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Chairperson: Mrs. Elin Østebø Johansen (Norway)

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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.107)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.107)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.82)

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(e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.25)

(f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.22)

(g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/38/Add.16)

(h) China – Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products: Status report by China (WT/DS363/17/Add.9)

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

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.107)

2. The Chairperson drew attention to document WT/DS176/11/Add.107, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

3. The representative of the United States said that his country had provided a status report in this dispute on 13 October 2011, in accordance with Article 21.6 of the DSU. Legislative proposals had been introduced in the current 112th US Congress that would implement the recommendations and rulings of the DSB. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

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

5. The representative of Cuba said that the US status report pertaining to this dispute had remained unchanged since 2002. The only change, since February 2011, was that the United States did no longer refer in its report to the number of the session of the US Congress in which legislative proposals that would implement the DSB's recommendations were to be examined. This further

restricted transparency and accountability required under the DSU provisions. For almost ten years Members had witnessed the US reluctance to act in accordance with the DSB's ruling to the effect that Section 211 was inconsistent with the provisions of the TRIPS Agreement, as it violated the national and most-favoured-nation treatment obligations. It was also inconsistent with the Paris Convention for the Protection of Industrial Property. As stated publicly by Cuba before the United Nations, the United States did not show any intention of changing its policy of economic, commercial and financial embargo against Cuba. The US policy remained intact and Section 211 was part of it. The continued application of Section 211 denied Cuban holders of rights to trademarks, or trade names registered and protected in Cuba, the recognition and exercise of those rights in the United States. Section 211 served as the pretext for the Bacardi company, in a flagrant act of piracy, to make unlawful use of the Havana Club rum trademark. In turn, this had led to new misappropriations of Cuba's trademark rights. As Cuba had already mentioned, in 2011 two rulings had been handed down by US courts that had denied Cubaexport – the legitimate right holder since 1976 – a permission to renew its registration of the Havana Club trademark. A third ruling had rejected the appeal by the French company Pernod Ricard, which had sued the Bacardi company for misuse of the trademark to market rum that was not of Cuban origin. Recently, at the 66th Session of the UN General Assembly, the international community had, once again, overwhelmingly rejected the enforcement of the unjust blockade against Cuba, by adopting Resolution 66/6 entitled: "Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States of America against Cuba". In striking contrast, at the WTO, an international organization whose main objective was to open trade for the benefit of all Members, this type of violation continued to be unpunished. The long-standing dispute on Section 211, which was inconsistent with the legally binding agreements, undermined the credibility of the DSB and demonstrated its inability to ensure compliance with the rulings, in particular when the non-complying Member was a developed country. Cuba, once again, requested that the United States repeal Section 211. Cuba also condemned the enforcement of Section 211, which was designed to cause further injury to Cuba's people and to perpetuate the theft of Cuba's most renowned trademark.

6. The representative of Mexico said that his delegation wished to refer delegations to Mexico's statements on this matter made at previous DSB meetings.

7. The representative of Zimbabwe said that his country thanked the United States for its status report. The DSB's recommendation was clear: i.e. Section 211 was inconsistent with Article 42 of the TRIPS Agreement. Furthermore, Section 211 violated the national treatment and the most-favoured nation principles as well as the Paris Convention for the Protection of Industrial Property. The United States was a sovereign state, but all Members were expected to respect and abide by the DSB's rulings. It was important to have a level-playing field and, therefore, Zimbabwe called upon the United States to comply with the DSB's rulings.

8. The representative of the Plurinational State of Bolivia said that his country noted that the US status report did not contain any information on progress in this dispute. Once again, Bolivia wished to reiterate its concern about the lack of progress in this dispute and the US failure to comply with the DSB's rulings. As Bolivia had previously stated, this situation undermined the credibility and integrity of the multilateral trading system, and caused serious harm and prejudice to a developing country and to the WTO. Bolivia urged the United States to comply with the DSB's rulings and to take steps to remove the restrictions imposed under Section 211. Bolivia supported the concerns raised by Cuba. With regard to the forthcoming UN General Assembly resolution, Bolivia noted that the international community had broadly rejected the US embargo imposed on Cuba and, once again, called for its removal.

