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Dispute Settlement Body
24 May 2013

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 24 MAY 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.126)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.126)

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.101)

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.64)

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.13)

F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.12)

G. United States – Measures affecting the production and sale of clove cigarettes: Status report by the United States (WT/DS406/11/Add.5)

H. United States – Measures concerning the importation, marketing and sale of tuna and tuna products (WT/DS381/18/Add.1)

1.1. The Chairman said that there were eight sub-items under Agenda item 1 concerning status reports provided by various delegations, pursuant to Article 21.6 of the DSU. He urged Members to keep their remarks focused on recent developments, and not to repeat statements made in the past. He recalled that this Agenda item was designed to provide informative and up-to-date information about compliance efforts and the comments were supposed to be in the spirit of being constructive focusing on new developments, suggestions and ideas on progress towards the resolution of disputes that remained true to the intentions of the drafters of the DSU.

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.126)

1.2. The Chairman drew attention to document WT/DS176/11/Add.126, 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 13 May 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, at the present meeting, her country wished to refer to paragraphs 1, 2, 3 and 6 of Article 21 of the DSU with regard to the "surveillance of implementation of recommendations and rulings" of the DSB. In this regard, she noted that paragraph 1 established the first precept of "prompt compliance". Paragraph 2 indicated that the principle of special and differential treatment applied to the settlement of disputes, establishing that "particular attention should be paid to matters affecting the interests of developing-country Members with respect to measures that had been subject to dispute settlement". Paragraph 3, which was of major importance, stated very precisely that "the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB". Finally, Cuba wished to refer to paragraph 6, which set out the content of status reports as well as the time-frame for submission of such reports. This paragraph stipulated that status reports should provide information on "progress in the implementation of the recommendations or rulings". Thus, the United States had, with impunity, violated all those provisions for more than 11 years in this dispute. Each month, the DSB's Agenda contained an item on this matter, without any developments in the implementation and settlement of this dispute. The United States continued to present a status report that lacked content and provided no indication of any actions aimed at implementing its legal obligations. Given the content of the draft legislation mentioned by the United States and the prolonged lack of implementation, Cuba believed that the DSB would continue to witness indefinite non-compliance in this dispute. The scenario that had been suggested by some of those legislative proposals was even worse, and involved outright legal gimmickry to give the appearance of implementation in the DSB. In some cases it was proposed to eliminate the most obviously discriminatory provisions of Section 211, but not to repeal Section 211. For example, some provisions on grounds of nationality would be eliminated, taking into account that Section 211 currently applied only to Cuban nationals. However, the conditions would be maintained that enabled the theft and use of the Havana Club trademark by the Bacardi company to continue, with the effect on falsification of other recognized Cuban trademarks. In that regard, Cuba was obliged each month to raise its complaint concerning the US failure to meet its obligations. Cuba, once again, reiterated that simply mentioning draft legislation that had never been adopted could not be seen as a step forward and, much less, a significant change in the status report submitted by the United States. Cuba would not stop challenging those violations, claiming its rights and demanding the prompt settlement of this dispute by repealing Section 211.

1.6. The representative of the Bolivarian Republic of Venezuela said that her country noted that the US status report before the DSB at the present meeting did not contain any new information on progress in the implementation in this dispute. Therefore, Venezuela had no other option but to reiterate its disappointment and concern about the situation of non-compliance in this dispute. Members continued to witness protracted and shameless failure of the United States to implement the DSB's recommendations and rulings. In this case, the failure was due solely and exclusively to the US administration's lack of political will and reflected the US intention to continue to maintain its policy of economic, trade and financial blockade, which had been applied illegally and illegitimately against a developing country, namely, Cuba. Venezuela recalled that, for decades, the international community had called upon the United States to put an end to its blockade. Venezuela, therefore, reiterated its call on the US Administration to end its non-compliance with

the DSB's recommendations and rulings by repealing Section 211. Venezuela supported Cuba's statement and shared its concerns that non-compliance undermined the credibility of the DSB and the multilateral trading system.

1.7. The representative of India said that his country thanked the United States for its status report and the statement made at the present meeting. India noted with regret that there was no substantive change in the situation and was compelled, yet again, to stress that the principle of prompt compliance was missing in this dispute. India reiterated its systemic concerns about the continuation of non-compliance, since this undermined the credibility and 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 the statement made at the present meeting. However, Argentina regretted that, once again, the report revealed non-compliance and lack of progress on this matter. Argentina noted that the US status report merely reiterated that draft legislation had been introduced in the current session of the US Congress. This situation of non-compliance in this dispute was inconsistent with the principle of prompt and effective implementation stipulated in the DSU provisions and affected the interests of a developing-country Member. Argentina, therefore, supported the statements made by Cuba and other delegations and urged 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 Ecuador said that his country supported Cuba's statement made at the present meeting. Ecuador stressed, once again, that Article 21 of the DSU specifically referred to prompt compliance with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Ecuador hoped that the United States would step up its efforts to ensure prompt compliance with the DSB's recommendations and rulings by repealing Section 211. Ecuador emphasized the importance of the DSB's surveillance/monitoring function, as stipulated in the DSU provisions.

1.10. The representative of China said that her country appreciated the Chairman's remarks urging Members not to repeat their previous statements. However, China found it difficult to be creative since the situation in this dispute remained unchanged and felt obliged to repeat its position as instructed by its capital. Regarding the issue at hand, China stressed that the prolonged situation of non-compliance in this dispute was highly inappropriate, in particular since the interests of a developing-country Member were affected. China urged the United States to provide new information to the DSB on progress in this dispute and to implement the DSB's rulings and recommendations without further delay.

1.11. The representative of Brazil said that his country thanked the United States for its status report on the implementation of the DSB's 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 rules.

1.12. The representative of South Africa said that her country thanked the United States for its status report. South Africa, once again, joined others in expressing concern about the delay in the implementation of the DSB's recommendations and rulings in this dispute. In that regard, South Africa referred to its previous statements in which it had stressed the systemic concerns of non-compliance. South Africa was also concerned about the negative economic consequences for the economy of some developing countries as a result of continued non-compliance. South Africa, therefore, urged the United States to bring its legislation into compliance with the DSB's rulings and recommendations.

1.13. The representative of Mexico said that his country wished to reiterate its position regarding the need for the parties to this dispute to adopt the necessary measures to comply with the DSB's recommendations and rulings to benefit all Members, as stipulated in Article 21.1 of the DSU.

1.14. 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, once again, was concerned about the US non-compliance with the DSB's recommendations and urged the United States to fully implement the DSB's recommendations without any further delay for the benefit of Cuba and in order to ensure that WTO rules were respected.

1.15. 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.126)

1.16. The Chairman drew attention to document WT/DS184/15/Add.126, 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.

1.17. The representative of the United States said that his country had provided a status report in this dispute on 13 May 2013, in accordance with Article 21.6 of the DSU. The United States said it 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 that would resolve this matter.

1.18. The representative of Japan said that his country thanked the United States for its statement and the status report submitted on 13 May 2013. Since the content of the US report had not changed from the previous reports, Japan's position had not changed either, as expressed in the previous DSB meetings.

1.19. 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.101)

1.20. The Chairman drew attention to document WT/DS160/24/Add.101, 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.

1.21. The representative of the United States said that his country had provided a status report in this dispute on 13 May 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.

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

1.23. 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.64)

1.24. The Chairman drew attention to document WT/DS291/37/Add.64, 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.

1.25. 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 GMOs[1] and had renewed the authorization of a sixth one.[2] Three of those decisions[3] had been adopted only six months after the relevant EFSA opinions had been published, while the recent 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. At the meeting of the relevant committee of 26 April 2013, the European Commission had presented, for discussion and vote, an authorizing decision for one GMO which had received no qualified majority.[5] Three more decisions[6] would be presented at the standing committees of 10 June 2013 for discussion and possible vote. In addition, EFSA had issued in March 2013, an opinion on a GM maize for food and feed[7] and for cultivation and in April 2013 on GM maize for food and feed.[8] The details were set out in the EU's written statement.

