compliance with them. Accordingly, the US Department of Commerce, in conjuncture with other agencies of the US Government, and in consultation with the US Congress, had taken the time necessary to consider the issues before preparing and issuing questionnaires. The United States noted that Chinese respondents, including the Government of China, also appeared to have recognized the complexity of the issues, as they had requested, on numerous occasions, additional time to provide complete responses to Commerce's questionnaires. As it had indicated previously, the United States and China had agreed to extend the reasonable period of time for implementation, due in significant part to China's request for more time to respond to Commerce's questionnaires. China had also expressed some concerns in its statement made at the present meeting about US implementation. As stated previously, the actions described in the US status reports and in its statement at the present meeting had resulted in full compliance with the DSB's recommendations and rulings. The United States said that it continued to stand ready to discuss with China any questions or concerns it may have about the actions taken by the United States, and the United States looked forward to doing so.

42. The representative of China said that, with regard to the issuance of questionnaires, one could claim that every case involved complex issues. However, the implementation of the DSB's recommendations and rulings could not be waived or exempted by merely claiming that the issues involved were complicated. Every Member should implement the DSB's recommendations and rulings in good faith. China was also ready to continue to discuss with the United States the issues involved in the implementation in this dispute. China understood that the United States had claimed that it had fully complied with the DSB's recommendations and rulings in this dispute, but China did not agree with the US claim.

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

(g) Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.4)

44. The Chairman drew attention to document WT/DS371/15/Add.4, 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.

45. The representative of Thailand said that her country wished to refer Members to its most recent status report in this dispute, which had been circulated to Members on 21 August 2012. After the informal consultations in Bangkok between the Philippines and Thailand regarding the implementation of the DSB's recommendations and rulings, the parties had continuously engaged in bilateral exchanges and discussions with a view to achieving a mutually satisfactory solution to this dispute. The discussions were continuing. Thailand welcomed those discussions and considered them to be a valuable means of clarifying its intentions with respect to the implementation of the DSB's recommendations as well as clarifying some of the more technical aspects of the regulations

being adopted by Thailand as part of its implementation in this dispute. While it understood the Philippines' concerns about the completion of implementation, Thailand considered this process to be worth pursuing in order to achieve a final resolution of the outstanding issues in this dispute. Therefore, Thailand looked forward to further discussions of technical details with the Philippines regarding implementation in this dispute.

46. The representative of the Philippines said that his country thanked Thailand for its fifth status report and for its statement made at the present meeting. The Philippines welcomed the steps Thailand had taken towards compliance, but regretted that a number of issues remained unresolved, more than three months after the end of the reasonable period of time. In the spirit of mutual cooperation, the Philippines had sought to address these outstanding matters on a bilateral level, short of a return to formal dispute settlement proceedings. Whether the dialogue had been fruitful would become clear in the coming weeks, when the Philippines would assess as to whether Thailand had followed through on specific actions committed for specific time-frames agreed during bilateral discussions. The importance of the next weeks in determining the next steps in the dispute could not be overstated. The Philippines had been patient and had exercised restraint well beyond the end of the reasonable period of time. Nonetheless, the Philippines had been instructed to communicate, in clear and concise terms, that its patience and restraint would end if the milestones addressed in the bilateral discussions were to pass without resolving the outstanding issues. While the Philippines reserved all its rights, it stood ready, between now and then, to do anything it could to assist Thailand in achieving full compliance.

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

(h) United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.3)

48. The Chairman drew attention to document WT/DS404/11/Add.3, 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.

49. The representative of the United States said that his country had provided a status report in this dispute on 20 August 2012, in accordance with Article 21.6 of the DSU. In October 2011, the United States and Viet Nam had jointly notified the DSB of their agreement that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would end on 2 July 2012.[6] In February 2012, the US Department of Commerce had published a modification to its procedures in order to implement DSB recommendations and rulings regarding the use of "zeroing" in anti-dumping reviews. That modification addressed certain findings in this dispute. On 28 June 2012, the US 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.

50. The representative of Viet Nam said that his country thanked the United States for its status report. Viet Nam reiterated that Article 21 of the DSU stipulated that prompt compliance with the DSB's recommendations and rulings was essential in order to ensure effective resolution of disputes to the benefit of all Members. Viet Nam would consult with the United States with a view to achieving an appropriate solution to this matter.