9. The representative of Brazil said that his country thanked the United States for its status report pertaining to this dispute. Once again, Brazil remained concerned about the lack of progress in this dispute. In that regard, Brazil urged the United States to expedite its efforts and to bring its measures into compliance with its multilateral obligations.

10. The representative of Ecuador said that his country supported the statement made by Cuba and, once again, wished to stress that Article 21 of the DSU referred specifically to prompt compliance with the DSB's recommendations and rulings, in particular with regard to issues affecting the interests of a developing-country Member. Ecuador thanked the United States for its status report and hoped that work would be intensified to ensure prompt compliance with the DSB's recommendations and rulings by repealing Section 211.

11. The representative of the Bolivarian Republic of Venezuela said that the US status report was identical to the previous status reports submitted by the United States. Once again, Venezuela supported Cuba's statement and requested that the United States put an end to its policy of economic, trade and financial blockade against Cuba. This policy had led to various actions taken by the United States since the 1960s, including the US failure to implement, for more than nine years, the Appellate Body's ruling that Section 211 was inconsistent with the TRIPS Agreement and the Paris Convention for the Protection of Intellectual Property. Venezuela wished to remind delegations that the UN General Assembly would shortly condemn the US embargo for the 20th consecutive year. This embargo, thus far, had cost Cuba an estimated US$975 billion dollars in economic loss. Venezuela found that this situation was not acceptable. As a WTO Member and a DSB participant, Venezuela was disappointed that the most recent US status report contained the same information. In Venezuela's view, this qualified as "action without results". Venezuela, therefore, urged the United States to provide further details on the work being done with the US Congress in order to keep Members informed. Venezuela was concerned that, in addition to the prejudice caused to the Cuban people, the US failure to comply would undermine and weaken the credibility of the DSB and the multilateral trading system. As it had done on previous occasions, Venezuela urged the United States to comply with the DSB's recommendations.

12. The representative of China said that his country thanked the United States for its status report and its statement made at the present meeting. China regretted that the United States had, once again, reported non-compliance. This prolonged situation of non-compliance was highly incompatible with the prompt and effective implementation required under the DSU provisions, in particular since the interests of a developing-country Member were affected. Thus, China urged the United States to implement the DSB's rulings and recommendations without any further delay.

13. The representative of Nicaragua said that his country was disappointed that, once again, the US status report was unchanged and that it was merely a repetition of previous status reports. As stated at previous DSB meetings, Nicaragua was particularly concerned that this issue had been on the DSB's Agenda for such a long time, with no indication as to when a solution would be found. Nicaragua supported Cuba's well-grounded arguments and considered that the US non-compliance with, and violation of, the DSU provisions undermined the credibility of the DSB and the multilateral trading system. Once again, Nicaragua urged the United States to meet its obligations, to bring the measure at issue into compliance with the DSB's recommendations and to seek a mutually satisfactory solution to this dispute through the adoption of urgent and necessary measures so as to end the violations.

14. The representative of Viet Nam said that his country thanked the United States for its status report. Viet Nam requested that the United States comply promptly and immediately with the DSB's recommendations and rulings, in accordance with Article 21 of the DSU.

15. The representative of Angola said that her country thanked the United States for its status report. Angola recalled that prompt compliance with the DSB's recommendations and rulings was fundamental to ensuring an effective resolution of disputes to the benefit of all Members. The delay in the implementation of the DSB's decision and the Appellate Body's findings of 12 February 2002 on Section 211 affected the security and the predictability of the multilateral trading system and set a negative precedent for other cases. Angola urged the United States to comply with its WTO obligations.