1.26. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. The United States said that it continued to have serious concerns regarding lack of progress in approvals of biotech products. For example, the United States said that it was concerned to learn that the relevant regulatory committee would not be meeting that month, despite the fact that the EU's scientific authority had issued opinions that awaited action. Without regular meetings, the United States said that it was doubtful that the EU would make the progress necessary to normalize trade in these products. For example, EFSA had issued a positive opinion on drought tolerant maize in November 2012, and the opinion had been discussed at the 20 March 2013 meeting of the regulatory committee. However, the Commission had not presented to the regulatory committee a draft regulation for the approval of the product in the six months since EFSA had issued the opinion. The United States urged the EU to take steps to address these problems with its measures affecting the approval of biotech products.

1.27. 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.13)

1.28. The Chairman drew attention to document WT/DS371/15/Add.13, 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.

1.29. The representative of Thailand said that, as indicated in its most recent status report, Thailand and the Philippines had held informal bilateral consultations in Bangkok on 3-4 May 2013 to discuss the status of the outstanding issues in this dispute. During those consultations, the parties had discussed technical details of three aspects of Thailand's implementation measures that had remained of concern to the Philippines. Thailand had undertaken to provide some follow-up information on those matters to the Philippines and was in the process of doing so. The discussions in Bangkok had also included a matter of concern to the Philippines that had not been directly at issue in the original panel proceedings. Thailand considered that those discussions had been productive in helping the parties obtain a full understanding of the situation regarding this matter. Thailand thanked the members of the Philippines' delegation for taking the time to travel to Bangkok to participate in those meetings. Thailand looked forward to continuing the discussions

[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.
[6] Maize stack events MON89034 x 1507 x MON88017 x 59122 and GM maize MON89034×1507×NK603.
[7] EFSA Opinion GM maize 59122, EFSA Journal 2013;11(3):3315.
[8] EFSA Opinion GM maize 98140, EFSA Journal 2013;11(4):3139.

and to resolving this matter in an amicable manner that reflected the excellent bilateral relationship between the two countries.

1.30. The representative of the Philippines said that his country thanked Thailand for its status report and its statement made at the present meeting. In its status report and its statement, Thailand had referred to the bilateral meeting held in Bangkok in early May 2013. At that meeting, a number of technical issues had been discussed which required certain follow-up actions from Thailand within agreed deadlines, the last of which expired at the end of May 2013. The Philippines had not yet received all of the relevant information from Thailand. Furthermore, at that meeting, Thailand had not been able to address issues of importance to the Philippines. Those concerns related to the actions by certain governmental agencies other than Thai Customs that appeared to make findings on customs valuation issues without operating under the WTO Customs Valuation Agreement. The Philippines was awaiting Thailand's actions on all issues within the agreed deadlines.

1.31. 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.12)

1.32. The Chairman drew attention to document WT/DS404/11/Add.12, 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.

1.33. The representative of the United States said that his country had provided a status report in this dispute on 13 May 2013, in accordance with Article 21.6 of the DSU. The United States explained that 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 USTR 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 said that it would continue to consult with interested parties as it worked to address the recommendations and rulings of the DSB.

1.34. 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 both parties had expired ten months ago but the US Administration had not taken any action to recalculate the anti-dumping duties for the second and third periods of analytic review. This was inconsistent with the DSB's recommendations. Once again, Viet Nam requested the United States to fully comply without any further delay for the benefit of Viet Nam's exporters.

1.35. The representative of Cuba said that this dispute had been on the DSB's Agenda for some time. Cuba noted that this was another case of non-compliance with the DSB's recommendations and rulings on the part of the United States in a dispute affecting the interests of Viet Nam, a developing-country Member. Cuba supported Viet Nam and urged the United States to comply with the DSB's recommendations and rulings in this dispute.

1.36. 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.5)

1.37. The Chairman drew attention to document WT/DS406/11/Add.5 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.

1.38. The representative of the United States said that his country had provided a status report in this dispute on 13 May 2013, in accordance with Article 21.6 of the DSU. The United States noted in the status report that US authorities were conferring with interested parties and working to implement the recommendations and rulings of the DSB in a manner that was appropriate from the perspective of the public health.

1.39. The representative of Indonesia said that her country's position on this matter had not changed, as expressed at previous DSB meetings.

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

H. United States – Measures concerning the importation, marketing and sale of tuna and tuna products (WT/DS381/18/Add.1)

1.41. The Chairman drew attention to document WT/DS381/18/Add.1 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.

1.42. The representative of the United States said that his country had provided a status report in this dispute on 13 May 2013, in accordance with Article 21.6 of the DSU. As noted in its status report, on 5 April 2013, the United States had published in the Federal Register a proposed rule related to the US dolphin-safe labelling standards.[9] The proposed changes would help ensure that consumers receive accurate information concerning whether the tuna in a product labelled "dolphin safe" was caught in a manner that had caused harm to dolphins. The period for comment on the proposed rule had closed on 6 May 2013. The United States said that it was evaluating the comments received concerning the proposed rule, and would continue to work to implement the recommendations and rulings of the DSB by the end of the reasonable period of time.

1.43. The representative of Mexico said that his country thanked the United States for its status report. Mexico had commented on the regulatory process established by the United States following the publication of the draft regulations amending certain requirements on "dolphin-safe" labelling. As Mexico had repeatedly stated, unfortunately, the proposed regulations did not remove discrimination against Mexican tuna. Mexico, therefore, wished to reiterate the points it had made at the previous DSB meeting, in particular that the proposed regulations did not eliminate the economic injury caused to the Mexican industry, nor did they address the damage caused to the environment and dolphins by fishing fleets from other countries in other oceans. In that regard, Mexico continued to examine all the legal options available to it in order to find an effective solution to this dispute.

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

2 CHINA – DEFINITIVE ANTI-DUMPING DUTIES ON X-RAY SECURITY INSPECTION EQUIPMENT FROM THE EUROPEAN UNION

A. Implementation of the recommendations of the DSB

2.1. 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 24 April 2013, the DSB had adopted the Panel Report pertaining to the dispute on: "China – Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union". He invited China to

[9] Enhanced Document Requirements to Support Use of the Dolphin Safe Label on Tuna Products, 78 Fed. Reg. 20604 (proposed 5 April 2013) (to be codified at 50 CFR pt. 216).

inform the DSB of its intentions in respect of implementation of the DSB's recommendations and rulings.

2.2. The representative of China said that, on 24 April 2013, the DSB had adopted the Panel Report in the dispute: "China – Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union" (DS425). According to Article 21.3 of the DSU, China wished to inform the DSB of its intention to implement the recommendations and rulings of the DSB in this dispute in a manner that respected its WTO obligations. China would need a reasonable period of time in order to do so.

2.3. The representative of the European Union said that the EU welcomed China's statement on its intention to comply and was ready to discuss with China a reasonable period of time to do so. The EU recalled that the Panel had upheld the EU claims with regard to all aspects of the investigation challenged by the EU, namely, price effects analysis, injury determination and causality as well as the transparency of the proceedings. Consequently, crucial aspects of China's assessment, necessary for the imposition of the duties, were found to be inconsistent with the requirements of the Anti-Dumping Agreement. In light of the Panel's clear findings, the EU trusted that China would promptly take the necessary steps to ensure WTO-compatibility of the measure. The EU expected that this would lead to the removal of the duties on x-ray security inspection equipment from the EU.

2.4. The representative of China said that her country did not agree with the EU's statement that the Panel had upheld all aspects of the EU's claims contained in its panel request. China referred to its previous statement made at the April 2013 DSB meeting regarding this matter.

2.5. The Chairman thanked China for its clarification and for referring to its statement made at the April 2013 DSB meeting, which was available to all Members. The DSB kept implementation under review and thus collectively Members could assess the various views as to what constituted effective implementation.

2.6. The DSB took note of the statements, and of the information provided by China regarding its intentions in respect of implementation of the DSB's recommendations and rulings.

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

3.1. 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.

3.2. The representatives 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. As discussed at the previous DSB meeting, the authorized level of retaliation had changed as from 1 May 2013. The details were set out in the EU's notification to the DSB sent earlier that week.