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

[6] WT/DS404/10.

(i) European Communities – Definitive anti-dumping measures on certain iron or steel fasteners from China: Status report by the European Union (WT/DS397/15/Add.1)

52. The Chairman drew attention to document WT/DS397/15/Add.1, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning EU anti-dumping measures on certain iron or steel fasteners from China.

53. The representative of the European Union said that the EU was working on the implementation of the DSB's recommendations and rulings in this dispute and was making an effort to complete the implementation before the expiry of the agreed reasonable period of time on 12 October 2012. First, the provision of the EU Basic Anti-Dumping Regulation that had been found to be "as such" incompatible with the Anti-Dumping Agreement was being amended in a manner that fully respected the EU's WTO obligations. The legislative procedure was expected to be concluded with the publication of the amendment in the Official Journal of the EU in early September 2012. Second, a review had been initiated in order to implement the DSB's recommendations and rulings related to the specific EU anti-dumping measures on certain iron or steel fasteners originating in China. The relevant procedures were ongoing and were expected to be finalized in the near future. Finally, the EU wished to note that, regardless of the clear limits of the EU's implementation obligations arising from this dispute, the EU had also offered exporting producers in non-market economy countries, including China, the possibility to request a review of other anti-dumping measures currently in force with respect to any application of Article 9(5) of the EU Basic Anti-Dumping Regulation in those measures allegedly in contradiction with the reasoning set out in the Appellate Body Report. The EU hoped that this initiative would inspire other WTO Members in similar circumstances.

54. The representative of China said that her country thanked the EU for its status report and noted that the EU had made efforts to implement the DSB's rulings and recommendations prior to the expiry of the reasonable period of time. However, China was of the view that the EU had not yet fully and properly implemented the DSB's rulings and recommendations. With respect to the proposed amendment of Article 9(5) of the European Union's Basic Anti-Dumping Regulation, China believed that, among others, the criterion of the "economic structure" of the supplying country that had been included in the proposed amendment to Article 9(5) was not appropriate and was inconsistent with the Appellate Body's findings. Concerns about this had been resolved bilaterally with the EU and China would not go into detail about the interpretation of the draft regulation at the present meeting. China was also concerned about the R548 review, which the EU had just mentioned. The EU had subjected the granting of individual treatment to exporting producers to certain conditions, it had failed to fully disclose normal value product type and to ensure fair price comparison, it had declined to redefine the domestic industry, and therefore it had failed to comply with the DSB's recommendations and rulings. China hoped that the EU would make adequate and substantive efforts so as to fully implement the DSB's recommendations and rulings.

55. The representative of the European Union said that the Amendment was in full compliance with the Appellate Body Report. The Amendment removed completely the individual treatment test that had been found to be incompatible with the Anti-Dumping Agreement. It also provided that, in certain situations, suppliers that were legally distinct from other suppliers or that were legally distinct from the State may, nevertheless, be considered as a single entity for the purpose of specifying the duty. This simply reproduced the findings of the Appellate Body itself (in particular paragraph 367). In particular, the factors that may be taken into account by the investigating authority while making such a determination were taken verbatim from the Appellate Body Report (paragraphs 376 and 367).

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

2. United States – Certain country of origin labelling (COOL) requirements

(a) Implementation of the recommendations of the DSB

57. The Chairman recalled that, in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB, in order to ensure effective resolution of disputes to the benefit of all Members. In that respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that, at its meeting on 23 July 2012, the DSB had adopted the Appellate Body Reports and the Panel Reports, as modified by the Appellate Body Reports, pertaining to the disputes on: "United States – Certain Country of Origin Labelling (COOL) Requirements". The 30-day time-period in this case had expired on 22 August 2012 and, on 21 August 2012, the United States had informed the DSB in writing of its intentions in respect of implementation of the DSB's recommendations. The relevant communication was contained in document WT/DS384/19 – WT/DS386/18. He invited the representative of the United States to make a statement.