16. The representative of the United States said that his country had, in previous meetings, replied to certain systemic concerns that had been raised by some Members. The United States continued to believe that the facts simply did not support those Members' assertions or justify such systemic concerns. The record was clear, the United States had come into compliance, fully and promptly, in the vast majority of its disputes. As for the remaining instances where US efforts to do so had not yet been entirely successful, the United States had been working actively towards compliance in furtherance of the purpose of the dispute settlement system. The United States had also, in past meetings, described the legislative activity related to this matter. In response to some Members' comments, the United States said that it could do so again at the present meeting. In the US Senate, S. 603 had been introduced on 16 March 2011. This bill had been referred to the Senate Committee on the Judiciary. In the US House of Representatives, four bills had been introduced that would either modify or repeal Section 211. H.R. 1166, which had been introduced on 17 March 2011, and had been referred to the House Committee on the Judiciary. H.R. 255, which had been introduced on 7 January 2011, and had been referred to the Sub-Committee on International Monetary Policy and Trade. H.R.1887, which had been introduced on 12 May 2011, and had been referred to the Sub-Committee on Communications and Technology. H.R. 1888, which had been introduced on 12 May 2011, and had been referred to the Committee on Foreign Affairs, and in addition to the Committees on Ways and Means, the Judiciary, Agriculture, and Financial Services. The US Administration would of course continue to work with the US Congress on solutions to implement the DSB's recommendations and rulings.

17. The representative of Cuba said that her delegation did not expect any further reaction in addition to what the United States had stated. Cuba had heard about bills that had been submitted to the relevant US legislative bodies but, as Cuba had stated, and as mentioned by Venezuela in the past, this was simply a hollow promise. Members had been awaiting a solution to this dispute for the past decade.

18. 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.107)

19. The Chairperson drew attention to document WT/DS184/15/Add.107, 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.

20. The representative of the United States said that his country had provided a status report in this dispute on 13 October 2011, in accordance with Article 21.6 of the DSU. As of November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. With respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

21. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan took note of the US report that the United States had taken certain measures to implement part of the DSB's recommendations in November 2002. Japan hoped that the United States would soon be in a position to report to the DSB on more tangible progress with respect to the implementation of the remaining part of the DSB's recommendations as the United States had done under sub-item 1(a) of the present meeting. Full and prompt implementation of the DSB's recommendations and rulings was "essential to the effective functioning of the WTO and the maintenance of a proper balance of the rights and obligations of Members".[1] Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

22. 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.82)

23. The Chairperson drew attention to document WT/DS160/24/Add.82, 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.

24. The representative of the United States said that his country had provided a status report in this dispute on 13 October 2011, 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.

25. The representative of the European Union said that the EU thanked the United States for its status report. The EU took note of the US status report and remained keen to move quickly to resolve this case.

26. 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.45)

27. The Chairperson drew attention to document WT/DS291/37/Add.45, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning its measures affecting the approval and marketing of biotech products.

28. The representative of the European Union said that, as the EU had mentioned at the previous DSB meeting, EU and US officials had held another technical meeting on biotechnology issues on 27 September 2011. The continued dialogue gave an opportunity to both the EU and the United States to discuss directly issues of their concern regarding biotechnology. The EU hoped that this constructive approach based on dialogue would allow the parties to leave litigation aside. Once again, the EU noted that its regulatory procedures on biotech products continued to work as foreseen in the legislation. The number of GMOs authorized since the date of establishment of the Panel was thirty four. In 2010, 11 applications had been authorized, more than double the number of authorizations in 2009, including one authorization for cultivation. On 17 June 2011, the Commission had adopted two more authorization decisions[2], together with the decision on the renewal of the

[1] Article 3.3 of the DSU.
[2] Maize MON89034xMON88017 and cotton GHB614.

authorization of maize 1507. Progress had also been made on other applications for authorization. Four more draft applications had been voted in the Standing Committee in February 2011[3] and had been transmitted to the Council which would examine those applications in the coming weeks. In April and July 2011, the European Food Safety Authority (EFSA) had adopted other scientific opinions on three GM soybean.[4] On 7 September 2011, EFSA had adopted a scientific opinion on the renewal of an authorization (MON531). Two more authorizations would be voted at the Standing Committee on 14 November 2011.