3.3. 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.

3.4. 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 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 obligation to provide status reports in this dispute.

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

3.6. The representative of India said that his country thanked the EU and Japan for regularly bringing this issue before the DSB. India supported their views and shared their concerns.

3.7. The representative of Thailand said that his country's position on this matter had not changed. Thailand maintained its position as stated at previous DSB meetings.

3.8. 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. Furthermore, the United States recalled 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 said that it 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.

3.9. The DSB took note of the statements.

4 UNITED STATES – MEASURES AFFECTING THE CROSS-BORDER SUPPLY OF GAMBLING AND BETTING SERVICES

A. Statement by Antigua and Barbuda regarding the implementation of the recommendations and rulings adopted by the DSB

4.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Antigua and Barbuda. He said that it was his understanding that the representative of Dominica would make a statement on behalf of Antigua and Barbuda regarding this item.

4.2. The representative of Dominica, speaking on behalf of Antigua and Barbuda, read out the following statement: "As has been the case in recent months, we are speaking on behalf of the delegation of Antigua and Barbuda, which has requested that this item be placed on the Agenda for today's meeting of the DSB. And as has also been the case in prior months, Antigua and Barbuda would like to point out to the DSB not only the failure of the United States to take any effort towards compliance with the recommendations and rulings of the DSB in DS285, but its ongoing failure to comply with its obligation under the DSU to provide the DSB with a status report in writing of its progress in the implementation of the recommendations and rulings on a monthly basis until the dispute is resolved. We are unconvinced by the argument advanced by the United States last month that its attempted revision of its international trade obligations under GATS Article XXI somehow absolves it of its other obligations under the DSU, including in this case its monthly reporting obligations with respect to an as-yet unresolved dispute. Although the United States has invoked the Article XXI process, it has not been concluded, and it is incontestable not only that DS285 remains unresolved but also that the United States remains in violation of the GATS with respect to the cross-border supply of gambling and betting services. In that respect, Antigua and Barbuda would observe that the ill-considered and unprecedented attempt of the United States to avoid its responsibilities to its trading partners under the GATS by simply revoking its commitment may well be re-examined in the light of developments over the past few years with rapidly increasing domestic-only growth in remote gaming within the United States. As some may recall, the defence of the United States in DS285 – as well as its asserted basis for revising its commitments under the GATS – was that remote gaming was so uniquely pernicious that the United States government prohibited all remote gaming throughout the country. Antigua and Barbuda provided considerable evidence during the course of the dispute that this absolutely was not the case, and while perhaps this evidence was not then given the weight or full consideration it was due, subsequent events have fully vindicated Antigua and Barbuda. These circumstances, Antigua and Barbuda believes, pose a serious question for the WTO, as to whether it is appropriate for a Member to claw-back on its treaty obligations solely to

protect a domestic market against legitimate and, as in this case, superior competition from other WTO Members. Given the stated objective of the WTO agreements to liberalize trade, including of course trade in services, this aberration by the United States should perhaps come under a bit of renewed scrutiny. In any event, Antigua and Barbuda asserts that revising a treaty obligation cannot cure a violation occurring prior to the 'revision', and there can be no clearer example of this than DS285, where the United States' actions in violation of the GATS have not only destroyed a cutting edge and vibrant industry that was beginning to prove a considerable benefit to the citizens of a tiny, resource-strapped developing country, but also where such actions have resulted in criminal prosecutions by American authorities, seizure of assets without due process and other adverse consequences, all unambiguously contrary to international law. The government of Antigua and Barbuda would like to make perfectly clear that it fully intends to hold the United States to its international obligations, and barring compliance or fair settlement, Antigua and Barbuda will in the very near term avail itself of the remedies granted to it by the DSB in January of this year."

4.3. The representative of Trinidad and Tobago said that his country supported the statement made by Dominica on behalf of Antigua and Barbuda. Trinidad and Tobago recalled its previous statements made on this particular dispute and recalled the decision of the CARICOM heads of government as detailed in their Communiqué issued at the conclusion of the 24th Intersessional meeting of the conference of the heads of governments of the Caribbean community which had taken place in Porte Prince, Haiti, in February 2013. At that meeting, CARICOM had stated its full support for Antigua and Barbuda and had urged the United States to engage in meaningful and constructive negotiations in order to arrive at a mutually acceptable settlement in this long-standing dispute. The WTO's dispute settlement system was widely regarded as one of the most useful and critical features of the multilateral trading system. In that regard, in order to maintain the high degree of confidence in the system, Trinidad and Tobago looked forward to an amicable resolution of this matter in the near future.

4.4. The representative of Brazil said that his country thanked Antigua and Barbuda, through Dominica, for including this item on the DSB's Agenda. Brazil was of the view that the credibility of the WTO's dispute settlement system depended on the premise that the system worked for the benefit of all Members, regardless of their size or level of development. The WTO dispute settlement system had proved to be a useful tool for resolving trade disputes among Members through a rules-based mechanism. However, non-compliance risked undermining the legitimacy and the effectiveness of the system. Bearing that in mind, Brazil, once again, encouraged both parties to the dispute to engage in effective negotiations with a view to reaching a mutually-agreed solution to this long-standing dispute, in line with the DSB's rulings on this matter.

4.5. The representative of Jamaica said that his country supported the statement made by Dominica on behalf of Antigua and Barbuda. Jamaica also supported the statements made by Trinidad and Tobago and Brazil. Jamaica wished to reaffirm the elements contained in its previous statements made at previous DSB meetings on this issue. Jamaica, once again, urged both parties to the dispute to take all necessary steps to find a just and lasting solution to this protracted dispute.

4.6. The representative of Argentina said that his delegation was taking the floor under this Agenda item for the first time. Argentina thanked Antigua and Barbuda for inscribing this item on the Agenda of the present meeting. As it had done in relation to the Section 211 dispute, Argentina once again expressed its concern about the systemic implications of the US failure to comply with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Article 21.1 of the DSU was clear in this regard by stating that "prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members". Argentina, therefore, joined previous speakers who had expressed similar concerns and urged the parties to this dispute to redouble their efforts towards reaching a fair and equitable solution to this long-standing dispute, in accordance with the DSB's recommendations and rulings in this dispute.

4.7. The representative of Cuba said that her country noted that this was another situation of non-compliance by the United States in a dispute that affected the interests of a developing-country, in particular Antigua and Barbuda, a small and vulnerable economy. Cuba supported the statement made by Dominica, on behalf of Antigua and Barbuda. Cuba was concerned about the

systemic implication of non-compliance and the lack of political will on the part of the United States to resolve this matter.

4.8. The representative of the Bolivarian Republic of Venezuela said that her country noted that this was another case of prolonged non-compliance which affected a developing-country Member. Venezuela supported the statement made by Dominica on behalf of Antigua and Barbuda. In Venezuela's view, the repeated refusal by the United States in this dispute, and in many other disputes, to implement the DSB's recommendations and rulings violated the most fundamental rules of the multilateral trading system, and had an impact on the supply of services by a developing-country Member with its economy based primarily on services. Thus, any restriction on the supply of services seriously affected finances of Antigua and Barbuda. Venezuela recalled that, in 2005, the Appellate Body had upheld the Panel's finding that the United States had acted inconsistently with paragraphs 1 and 2 of Article XVI of the GATS. The Appellate Body had also confirmed that the exception of subparagraph (a) of Article XIV of the GATS did not apply, as the United States did not provide the same treatment to domestic and foreign suppliers of gambling and betting services. Despite that final ruling, a compliance panel had been established which, in 2007, had found that the United States had not implemented the DSB's recommendations and rulings in this dispute. Six years had passed without any implementation. Therefore, Venezuela supported Antigua and Barbuda, vigorously condemned the US conduct and urged the United States to comply with the DSB's recommendations and rulings. Venezuela also requested that the United States submit a status report on its progress in the implementation in this dispute.