58. The representative of the United States said that, on 23 July 2012, the DSB had adopted the Reports of the Panel and the Appellate Body in the disputes: "United States – Certain Country of Origin Labelling (COOL) Requirements" (DS384; DS386). On 21 August 2012, the United States had informed the DSB by letter that it intended to implement the recommendations and rulings of the DSB in a manner that respected US WTO obligations and had begun to evaluate its options for doing so. That letter had been circulated to the DSB (WT/DS384/19 – WT/DS386/18). Canada and Mexico had agreed with the United States that it was appropriate to inform the DSB of US intentions by letter, rather than at a special meeting, in light of the fact that the 30 day period of time described in Article 21.3 of the DSU had expired before the next regularly scheduled DSB meeting. As the United States had noted in its letter, it would need a reasonable period of time in which to implement the DSB's recommendations and rulings, and it hoped to reach agreement with Canada and Mexico in accordance with Article 21.3(b) of the DSU.

59. The representative of Canada said that her country thanked the United States for stating its intention to comply with the DSB's recommendations and rulings. Canada recalled that the COOL requirements had and continued to have a significant adverse impact on the competitive position of Canadian cattle and hogs in the United States. Canada had taken note of the statement by the United States that it would need a reasonable period of time to bring itself into compliance with the DSB's recommendations and rulings. Canada and the United States had initiated discussions with a view to agreeing on a reasonable period of time.

60. The representative of Mexico said that his country thanked the United States for its letter dated 21 August 2012 and for its statement made at the present meeting. Mexico was ready to discuss the reasonable period of time for the United States to comply with the DSB's recommendations and rulings, taking into account the nature of the measures that the United States would seek to adopt in order to comply in a timely manner.

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

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

(a) Statements by the European Union and Japan

62. 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.

63. The representative of the European Union said that, as it had done many times before, the EU requested the United States to 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. Once again, 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 pertaining to this dispute.

64. The representative of Japan said that the CDSOA continued to be operational, as FY 2012 Preliminary CDSOA Amount Available announced by the US Customs and Border Protection showed. Under those circumstances, Japan had decided to continue, as from 1 September 2011, its suspension of concessions and related obligations under the GATT 1994 on certain US imports. Details of that decision were provided in document WT/DS217/62. Japan urged the United States to stop the illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report in this dispute.

65. The representative of India said that his country thanked the EU and Japan for inscribing this item on the DSB's Agenda. India shared their concerns and supported their views.

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

67. The representative of Canada said that his country wished to refer to its previous statements made under this Agenda item. Canada's position on this matter had not changed.

68. The representative of Thailand said that her country thanked Japan and the EU for continuing to bring this item before the DSB. Thailand referred to its previous statement made under this Agenda item. Thailand's position on this matter had not changed.

69. The representative of the United States said that, as his country had explained at previous DSB meetings, the President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that Members had acknowledged during previous DSB meetings that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007. With respect to comments regarding further status reports in this matter, as it had explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports repeating the progress the United States had made in the implementation of the DSB's recommendations and rulings. Finally, Japan referred to its renewed retaliation measures; the United States would be reviewing carefully the

measures taken by Japan. As the United States had observed previously, the DSB had only authorized the suspension of concessions or other obligations as provided in the Award of the Arbitrator.

70. The DSB took note of the statements.

4. United States – Countervailing measures on certain hot-rolled carbon steel flat products from India

(a) Request for the establishment of a panel by India (WT/DS436/3)

71. The Chairman recalled that the DSB had considered this matter at its meeting on 23 July 2012 and had agreed to revert to it. He drew attention to the communication from India contained in document WT/DS436/3, and invited the representative of India to speak.

72. The representative of India said that, at the 23 July 2012 DSB meeting, his country had expressed its concerns about the countervailing duty investigation by the United States and the imposition of duty on certain hot-rolled carbon steel flat products from India. India considered that the measures taken by the United States were inconsistent with its obligations under several provisions of the SCM Agreement and the GATT 1994. India acknowledged that every WTO Member had a right to levy countervailing duties, but that right could be exercised only within the framework of the SCM Agreement and the GATT 1994. India did not agree with the US allegation that India's panel request included provisions of US law about which no consultations had been requested or held. India asserted that its panel request was fully consistent with the DSU requirements. Therefore, India respectfully requested that the DSB establish a panel to examine the matter set out in its panel request with standard terms of reference.