29. 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. As the EU had noted, a US delegation had recently met with EU officials in Brussels to discuss these matters and related issues. The United States wished to thank the EU for having hosted a constructive meeting. At the present meeting of the DSB, and in light of the DSB recommendations and rulings concerning delays in EU approvals, the United States wished to highlight its concerns regarding on-going EU delays in the approval of biotech varieties of soybeans. As Members were aware, soybeans are a major commodity in international trade. The delays in the EU approval system were illustrated by the fact that EU approvals were lagging behind the soybean approvals completed by the United States, by other exporters of soybeans, and by other Members that imported soybeans. These EU delays were threatening to cause additional disruptions in international trade in soybeans. Currently, four applications to approve varieties of biotech soybeans had been pending in the EU system for over 48 months – four years – with no decision. A fifth application had been pending for 41 months. The United States looked forward to EU progress on the approval of these soybeans varieties, as well as on the other products pending in the EU approval system.

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

(e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.25)

31. The Chairperson drew attention to document WT/DS322/36/Add.25, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US measures relating to zeroing and sunset reviews.

32. The representative of the United States said that his country had provided a status report in this dispute on 13 October 2011, in accordance with Article 21.6 of the DSU. As the United States had explained in its status report, in December 2010 the US Department of Commerce had announced a proposal to change the calculation of weighted-average dumping margins and assessment rates in certain anti-dumping proceedings. At the present time, the US Department of Commerce was continuing with its on-going work on the December proposal.

33. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan took note of the report that the United States was continuing internal consultations and its on-going work based on the proposal announced by the US Department of Commerce on 28 December 2010. As had been stated at previous DSB meetings, Japan took US implementation efforts as a positive step forward but continued to seek prompt and full compliance by the United States with respect to all of the measures at issue that were subject to the recommendations in this dispute. Japan looked forward to a continued dialogue with the United States and would closely monitor any developments on this matter. Japan reserved its right under the DSU to take appropriate action, if necessary.

[3] MIR604×GA21 maize, BT11×MIR604 maize, Bt11×MIR604×GA21 maize, 281-24-236/3006-210-23 cotton.

[4] A5547-127, 356043 and MON87701.

34. The representative of China said that his country thanked the United States for its status report and the statement made at the present meeting. China welcomed the steps taken by the United States towards the implementation of the DSB's rulings and recommendations on zeroing matters. However, China remained highly concerned about how the United States would implement the DSB's decision on zeroing matters. China would monitor the US implementation steps and urged the United States to take actions to be fully in compliance with the DSB's rulings and recommendations without further delay.

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

(f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.22)

36. The Chairperson drew attention to document WT/DS350/18/Add.22, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the existence and application of zeroing methodology by the United States.

37. The representative of the United States said that his country had addressed the issue of compliance with the findings in this dispute in the status report provided on 13 October 2011, and earlier in the present meeting's discussion of Agenda item 1(e). The United States referred Members to that report and statement for further details.

38. The representative of the European Union said that the EU thanked the United States for its status report. Since the United States had not reported on any steps taken to address the concerns raised by the EU in the DSB, the EU referred to its statements made at the DSB meetings in January and February 2011. The EU remained ready to engage with the United States in discussions in the WTO and bilaterally in order to ensure that its concerns were addressed by the United States. The EU looked forward to further information from the United States on its intentions.

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

(g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/38/Add.16)

40. The Chairperson drew attention to document WT/DS294/38/Add.16, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US laws, regulations and methodology for calculating dumping margins.

41. The representative of the United States said that his country had addressed the issue of compliance with the findings in this dispute in the status report provided on 13 October 2011, and earlier in the present meeting's discussion of Agenda item 1(e). The United States referred Members to that report and statement for further details.

42. The representative of the European Union said that the EU thanked the United States for its status report and referred Members to its statement made under Agenda item 1(f) of the present meeting.