4.9. The representative of China said that her country understood the situation of Antigua and Barbuda and supported the statements made by previous speakers on this matter. In particular, China agreed with Brazil that the credibility of the system depended on whether all Members, regardless of their size, could benefit from the system. Therefore, China encouraged and urged the parties to this dispute to make every effort to try to find a satisfactory solution to this dispute. China stressed that the ultimate goal was to comply with the DSB's recommendations and rulings.

4.10. The representative of the United States said that his country remained committed to constructive dialogue with Antigua to resolve this matter. The United States said that it remained of the view that a negotiated resolution was the best outcome and would continue with those efforts. In relation to the statement on further DSB status reports, the United States recalled that it had invoked the GATS Article XXI process to withdraw the gambling concession at issue in this dispute. The United States had reached agreement with all other interested Members to complete that process by offering substantial new services concessions. Only Antigua prevented completion of that WTO process. The United States considered that the GATS Article XXI process was the proper forum for further discussion of this matter.

4.11. The DSB took note of the statements.

5 CHINA – MEASURES IMPOSING ANTI-DUMPING DUTIES ON HIGH-PERFORMANCE STAINLESS STEEL SEAMLESS TUBES ("HP-SSST") FROM JAPAN

A. Request for the establishment of a panel by Japan (WT/DS454/4)

5.1. The Chairman recalled that the DSB had considered this matter at its meeting on 24 April 2013 and had agreed to revert to it. He drew attention to the communication from Japan contained in document WT/DS454/4, and invited the representative of Japan to speak.

5.2. The representative of Japan said that, as his country had explained at the previous DSB meeting of 24 April 2013, this dispute concerned China's anti-dumping measures on high-performance stainless steel seamless tubes ("HP-SSST") originating from Japan. China had failed to meet its obligations under the WTO Agreement, in particular the Anti-Dumping Agreement, in every aspect of the anti-dumping investigations in question. The request for the establishment of a panel had first appeared as an item on the DSB's Agenda at the meeting held on 24 April 2013. Following that meeting, Japan had, once again, requested that, pursuant to Article 6 of the DSU, a panel be established at the present meeting to examine the matter set forth in the panel request circulated as document WT/DS454/4, with standard terms of reference, in accordance with Article 7.1 of the DSU.

5.3. The representative of China said that her country was disappointed that Japan had requested the establishment of a panel for the second time. As China had noted at the previous DSB meeting, the WTO Agreements permitted Members to levy on any dumped product an anti-dumping duty in order to offset or prevent dumping in accordance with the Anti-Dumping Agreement. The application of the anti-dumping measure by Chinese investigating authorities at issue in this dispute was consistent with China's obligations under the WTO rules. China understood that a panel would be established at the present meeting and was convinced that at least on one point the panel would not uphold Japan's claim that all aspects of China's investigating authority's decisions in this matter were inconsistent with the WTO's rules and regulations. Contrary to what Japan claimed, the majority of the decisions by China's anti-dumping authority would be consistent with the WTO's rules and regulations. China intended to fully defend its rights in the Panel's proceedings on this matter.

5.4. 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.

5.5. The representatives of the European Union, India, Korea, Russian Federation and the United States reserved their third-party rights to participate in the Panel's proceedings.

6 EUROPEAN UNION – ANTI-DUMPING MEASURES ON IMPORTS OF CERTAIN FATTY ALCOHOLS FROM INDONESIA

A. Request for the establishment of a panel by Indonesia (WT/DS442/2)

6.1. The Chairman drew attention to the communication from Indonesia contained in document WT/DS442/2, and invited the representative of Indonesia to speak.

6.2. The representative of Indonesia said that, on 8 November 2011, the EU had imposed definitive anti-dumping duties on imports of certain fatty alcohols from Indonesia. Fatty alcohols were used in the production of soaps, detergents and other personal and household products and the industry was of considerable importance to Indonesia. The EU's definitive anti-dumping measure had applied to two large Indonesian exporters. On reviewing the EU's definitive measure, Indonesia was concerned that the determination of the dumping margins for those exporters, the EU's injury determination and certain procedural aspects of the investigation were inconsistent with the Anti-Dumping Agreement. Furthermore, in Indonesia's view, the measures at issue were inconsistent with the EU's obligations under the Anti-Dumping Agreement and the GATT 1994 for the following reasons. The EU had failed to treat one of the Indonesian exporters' related Singapore sales office as a single economic entity with its related producer/exporter. Furthermore, the EU had made adjustments to the export price of that Indonesian exporter to reflect both the selling expenses of the Singapore sales office as well as an imputed "commission" paid to the related Singapore sales office. Because it did not have a proper factual and legal basis for those adjustments, the EU had acted inconsistently with Articles 2.3 and 2.4, Article 5.8, Articles 3.1, 3.4 and 3.5, Articles 9.4 and 9.2 of the Anti-Dumping Agreement and Article X:3(a) of the GATT 1994.

6.3. The EU had also inappropriately excluded so-called "branched" fatty alcohols from the scope of both the product under consideration and the domestic "like" product. By excluding the production of those "branched" fatty alcohols from the scope of the domestic industry, the EU had also incorrectly defined the domestic industry. The EU had thereby acted inconsistently with the provisions of Article 2.6, Articles 3.1 and 4.1 read with Article 2.6, and Articles 3.4 and 3.5, Article 4.1 and Articles 3.1, 3.2, 3.4 and 3.5 of the Anti-Dumping Agreement. The EU had acted inconsistently with Articles 3.1 and 3.5 of the Anti-Dumping Agreement by failing to provide a reasoned and adequate explanation, based on positive evidence and involving an objective examination, as to why the injury suffered by the domestic industry had not been attributable to other known factors, including (but not limited to) the effects of sales of branched fatty alcohols on sales of linear fatty alcohols and the impact of the financial crisis. The EU had acted inconsistently with Articles 3.1, 3.3 and 3.4 of the Anti-Dumping Agreement by cumulating imports from Indonesia which had negative price undercutting margins, with imports from other countries, which had been at prices that undercut the domestic product. In that respect, the EU had also failed to administer its laws, regulations, decisions and rulings in a uniform, impartial and reasonable manner, contrary to Article X:3(a) of the GATT 1994. The EU had acted inconsistently with Articles 6.7 and 6.9 of the Anti-Dumping Agreement by failing to provide the Indonesian

exporters with the results of the EU Commission's verification visits to the exporters and by failing to inform all interested parties of the essential facts under consideration.

6.4. In 2012, the EU authorities, in response to a judgment of the European Court of Justice, had preliminarily determined to amend the measure to exclude one of the Indonesian exporters. The EU's and the European Court's decisions had involved concerns similar to those identified by Indonesia in its review of the EU's definitive measure. However, for unknown reasons, the EU had not also excluded the other Indonesian exporter even though the two Indonesian exporters sold to the EU in essentially the same manner. Indonesia, therefore, did not understand why the EU would exclude one exporter but not the other from the measure. On 27 July 2012, Indonesia had requested consultations with the EU regarding its concerns with the anti-dumping measure. Consultations had been held in September 2012. Unfortunately, however, those consultations had failed to resolve the dispute. While the EU had formally excluded one of the Indonesian exporters from the measure, the other similarly-situated Indonesian exporter remained subject to the measure. In addition, the EU had failed to address Indonesia's concerns regarding the injury determination, although a review of the injury determination had been pending for four months, and the procedural aspects of the investigation. At the present time, the EU continued to review aspects of the measure and Indonesia was not aware of any deadline for that review. Indonesia had hoped that this matter could have been resolved without the need to go to the panel stage and still hoped that the matter may be resolved. However, while maintaining an open and cooperative attitude, Indonesia also needed to ensure that its rights under the Anti-Dumping Agreement were properly secured by the system. In that regard, Indonesia was proceeding to the next stage of the dispute settlement process. Indonesia, therefore, requested that the DSB establish a panel with the usual terms of reference to address the matters set out in its request for the establishment of a panel, contained in document WT/DS442/2.