73. The representative of the United States said that, as his country had noted at the July 2012 DSB meeting, Members retained the right to levy countervailing duties to offset subsidies bestowed by another Member. As the United States and other Members had found, India – at both the state and national levels – provided numerous subsidies to its domestic steel industry. And, as the United States and other Members had found, those subsidies caused material injury to manufacturers attempting to compete with India's steel industry. In light of India's comments at the present meeting, the United States also recalled its concern with India's panel request, which appeared to include provisions of US law about which consultations had neither been requested nor held. For these reasons, the United States remained disappointed that India had decided to request a panel on this matter. The United States stood ready to defend the use of WTO-consistent measures to countervail India's injurious use of subsidies.

74. 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.

75. The representatives of Australia, Canada, China, the European Union, Saudi Arabia and Turkey reserved their third-party rights to participate in the Panel's proceedings.

5. Australia – Certain measures concerning trademarks and other plain packaging requirements applicable to tobacco products and packaging

(a) Request for the establishment of a panel by Ukraine (WT/DS434/11)

76. The Chairman drew attention to the communication from Ukraine contained in document WT/DS434/11, and invited the representative of Ukraine to speak.

77. The representative of Ukraine said that, on 14 August 2012, her country had submitted its request for the establishment of a panel in respect of Australia's plain packaging requirements

applicable to tobacco products and their packaging. The measures imposed severe restrictions on the use of validly registered trademarks and imposed a significant number of product and packaging requirements that would standardize tobacco products and their packages in Australia. Australia's unprecedented measures denied the essence of the rights that were protected under the TRIPS Agreement and eroded the protection of intellectual property rights, thus raising systemic concerns that directly affected Ukraine as a producer and exporter of tobacco products and of other products that relied on trademarks for entering and competing in foreign markets. Following the notification of the Tobacco Plain Packaging Bill to the WTO in April 2011, Ukraine had, on several occasions and in various international and domestic fora, expressed its serious concerns about these measures, which were inconsistent with a number of Australia's WTO obligations. In that context, Ukraine and several other WTO Members had posed specific questions to Australia in an attempt to obtain additional information from Australia concerning the basis for these measures and their alleged consistency with Australia's obligations. Regrettably, Australia had never directly responded to the many constructive questions posed by Ukraine.

78. On 13 March 2012, Ukraine had requested consultations with Australia on this matter and had, in good faith, engaged in those consultations with Australia with a view to reaching a mutually satisfactory solution. Unfortunately, the consultations had not been fruitful and had failed to resolve the dispute. Thus, Ukraine felt obliged to request the establishment of a panel to resolve this dispute. As described in more detail in its panel request, Ukraine considered that Australia's plain packaging requirements, as identified in the request, violated a number of Australia's obligations under the TRIPS Agreement, the TBT Agreement and the GATT 1994. In particular, Ukraine considered that the plain packaging measures were inconsistent with the TRIPS Agreement and the Paris Convention because the measures failed to give effect to the trademark holder's legitimate intellectual property rights as protected under those agreements. In addition, Ukraine considered that the measures were clearly more trade restrictive than necessary to achieve the stated health objectives and thus violated Article 2.2 of the TBT Agreement as an unnecessary obstacle to trade. Finally, Ukraine considered that the plain packaging measures adversely affected competitive opportunities for imported products and foreign trademark right holders and thus failed to respect the national treatment requirement set out in several provisions of the WTO Agreements. Accordingly, Ukraine requested that the DSB establish a panel to examine the matter set out in its request for establishment of a panel, with standard terms of reference.

79. The representative of Australia said that all WTO Members had to confront the global tobacco epidemic. According to the World Health Organization, tobacco killed nearly six million people a year and was the only legal product that killed up to half of those who used it as intended. Approximately 15,000 Australians died every year from smoking. Smoking was one of the leading preventable causes of death in Australia and cost the Australian society and economy billions of dollars each year. That was why the Australian Government had decided to introduce tobacco plain packaging as part of a balanced package of measures that would contribute to the reduction of smoking rates in Australia. Tobacco plain packaging was a sound, well-considered measure designed to achieve a legitimate objective, the protection of public health. As a matter of key systemic importance, the WTO Agreements recognized the fundamental right of Members to implement measures necessary for the achievement of that objective. The tobacco plain packaging measure was endorsed by leading Australian and international public health experts as well as the World Health Organization and was supported by extensive research reports and studies. Australia had provided a substantial amount of information about the measure in relevant WTO fora and had undertaken an extensive domestic consultation process. Where appropriate, adjustments had been made to the measure in response to concerns raised during those consultations.