6.5. The representative of the European Union said that the EU took note of Indonesia's decision to request a panel on provisional anti-dumping duties on certain chemical products imposed by the EU in May 2011 and definitive anti-dumping duties imposed by the EU in November 2011. A decision to re-examine the injury findings had been taken at the end of February 2013 and the internal process was underway, as announced in the EU letter dated 25 February 2013. At present, the EU considered this request premature and could not therefore agree to the establishment of a panel. The EU wished to reaffirm its commitment to dialogue with the Indonesian authorities in this case and to finding an amicable solution. The EU was convinced that its measures were in conformity with the WTO Agreements and would defend them vigorously if a panel was established.

6.6. The representative of Indonesia said that her country welcomed the statement made by the EU and was open to dialogue with the EU. Indonesia would welcome further progress by the EU regarding this matter.

6.7. The Chairman thanked the EU for noting in its statement the fact that a number of the matters were pending under review. He said that he hoped that the completion of the reviews and any additional dialogue would lead to a satisfactory resolution.

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

7 ARGENTINA – MEASURES RELATING TO TRADE IN GOODS AND SERVICES

A. Request for the establishment of a panel by Panama (WT/DS453/4)

7.1. The Chairman drew attention to the communication from Panama contained in document WT/DS453/4, and invited the representative of Panama to speak.

7.2. The representative of Panama said that his country's panel request was self-explanatory. The complaint concerned a set of measures imposed by Argentina which had a common denominator: a policy of discrimination in the areas of taxation, foreign exchange, stock exchange, registration and administrative matters against goods and services of Panama and other selected countries, as well as a policy of restriction of access to specific markets which were contrary to Argentina's WTO commitments. The measures violated the basic WTO principles and Panama hoped that the panel, once established to examine this matter, be categorical in its findings and decisions, and grant a

remedy befitting the circumstances which, in this case, implied that Argentina should eliminate its discrimination and barriers to its market access. Panama thanked Argentina for being well-disposed during the consultations, which had been free-flowing and cordial. Nevertheless, the consultations had not allowed the parties to resolve this dispute. After carefully examining the matter, Panama was still of the view that the measures imposed by Argentina violated various provisions of the WTO Agreement, as had been stated in the panel request, which was before the DSB at the present meeting. Panama hoped that, at the present meeting, the DSB would establish a panel with standard terms of reference.

7.3. The representative of Argentina said that his country was disappointed at Panama's decision to request that the DSB establish a panel in this dispute. During the consultations, held in February 2013 in Geneva, Argentina had had the opportunity to explain in detail the matter at issue. To this effect, Argentina had provided the clarifications requested by Panama and had replied to all the questions raised by Panama. It had been and remained Argentina's desire to resolve this dispute through negotiations, as Argentina was convinced that this was the most suitable option for both parties. This was due to the fact that Argentina had repeated its offer to Panama to sign an agreement for the exchange of tax information that would include other tax aspects to ensure transparency in this area in accordance with the international standards, in particular those established by the OECD. Argentina had also proposed agreements between specialized agencies for this purpose. That would be the basis for finding a mutually satisfactory settlement of the dispute. Unfortunately, despite Argentina's willingness, Panama had decided to proceed towards the establishment of a panel. Argentina considered that the claims put forward by Panama concerned measures that were in conformity with WTO rules. The rules which Panama was challenging constituted a set of measures that Argentina could describe as essentially having the objective of avoiding fraudulent practices that harmed the Treasury as well as consumers of financial services. They were part of a general policy aimed at ensuring the integrity and stability of the financial system which Argentina called "anti-abuse measures". Panama was challenging rules relating to tax and capital market matters that were similar to those adopted by other countries. Panama was challenging international mechanisms which were similar to those adopted by other countries. Panama was challenging international mechanisms, approaches and standards for anti-abuse rules concerning tax havens and countries that were uncooperative over tax transparency, which had been adopted by the OECD Global Forum and the G20. It had been estimated that the developing world had lost about a billion dollars annually (and a trillion dollars annually in the case of the United States) in illegal flows, which included tax evasion[10], which greatly exceeded the development aid they received. This figure showed the scale of the problem created by the opacity of some financial systems, justifying the action taken to prevent or mitigate it. Therefore, Argentina was not in a position to agree to the establishment of a panel to examine this matter as had been requested by Panama. Nevertheless, Argentina remained at Panama's disposal to find a satisfactory solution to this dispute.

7.4. Finally, Argentina wished to make one comment regarding the title of the dispute under consideration. Argentina considered that the title given to Panama's complaint in this dispute lacked the precision that would be desirable to avoid creating any confusion. Argentina wished to point out that the title of this dispute in its present form could allow the inference to be drawn that there was a multiplicity of complaints similar to other cases that had recently been filed against Argentina. The present dispute raised by Panama referred to measures that were applied exclusively to a set of countries in accordance with tax rules. Argentina was in contact with Panama in order to find an agreement to suggest modifications that would make it possible to avoid that confusion, but those talks had been unsuccessful. Argentina understood that it was Panama's right to maintain its position on this question, and respected it. Nevertheless, Argentina thought it necessary to make that clarification at the present meeting.

7.5. The Chairman said that he wished to comment on two separate issues. One was the main body of the exchange that constituted a first request for a panel. In this regard, he noted that there was no agreement to establish a panel at the present meeting. The second one, which was somewhat procedural, was whether the title of this item on the Agenda accurately reflected the nature of the dispute. To be clear and to keep amicable relations between the parties, the Chair noted that titles to disputes were assigned by the Secretariat. In that regard, any concerns about the title should be communicated to the Secretariat. The Secretariat would consult with the parties concerned and see if they could collectively come up with something more appropriate. In the

[10] Global Financial Integrity Report.

meantime, however, there being no agreement on the establishment of a panel and may be the prospect during the next 30 days of continued consultations leading to a collective resolution of the dispute, the DSB would take note of the statements and agree to revert to this matter at its next meeting.

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

8 CANADA – CERTAIN MEASURES AFFECTING THE RENEWABLE ENERGY GENERATION SECTOR/CANADA – MEASURES RELATING TO THE FEED-IN TARIFF PROGRAM

A. Reports of the Appellate Body (WT/DS412/AB/R – WT/DS426/AB/R) and Reports of the Panel (WTDS412/R and WT/DS412/R/Add.1 – WT/DS426/R and WT/DS426/R/Add.1)

8.1. The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS412/13 – WT/DS426/12 transmitting the Appellate Body Reports on: "Canada – Certain Measures Affecting the Renewable Energy Generation Sector/Canada – Measures Relating to the Feed-In Tariff Program", which had been circulated on 6 May 2013 in document WT/DS412/AB/R – WT/DS426/AB/R, in accordance with Article 17.5 of the DSU. The Appellate Body Reports and the Panel Reports pertaining to this dispute had been circulated as unrestricted documents. As Members were aware, Article 17.14 of the DSU required that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report". He noted that this was the negative consensus rule that the DSB adopt the Reports unless the DSB collectively by consensus agree not to do so. This meant that Members still had the opportunity to express their views on the Reports. He then invited the parties to the dispute to express their views on the Reports before the DSB.

8.2. The representative of Japan said that his country thanked the Panel, the Appellate Body and the respective Secretariats for their work in this dispute. Japan also thanked the third parties for their active participation in the proceedings. Japan welcomed the confirmation by the Appellate Body and the Panel in their Reports that the Canadian measures at issue, namely the local content requirements contained in the feed-in-tariff program or so called FIT Program, were in clear breach of Canada's WTO obligations. The findings of the Appellate Body and the Panel were thorough and based on facts of the case specific to the energy market in question present in the Canadian Province of Ontario. Although Japan disagreed with some of the findings contained in the Reports, Japan supported the adoption of the Reports at the present meeting. In this dispute, as stated in the proceedings, Japan's challenge was neither directed to the WTO consistency of Canada's feed-in-tariff program itself, nor the policy of promoting renewable energy generation. Japan's concerns specifically related to the use of the domestic content requirements under that program, which accorded less-favourable treatment to imported equipment than those domestically produced, thus limiting renewable energy generators' access to the best available technology from the global marketplace. Japan was also seriously concerned that local content requirements of this kind in the renewable energy sector were spread on a global scale. This was the first case that had addressed the WTO-consistency of the local content requirements in a FIT Program, a renewable energy generation sector. The Appellate Body and the Panel had unambiguously found local content requirement of the kind adopted by Canada could not escape the national treatment disciplines under the WTO Agreements and had no place in international trade under the multilateral trading system. Japan believed and hoped that the findings in the Reports would provide not only a definitive resolution of the matter in this dispute, but would also provide the clarification to the relevant WTO rules which would serve to prevent the global proliferation of discriminatory local content measures in this growing industry. Finally, Japan urged Canada to eliminate promptly the local content requirements in the FIT Program completely in line with the DSB's recommendations and rulings. Japan wished to note that the DSU provided that "[p]rompt compliance with the recommendations and rulings of the DSB is essential in order to ensure effective resolution of disputes" and directed Members to "comply immediately with the recommendations and rulings". Japan expressed its readiness to engage in dialogue with Canada in a constructive manner in the coming weeks, with a view to achieving the prompt and full compliance by Canada and a positive resolution of this dispute.

8.3. The representative of the European Union said that the EU thanked the Panel, the Appellate Body and the respective Secretariats for their work in this dispute. The Panel and Appellate Body Reports confirmed the EU's position that the challenged measures, in particular the requirements to source domestically in Ontario a minimum percentage of goods for the generation of electricity from renewable sources, were in breach of both the TRIMS and the GATT Agreements. The EU also noted that some of the legal flaws in the Panel Report had been corrected by the Appellate Body, as had been argued by the EU on appeal. It was particularly important that certain key interpretations of the Panel of Article III:8(a) of the GATT 1994 had been reversed or otherwise declared moot and with no legal effect. In the EU's view, some elements in the Panel's approach had seriously undermined the object and purpose of the basic principle of national treatment. It was worth stressing that, while Article III:8(a) did entitle Members to accord a preference to domestic goods in the context of government procurement subject to several conditions, such right could not be misused to impose discriminatory requirements that extended beyond the specific object of a procurement operation, namely, the goods that were actually being purchased. As a matter of legal interpretation, the Panel had erred in approaching the various terms in Article III:8(a) in an isolated and disconnected fashion, disregarding the function of that Article in the overall context of the provisions on national treatment. The EU was satisfied that the Appellate Body had clarified this important matter. The EU also wished to underline that it welcomed the Appellate Body's confirmation that the Panel had unduly rejected the EU claims under the SCM Agreement. The partial approach that had been taken by the Panel majority with regard to the assessment of the arguments and evidence in front of them had been an issue of serious concern to the EU. The EU regretted the fact that the Appellate Body could not complete the analysis in this case, even though the Appellate Body had indicated the existence of evidence in the record that the Panel could have relied upon to show that the FIT Program conferred a "benefit" under the SCM Agreement. The EU trusted that Canada would take prompt action to bring the relevant measures into compliance with its WTO obligations. The EU looked forward to receiving information from Canada about its intentions regarding implementation at the next DSB meeting, in accordance with Article 21.3 of the DSU.

8.4. The representative of Canada said that his country thanked the Panel, the Appellate Body and their respective Secretariats for the considerable time and effort that they had devoted to this dispute. With respect to the Reports to be adopted at the present meeting, Canada regretted that the Appellate Body had upheld the Panel's findings that requirements of the FIT Program did not fall within the scope of Article III:8(a) of the GATT 1994. As a result of that finding, those requirements had been found to be subject to Article III:4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement. In particular, Canada was surprised by the manner in which the Appellate Body had arrived at the finding that Article III:8(a) applied to the purchase of a product that competed with the product against which discrimination was alleged. None of the parties had made submissions on such an interpretation of Article III:8(a). Nor had any questions been put to the parties regarding such an interpretation. As a result, the parties had not had the opportunity to address this particular issue, which formed the crux of the conclusions in respect of Canada's obligations under the GATT 1994 and the TRIMs Agreement. On the other hand, Canada welcomed the Appellate Body's conclusion that Japan and the EU had failed to demonstrate that the FIT Program constituted a prohibited "subsidy" under the SCM Agreement. Canada welcomed, in particular, the Appellate Body's rejection of Japan's appeal that the challenged measures may have been characterized as a "direct transfer of funds" or "potential direct transfer of funds" under Article 1.1(a)(1)(i) of that Agreement. Canada was further pleased that the Appellate Body had upheld the Panel's finding that Article 14 of the SCM Agreement could be used as relevant context to determine the existence of a "benefit" in the context of a prohibited subsidy claim. Canada agreed that, even where a precise calculation of the amount of "benefit" was unnecessary, a determination of the existence of a "benefit" under Article 1.1(b), read in the context of Article 14(d), still required a comparison between actual remuneration and a market-based benchmark or proxy. Canada also welcomed the Appellate Body's rejection of the Panel's finding that the relevant market for the purposes of a "benefit" analysis in this case was electricity. Canada agreed that the Panel should have begun its analysis by defining the relevant market taking into account both demand and supply-side factors. In closing, while Canada did not agree with all the findings and conclusions of the Appellate Body and the Panel, it acknowledged that the Reports would be adopted by the DSB at the present meeting. Pursuant to Article 21.3 of the DSU, Canada would, within the next 30 days, inform the DSB of its intentions with respect to implementation of the recommendations and rulings that the DSB would adopt at the present meeting.

8.5. The Chairman said that the DSB had heard from the parties to the dispute and noted that a number of delegations wished to add their reflections. The DSB had already heard fairly detailed and technical legal commentary. The statements made would form part of the minutes of the present meeting and thus be available to other delegations to study more carefully.

8.6. The representative of the United States said that his country thanked the Panel, the Appellate Body, and the Secretariat for their work in these proceedings. The United States said that it was a third party in this dispute and, in view of the limited time available at the present meeting, wished to take the opportunity to comment on just two points in the Appellate Body's Report. First, with respect to the so-called "government procurement exception", the United States noted that Article III:8(a) of the GATT 1994 applied only to measures governing the procurement of certain products by governmental agencies. The United States said that it agreed with the Appellate Body's finding in this case that the derogation in Article III:8(a) did not apply where the procurement by a government agency was of one product (electricity) while the domestic content requirements were on private entities purchasing a different product (renewable energy generation equipment). The United States also said that it agreed with the Appellate Body's finding that a mere "connection" between two different products, where only one of the products was being procured by the government, was not sufficient to bring the other product within the scope of Article III:8(a).[11] The United States furthermore agreed that, in determining the scope of the product covered by a measure governing government procurement, the "competitive relationship" test set out by the Appellate Body could be helpful.[12] The United States said that it was very concerned, however, by the Appellate Body's analysis of "benefit" under Article 1.1(b) of the SCM Agreement, and considered that Members would want to reflect further and discuss the consequences of such an approach. The United States noted that electricity markets may present some characteristics that differ from other product markets. Nevertheless, the Appellate Body's discussion of the "relevant market" for purposes of analyzing whether the FIT Program conferred a "benefit" raised difficult issues that the Report did not appear to address. For instance, it was not clear in what situations a "supply-side" analysis focused on the recipients of a financial contribution would be necessary or appropriate in determining whether the products of those recipients competed with the identical product produced by lower-cost producers. Nor was it clear what factors were relevant to that analysis. The Appellate Body acknowledged that in the present disputes, producers of solar- and wind-generated electricity had higher costs and stated that currently "markets for wind- and solar PV-generated electricity can only come into existence as a matter of government regulation". (AB Report, para. 5.175.) But these statements tended to undermine and not support the approach in the Report. First, it was not any "government regulation" that was being challenged, but the purchase of goods through specific tariff rates under the FIT Program.