80. The High Court of Australia had recently dismissed a challenge to the constitutional validity of the tobacco plain packaging legislation. Both Australia and Ukraine were parties to the WHO Framework Convention on Tobacco Control. Plain packaging was recommended in the guidelines for implementation of Articles 11 and 13 of the Convention. Both Australia and Ukraine had endorsed

those Guidelines and Ukraine was a member of the Working Group that had developed the Guidelines. Australia recognized that Ukraine also confronted the significant public health challenge of tobacco use and acknowledged the important steps that Ukraine had taken recently to implement tobacco control measures. Australia was, therefore, surprised at Ukraine's decision to challenge Australia's measure. The surprise was compounded by the fact that Ukraine did not export tobacco products to Australia. Australia's measure would not affect Ukraine's tobacco exports. Australia had held consultations with Ukraine on 12 April 2012. However, Australia noted that Ukraine's panel request included claims that had not been included in Ukraine's 13 March 2012 request for consultations. The tobacco plain packaging legislation did not undermine the protection afforded to trademarks as required under the TRIPS Agreement. Nor was the measure more trade restrictive than necessary to fulfil its legitimate public health objective. The tobacco plain packaging measure was origin neutral on its face and even-handed in its application. It was clearly non-discriminatory. It applied to all tobacco products, regardless of type or origin, and as such represented best practice in tobacco control. Ukraine's claim that the measure treated imported tobacco products less favourably than like domestic products was, therefore, unclear and Ukraine's panel request provided no further clarification in that regard. The tobacco plain packaging measure was a world first and was the next logical step in Australia's long history of tobacco control efforts. In adopting the measure, Australia had acted consistently with its WTO obligations. For these reasons, Australia was disappointed that Ukraine had requested the DSB to establish a panel in relation to tobacco plain packaging and could not agree to that request.

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

6. United States – Countervailing duty measures on certain products from China

(a) Request for the establishment of a panel by China (WT/DS437/2)

82. The Chairman drew attention to the communication from China contained in document WT/DS437/2, and invited the representative of China to speak.

83. The representative of China said that first her delegation wished to make a statement regarding Agenda item 1F of the present meeting, which was closely related to Agenda item 6. She said that the United States had twice claimed that China had requested additional time to provide responses to the US Department of Commerce's (USDOC) questionnaires regarding implementation of the DSB's recommendations and rulings in the DS379 dispute. But what had not been mentioned was that the United States had requested excessive information from the Chinese Government and after eight months of preparation in circulating the questionnaires, only three weeks had been given to respond to those questionnaires. That was why China had no choice but to request additional time to coordinate among different agencies and enterprises. To claim that the dispute involved complex issues could not exempt any Member from promptly implementing the DSB's recommendations and rulings. The fact was that more than five months had lapsed since the expiry of the reasonable period of time agreed by the two parties. China hoped that the United States would implement the DSB's recommendations and rulings in the DS379 dispute in good faith.

84. With regard to Agenda item 6, China regretted to request the establishment of a panel to examine the DS437 dispute. As had been explained in the panel request, this case concerned the preliminary and final countervailing duty measures imposed by the USDOC as well as the "rebuttable presumption" established and applied by the USDOC in its public body determinations. China noted that some of the measures at issue had been adopted after the issuance of the Appellate Body Report in a previous dispute (DS379), in which the Appellate Body had clearly ruled that a similar set of measures were WTO-inconsistent. Nevertheless, China regretted to note that the USDOC had not modified its conduct in the subsequent trade remedy investigations. Furthermore, the USDOC had made Chinese respondents worse off in some instances. As had been indicated in the panel request, the USDOC's trade remedy practices at issue had significantly impaired the legitimate interests of

Chinese enterprises under the covered agreements. The measures at issue had not only deprived the Chinese enterprises of the procedural fairness envisioned by the WTO rules, but had also undermined their substantive rights. China recognized Members' legitimate right to adopt trade remedy measures in accordance with WTO rules. However, China strongly believed that such rights must not be subject to any form of abuse. China considered that the US trade remedy practices at issue amounted to an abuse of such rights and violated WTO rules. Thus**,** China looked forward to a clear WTO finding to that effect. Consultations in this dispute had been held on 25 June and 18 July 2012, with a view to reaching a mutually satisfactory solution. While those consultations had clarified certain issues between the parties, they had failed to resolve the dispute. China, therefore, respectfully requested, pursuant to Article 6 of the DSU, that the DSB establish a panel to examine this matter.

85. The representative of the United States said that first, with respect to China's comments related to Agenda item 1F, his country did not believe it was appropriate to be returning to that Agenda item at this time and, therefore, would not further disclose that discussion here. Turning to the matter at hand, the United States was disappointed that China had requested the establishment of a panel on this matter. The WTO Agreements permitted Members to levy a countervailing duty in order to offset injurious subsidies bestowed by another Member on the manufacture, production, or export of goods in or from that other Member's jurisdiction. With respect to the countervailing duty proceedings at issue in this dispute, the United States had conducted the proceedings transparently and with all the procedural safeguards provided for under the WTO Agreement. The United States also noted that China's panel request appeared to include measures about which consultations had neither been requested nor held. For those reasons, the United States was not in a position to agree to the establishment of a panel.

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

7. China – Certain measures affecting electronic payment services

(a) Report of the Panel (WT/DS413/R and Add.1)

87. The Chairman recalled that, at its meeting on 25 March 2011, the DSB had established a panel to examine the complaint by the United States pertaining to this dispute. The Report of the Panel contained in document WT/DS413/R and Add.1 had been circulated on 16 July 2012 as an unrestricted document. The Report of the Panel was before the DSB for adoption at the request of the United States. The adoption procedure was without prejudice to the right of Members to express their views on the Report.

88. The representative of the United States said that his country thanked the Panel and the Secretariat assisting it for their hard work on this dispute. Electronic payment services (EPS) allowed consumers to purchase goods and services without cash. EPS enabled, facilitated and managed the flow of information and the transfer of funds from cardholders' banks to merchants' banks. EPS were vital to facilitating global commerce and were familiar to both consumers and merchants alike. Each year well over US$1 trillion worth of electronic payment card transactions were processed in China alone. China had instituted and maintained 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, the renminbi (RMB). China's discriminatory measures had ensured the market dominance of a Chinese entity, China UnionPay, Ltd. (CUP) and had prevented foreign suppliers from providing these EPS. China had committed to eliminate any measures not consistent with its market access and national treatment obligations for "all payment and money transmission services, including credit, charge, and debit cards…". The Panel Report that was being adopted at the present meeting found that China had failed to do so, and that each aspect of China's regulatory architecture for payment card transactions was inconsistent with China's WTO obligations. First, the Panel had found that China required that all payment cards issued in China bore a UnionPay logo. The Panel had also found that China required that the financial institutions that issued payment cards become members of the CUP

network, and that the cards they issued in China met certain uniform business specifications and technical standards. The Panel had properly found that these requirements discriminated against services and service suppliers of other Members. Second, the Panel had found that China required that ATMs, merchant processing devices, and point-of-sale terminals in China be capable of accepting all payment cards bearing the UnionPay logo. The Panel had properly found that these requirements also discriminated against services and service suppliers of other Members. Third, the Panel had found that China imposed requirements on acquiring institutions (acquirers). These institutions sought to acquire payment card transactions, maintain relationships with merchants, provide terminal equipment, and were also customers of EPS. The Panel had found that China imposed requirements on acquirers to post the UnionPay logo, and to join the CUP network and comply with uniform business standards and technical specifications of inter-bank interoperability. The Panel had found that China required terminal equipment operated or provided by acquirers be capable of accepting bank cards bearing the UnionPay logo. The Panel had properly found that these requirements also discriminated against other Members' services and service suppliers. In addition to finding that China had breached its national treatment obligations in each of these ways, the Panel had also found that China had breached its market access obligations under Article XVI of the GATS. In particular, the Panel had found that the requirements pertaining to certain card-based electronic transactions related to Hong Kong and Macao were inconsistent with China's market access commitments because China maintained a monopoly over the processing of such transactions.