8.7. Second, the United States said that if there was no separate market today for electricity generated from certain renewable sources, and those generators had higher costs, that would suggest it was the government's financial contribution that permitted such electricity to be purchased in the existing marketplace. The Appellate Body's approach in this dispute called into question its long-standing interpretation of benefit as consisting of a determination whether the transaction "makes a recipient 'better off' than it would otherwise be in the marketplace". (AB Report, para. 5.163) (citing Canada - Aircraft, AB Report, para. 155.) In this case, the Appellate Body had focused on the fact that due to their cost structures, certain producers, including the recipients of the FIT contracts, "cannot compete" with other producers of the same good, electricity.[13] In contrast to supply-side substitutability that focused on the ability of producers to shift between production of arguably like products, it was not clear what relevance higher costs of production had for such a supply-side analysis. It was also not clear how, if one must define the relevant market to be used for a benchmark as a market that would not exist but for the government's "creation" of that market[14], how that definition of a "relevant market" would continue to maintain SCM Agreement disciplines on a wide range of potential subsidies. The United States said that it supported the increased use of renewable energy sources to meet the world's energy needs. The United States said that it strongly believed that the SCM Agreement allowed Members to help bring those markets into being, while continuing to discipline inefficient,

[11] Appellate Body Report, para. 5.78.
[12] Appellate Body Report, para. 5.79.
[13] Appellate Body Report, para. 5.174.
[14] Appellate Body Report, para. 5.188.

trade-distortive practices – such as domestic content requirements – that ultimately encumbered the spread of renewable energy.

8.8. The representative of China said that her country had participated in these disputes as a third party in both the Panel and the Appellate Body proceedings due to systemic implication, and had submitted its submissions. China welcomed the findings made by the Appellate Body in these disputes. National treatment was one of the fundamental principles of the multilateral trading system. In its Report, the Appellate Body had upheld the Panel's finding that the minimum required domestic content levels prescribed under the FIT Programme and related FIT and microFIT contracts of Canada were inconsistent with Article 2.1 of the TRIMs Agreement and Article III:4 of the GATT 1994, and unqualified for Article III:8(a) of the GATT 1994. China noted that the Appellate Body had revised the reasoning of the Panel in terms of Article III:8(a) of the GATT 1994, and China's opinion in its submission was in line with the Appellate Body's reasoning. In light of the findings, China wished to emphasize that no WTO Member was allowed to keep domestic content measures, which were inconsistent with WTO disciplines. The measures involving renewable energy were becoming important methods to protect the environment, and had been prioritized by many governments. Nevertheless, such measures should not be used as a disguised tool to realize discrimination and trade protection. On the contrary, it had been proved that the trade development and environment protection could be achieved in a harmonious way. China regretted to see that, apart from measures in the present disputes, some other WTO Members were also keeping domestic content measures to protect their domestic PV producers and discriminate imported products. Chinese PV exporters were seriously suffering from those measures. Therefore, China applauded the decision of the Panel and the Appellate Body, and urged those WTO Members to revoke all illegal measures as soon as possible. China welcomed the adoption of the Reports and believed that they had correctly upheld the national treatment principle.

8.9. The representative of Australia said that his country, like the parties to the disputes, welcomed the efforts of the Panel, the Appellate Body and the Secretariat in these disputes. Australia had participated as a third party, in particular due to its systemic interest in the interpretation and application of the WTO Agreements to environmental measures. Australia welcomed the Appellate Body's decision to uphold the Panel's original finding that the minimum required domestic content levels prescribed under Ontario's FIT Program and its related FIT and microFIT contracts were inconsistent with the national treatment obligations in Article 2.1 of the TRIMs Agreement and Article III.4 of the GATT 1994. Australia also welcomed the Appellate Body's reversal of the Panel's finding that the complainants had not been able to establish the existence of a benefit under Article 1.1(b) of the SCM Agreement. Nevertheless, Australia wished to put on the record that it did not wish to see an unnecessarily narrow definition of the relevant market benchmark against which to assess whether there was a benefit under Article 1.1(b) of the SCM Agreement, particularly in highly regulated markets. Australia recalled, in that context, that the use of subsidies by Members to promote environmental goals was disciplined but not prohibited by the SCM Agreement. The SCM Agreement prohibited subsidies that were contingent on export performance or domestic content requirements and disciplined those subsidies that caused adverse effects to other Members. Australia considered that the SCM Agreement already provided Members with appropriate flexibility to develop environmental measures without trade-distorting impacts.

8.10. The representative of Korea said that his country welcomed the Appellate Body's confirmation of the major findings of the Panel Report. As noted in Korea's third party submission, the goal of promoting sustainable energy should not be a pretext for discriminatory measures. In Korea's view, the Appellate Body's ruling in this case provided Members with useful guidance on how sustainable energy policies should be squared with the WTO rules. Along those lines, Korea appreciated the clarity provided by the Appellate Body concerning the operation of the government procurement exception to the national treatment obligation under Article III:8(a) of the GATT 1994.

8.11. The representative of Japan wished to briefly comment on Canada's statement regarding the fact that none of the parties to the dispute had made submissions on the interpretation of Article III:8 (a) of the GATT 1994 provided by the Appellate Body. In Japan's view, that was the consequence of the Appellate Body's careful examination of all evidence and the legal arguments made by the parties to the dispute.

8.12. The Chairman said that delegations that had spoken under this Agenda item had provided food for thought and some had pointed to issues that merited further reflection, in particular with regard to the SCM Agreement. He said that it was not for the DSB itself to follow through with those issues, but should Members consider that a collective consideration be pursued, the matter could be referred to the relevant WTO committee. As he had stated previously, the rules provided that the DSB formally adopt the Reports at the present meeting.

8.13. The DSB took note of the statements, and adopted the Appellate Body Reports contained in WT/DS412/AB/R – WT/DS426/AB/R and the Panel Reports contained in WT/DS412/R and Add.1 – WT/DS426/R and Add.1, as modified by the Appellate Body Reports.

9 APPOINTMENT/REAPPOINTMENT OF APPELLATE BODY MEMBERS

A. Proposal by the Chairman

9.1. The Chairman recalled that, at its meeting in April 2013, the DSB had considered the Chair's proposal regarding this matter. The proposal had been circulated in advance of the April meeting, in order to allow delegations to have a meaningful discussion and to share their views on the proposal. At that time, two delegations, the United States and Norway, had jointly proposed some changes and had provided a room document that reflected those changes. He recalled that he had considered those changes to be entirely editorial in nature and consistent with the intent of the draft he had circulated. He further recalled that, at that meeting, some delegations had supported the suggestions proposed by the United States and Norway while other delegations had requested further time to consult with capitals. The Chairman said that on 25 April 2013, he had sent a fax to all delegations containing a revised text of the proposal, which reflected the views expressed by delegations at the meeting, and invited delegations to provide comments on the revised text by 8 May 2013. In that fax, he had indicated that, in the absence of objection to the 25 April draft, he would consider that draft to reflect the DSB's decision regarding this matter. By the agreed deadline of 8 May, he had received comments from Australia, Brazil, China, the EU, India, Japan, Korea, Mexico and the United States. In light of those comments, he had further revised the draft to reflect those comments and to build on the views expressed by delegations at the 24 April DSB meeting. The text of a revised proposal was circulated to all delegations by fax on 14 May 2013. In light of the requests made by some delegations, he proposed that the revised draft decision be considered for adoption by the DSB at the present meeting. He asked whether the revised draft decision, as set out in his fax of 14 May 2013, was acceptable to all delegations or whether there were any comments in connection with that proposal.

9.2. The representative of Japan said that his country thanked the Chairman for his initiative on the draft decision on the appointment/reappointment of Appellate Body members. With regard to the previous Chair's text dated 25 April 2013, Japan had submitted a comment on the proposed preamble and had expressed the view that the preamble was unnecessary. That was because the previous decisions on the relevant processes had not contained a preamble and Japan was concerned that the introduction of such new wording might induce additional comments from other Members, which might delay reaching a consensus decision. At the present meeting, in the hope that this was not the case, Japan indicated that it could accept the Chair's text without prejudging its position in connection with any similar activities in future, if other Members could accept it. Japan also wished to stress the importance of cooperation in providing information and documents related to candidates. Those who had experienced the selection process of Appellate Body members had said that it was difficult to find publications or articles listed in the CVs of the candidates. To make that process efficient for all Members, Japan requested Members nominating candidates to cooperate in providing the information and documents upon request from other Members. Although Japan did not seek to change the Chair's text, Japan would appreciate it if the present meeting took note of Japan's statement regarding the need for Members' cooperation on this matter.