89. The United States had also prevailed on each of the key threshold issues. In particular, the Panel had confirmed that EPS was a single, fully integrated service and that EPS was properly classified under a single subsector of China's Schedule, subsector (d), rather than under subsectors for which China had no national treatment or market access WTO commitments. While the United States was very pleased with those findings, there were nevertheless a few aspects of the Panel Report with which it had concerns. The United States said that it would like to take the opportunity to note one such area of concern. The United States was disappointed that, having found that China's measures severely discriminated against foreign suppliers in favour of CUP, and despite recognizing that CUP was the sole EPS supplier processing domestic RMB payment card transactions in China, the Panel nonetheless had failed to find that China's measures provided CUP with the status of a monopoly or exclusive supplier. The United States was concerned that this result failed to recognize the opaque manner in which China's measures operated, as that lack of transparency was the principal reason for any perceived evidentiary insufficiencies cited by the Panel. Overall, however, the United States was extremely pleased that the DSB would adopt this important Report. The policies of China, as had been reflected in the measures at issue in this dispute, had caused pervasive discrimination at every stage of a card-based payment transaction and had severely distorted competition in China's market. The United States welcomed China's decision to accept the adoption of the Panel Report at the present meeting. The United States looked forward to constructive engagement with China to put this dispute behind the parties, in particular action by China to address its measures affecting electronic payment services – and more broadly – to meet its WTO obligations in light of this Report.

90. The representative of China said that her country thanked the Panel and the Secretariat for their work on this dispute. This was one of a limited number of disputes that had arisen under the General Agreement on Trade in Services, and the first dispute involving the Annex on Financial Services. China appreciated that the Panel and the Secretariat had completed their work in a timely and efficient manner. The centrepiece of the US claim in this dispute was that China had provided a monopoly to China UnionPay with respect to the processing of domestic payment card transactions. The United States had failed to establish the existence of any such "monopoly". As the Panel had correctly found, none of the measures identified by the United States, whether viewed individually or collectively, had conferred any sort of domestic processing monopoly upon China UnionPay. China commended the Panel for its diligent and thorough examination of the measures at issue, and for its rejection of the unfounded "monopoly" claims by the United States. China also welcomed the Panel's conclusion that a Member's market access obligations under Article XVI:2 of the GATS prevailed over the Member's national treatment obligations under Article XVII of the GATS, to the extent of

any overlap between these two disciplines. The Panel's conclusion was based on a straightforward reading of Article XX:2 of the GATS, which plainly indicated that a Member's market access commitments, or lack thereof, applied to any of the measures listed in Article XVI:2(a)-(f), including measures that were discriminatory in nature. This was an important systemic issue in the operation of the GATS, and one that had previously been the subject of extensive discussion in the Council for Trade in Services. China believed that the Panel's interpretation was correct and represented a proper resolution of this issue.

91. However, China did not believe that the Panel Report was entirely free from error. China was concerned, in particular, about the Panel's approach to the classification of the services at issue in this dispute. The processing of payment card transactions involved a number of distinct and separately identifiable service subsectors, including data processing services and clearing and settlement services. The Panel had classified these separate and distinct services into a single subsector, "payment and money transmission services", based on the idea that any service that was "necessary" or "essential" to the supply of another service should be classified as that other service. The Panel's approach to services classification should be of broader systemic concern to Members as a whole. This approach, if followed in other disputes, would undermine the taxonomy of distinct and mutually exclusive service subsectors that was the foundation for negotiating and scheduling services commitments. Many service transactions involved a number of distinct services operating in conjunction with each other. Sometimes those services were provided by the same service supplier, and sometimes they were provided by different service suppliers. If services were classified based on whether they were "necessary" or "essential" to the provision of some other service, Members would be left with an undifferentiated mass of "services". That was not how Members had agreed to negotiate and schedule their services commitments, and it was inconsistent with the Appellate Body's recognition that the service subsectors in a Member's Schedule of Specific Commitments were mutually exclusive. While China was concerned about the Panel's approach to services classification, China believed that a more definitive resolution of this issue could be desirable to all Members. Even under the Panel's classification of the services at issue, the Panel's findings of inconsistency were limited in scope and effect, given the lack of a market access commitment in Mode 1 and the nature of China's market access limitations in Mode 3.

92. The representative of the United States said that his country welcomed the sentiment of China's statement that CUP did not have a monopoly. The United States looked forward to seeing those assertions reflected in foreign EPS suppliers, including US EPS suppliers, processing domestic RMB payment card transactions.

93. The DSB took note of the statements and adopted the Panel Report contained in document WT/DS413/R and Add.1.