9.3. The representative of the United States said that his country appreciated the Chair's efforts to work with the United States and other Members on a DSB decision on the process for the appointment and possible reappointment of Appellate Body members in 2013. The United States also said that it was pleased that the draft decision had been placed on the Agenda of the present meeting, so as to provide Members with the opportunity to approve the decision at a DSB meeting which, the United States believed to be the appropriate process for any decision taken by the DSB in light of Article 2.4 of the DSU. With respect to the substance of the draft decision, the

United States said that while in some respects the decision could have been even more focused (for example, through the omission of the preamble), the United States believed that the revised draft provided greater clarity as to what the DSB was agreeing to, ensured consistency with past DSB decisions, and maximized the opportunity for Members to have a robust pool of high quality candidates to consider for the Appellate Body. On the whole, the United States said that it believed that the text that had been circulated by the Chair on 14 May represented a very good product that reflected the views of the DSB and was pleased to join in a consensus to adopt that decision at the present meeting. Finally, the United States said that it wished to add its support to the suggestion made by Japan. The United States agreed that it would be helpful for nominating Members to make best efforts to ensure that materials about the Appellate Body candidates that they nominated were made readily available to the entire Membership.

9.4. The representative of Korea said that his country supported Japan's suggestion. In Korea's view, enhancing transparency concerning the selection process of Appellate Body members would be in the interest of the whole Membership. Korea wished to further suggest that Members nominating a candidate provide all publications and articles listed in the candidate's CV. By making that suggestion, however, Korea did not intend to propose a modification to the Chair's draft text. In that regard, Korea looked forward to Members' cooperation on this matter.

9.5. The representative of the European Union said that the EU thanked the Chairman for the skilful way in which he had handled this issue including taking into account the wishes of some Members to verify the dots and commas of the decision. The EU believed that the dots and commas were in the right place and was, therefore, pleased to agree with the draft decision. The EU supported Japan's suggestion that Members who would nominate candidates be prepared to share with other Members all relevant documentation so that Members could assess the candidates' merits as efficiently as possible.

9.6. The representative of Singapore said that, although her delegation did not comment on this matter previously, it had closely followed the exchanges that had taken place on this matter and what had been stated by previous speakers. Singapore welcomed the outcome of that exchange which had led to the decision to be adopted at the present meeting. Singapore supported Japan's suggestion and was of the view that if nominating Members responded positively to what Japan had suggested at the present meeting, it could prove helpful to the overall selection process.

9.7. The Chairman thanked delegations for their collaborative approach in reaching a consensus and noted that including a preamble in the decision represented a rare instance of doing something different from the way the DSB usually did things. The preamble served a constructive purpose in bringing together the context and the history so that future delegations could have, in one place, some lineage of the process and procedure. He proposed that the DSB agree to the revised draft decision, as set out in the fax of 14 May 2013, which would be circulated as a DSB document in all three WTO languages.

9.8. The DSB took note of the statements and agreed to the revised draft decision, as set out in the fax of 14 May 2013.[15]

9.9. The Chairman noted that, as had been done in the past, nominations of candidates, together with their Curricula Vitae, should be addressed to the Chair of the DSB, in care of the Council and TNC Division. The CVs would then be circulated as Job documents to all Members. He informed Members that he would provide more information regarding the time-table and the work of the Selection Committee in due course, and would use his best efforts to do so prior to the next DSB meeting. His goal, consistent with the decision, was to see if the Selection Committee could be convened before the Summer break. He would inform members of the Selection Committee to plan well in advance for the serious work that they would be asked to undertake and carry out during September/October bearing in mind the 7 November 2013 DSB deadline. Regarding Japan's suggestion, supported by a number of delegations, that Members should facilitate the circulation of additional information, he trusted that delegations would submit that message to capitals so that they might be prepared to assist. In the spirit of what Japan and several other delegations had stated, he noted that the earlier a nomination was filed, the more thorough and careful the review and assessment of associated documents could be, which was in the interest of all Members. Delegations should take that into account as they reported on the deliberations of the present

[15] Subsequently, the text of the DSB decision was circulated in document WT/DSB/60.

meeting to their capitals. He further stated that in addition to the text of the decision that had been adopted at the present meeting, delegations may wish to highlight what that meant in practical terms, in terms of the nomination and review process. With regard to the possible reappointment of Mr. Peter Van den Bossche, it was the Chair's intention to report back on the results of his consultations as soon as possible and certainly before the summer break.

9.10. The DSB took note of the statements.

10 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/503)

10.1. The Chairman drew attention to document WT/DSB/W/503, which contained additional names proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/503.

10.2. The DSB so agreed.

11 UNITED STATES – CERTAIN COUNTRY OF ORIGIN LABELLING (COOL) REQUIREMENTS

A. Statements by the United States, Canada and Mexico

11.1. The representative of the United States, speaking under "Other Business", said that, on 23 May 2013, USDA had issued a final rule that made certain changes to the country-of-origin (COOL) labelling requirements found by the DSB to be inconsistent with Article 2.1 of the TBT Agreement. Under the final rule, country of origin labels must include information about where each of the production steps (i.e., born, raised, slaughtered) occurred for covered muscle cut commodities derived from animals slaughtered in the United States. The final rule ensured that US consumers were provided with more detailed and accurate origin information for muscle cut meats to allow them to make informed purchasing decisions. That final rule brought the United States into compliance with the DSB's recommendations and rulings in this dispute. The United States had come into compliance within the ten-month reasonable period of time set by a WTO arbitrator, which had expired the previous day, 23 May 2013.

11.2. The representative of Canada said that, as the United States had just indicated, a WTO arbitrator had awarded the United States a period of ten months to implement the DSB's recommendations and rulings in the "US - COOL" dispute, adopted in July 2012. As the United States had also indicated, on 23 May 2013, on the expiry of the reasonable period of time that had been granted to it, the United States had issued amendments to its COOL regulations, by which it purported to have achieved compliance with its WTO obligations. Canada was extremely disappointed with those regulatory changes which had not brought the United States into compliance. Rather, those changes had the opposite effect of compliance. They increased the discrimination by the United States against Canadian livestock. They also increased the damaging effects of the COOL measure on both Canadian and US industry. As a result, Canada was considering all of its options under the DSU provisions to secure complete compliance by the United States with its WTO obligations.

11.3. The representative of Mexico said that his country thanked the United States for its statement. As had been mentioned, the reasonable period of time for the United States to bring its measure into conformity with Article 2.1 of the TBT Agreement had expired on 23 May 2013. The United States had published, in the Federal Register, a measure to implement the DSB's recommendations and rulings, as the United States had reported. Mexico considered that this new rule was even stricter than the first one and would cause greater harm to exports of Mexican cattle. Mexico believed that the US labelling programme was distortive as it unnecessarily increased the cost for the livestock sector. Mexico considered that the measure was not compatible with the DSB's recommendations and rulings. Mexico was currently examining the measure as well as Mexico's legal options, which included requesting the DSB's authorization to suspend concessions.

11.4. In response to Members comments, the representative of the United States said that his country had studied the DSB's recommendations and rulings closely and believed that the final rule brought it into compliance. The United States continued by stating that, if necessary, the United States was fully prepared to defend the final rule. At the same time, the United States remained open to further discussions with Canada/Mexico to address any concerns that they may have.

11.5. The DSB took note of the statements.

12 2012 ANNUAL REPORT OF THE APPELLATE BODY

A. Statement by the Chairman

12.1. The Chairman, speaking under "Other Business", recalled that, at the April 2013 DSB meeting, he had brought to the attention of delegations the fact that the Appellate Body's Annual Report for 2012[16] had been posted on the website and was publicly available. At that meeting, he had noted a number of observations that were worthy of reflection and had invited delegations to revert either to a meeting or to him with further thoughts as to whether there was any follow-up that Members might take collectively or individually. He said that no delegation had approached him on this matter, but he was confident that this did not mean that no delegation had read the Report. Once again, he encouraged delegations to take stock of what the Appellate Body had stated in its Report and to encourage capitals to do the same.

12.2. The DSB took note of the statement.

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[16] WT/AB/18.