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

(h) China – Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products: Status report by China (WT/DS363/17/Add.9)

44. The Chairperson drew attention to document WT/DS363/17/Add.9, which contained the status report by China on progress in the implementation of the DSB's recommendations in the case concerning China's measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products.

45. The representative of China said that his country had provided its status report in this dispute on 13 October 2011, in accordance with Article 21.6 of the DSU. China had made tremendous efforts to implement the DSB's rulings and recommendations and had, thus far, completed amendments to most measures at issue. China believed that this matter would be properly resolved through joint efforts and mutual cooperation by relevant parties.

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

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

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

(a) Statements by the European Union and Japan

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

49. The representatives of the European Union said that the EU had already informed the DSB about the annual adjustment in the level of duties applied by the EU in this case, as set out in its communication circulated on 12 April 2011. At the present meeting, and as it had done many times before, the EU wished to ask the United States when it would effectively stop the transfer of anti-dumping and countervailing duties to the US industry and hence, put an end to the condemned measure. The fact that the United States had stopped disbursing duties collected after a certain point in time did not achieve full compliance. Every disbursement that still took place was clearly an act of non-compliance with the DSB recommendations. The EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit status reports pertaining to this dispute.

50. The representative of Japan said that FY 2011 distributions appeared to be well underway[5], which showed that the CDSOA remained operational. As US Customs and Border Protection had explained, "the distribution process will continue for an undetermined period".[6] Japan urged the United States to stop the illegal distributions and repeal the CDSOA, not just in form but in substance,

[5] See US Customs and Border Protection's website at: http://www.cbp .gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cdsoa_11/

[6] See US Customs and Border Protection's website at: http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cont_dump_faq.xm1

so as to resolve this dispute. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report pertaining to this dispute.

51. The representative of Canada said that his country agreed with the EU and Japan that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

52. The representative of India said that his country thanked the EU and Japan for their statements and shared their concerns. India requested that the United States report full compliance in this dispute without any further delay. Until such time full compliance was achieved, the matter should continue to remain under the surveillance of the DSB.

53. The representative of Brazil said that his country thanked Japan and the EU for keeping this item on the DSB's Agenda. Brazil joined the EU and Japan, and other delegations in urging the United States to discontinue disbursements made pursuant to the CDSOA, in order to resolve the situation of non-compliance in this dispute. In addition, Brazil recalled that as long as the US implementation efforts fell short of its WTO obligations, the United States was required to submit status reports pertaining to this dispute.

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

55. The representative of the United States said that, as his country had already explained at previous DSB meetings, the US President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled furthermore that Members had acknowledged that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, more than four years ago. The United States therefore did not understand the purpose for which the EU and Japan had inscribed this item at the present meeting. With respect to comments regarding further status reports in this matter, as the United States had already explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports repeating, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The Unites States was not aware of other Members, including those who had inscribed this item at the present meeting, continuing to provide status reports in similar circumstances.

56. The DSB took note of the statements.

3. United States – Anti-dumping measures on certain shrimp and diamond sawblades from China

(a) Request for the establishment of a panel by China (WT/DS422/3)

57. The Chairperson drew attention to the communication from China contained in document WT/DS422/3, and invited the representative of China to speak.

58. The representative of China said that, on 28 February and 22 July 2011, her country had requested consultations with the United States with regard to the "zeroing" practice by the United States in its anti-dumping investigations on certain frozen warm water shrimp from China and diamond sawblades and parts thereof from China. Consultations had been held on 11 May and 8 September 2011. While those consultations had assisted in clarifying the issues before the parties

and had enabled the parties to reach a procedural agreement, they had failed to resolve the dispute. Therefore, pursuant to Article XXIII of the GATT 1994, Articles 4 and 6 of the DSU, and Article 17.4 of the Anti-Dumping Agreement, China had requested the establishment of a panel to examine this dispute on 13 October 2011. The United States had initiated an anti-dumping investigation of certain frozen warm water shrimp from China on 27 January 2004, and had initiated an anti-dumping investigation of diamond sawblades and parts thereof from China on 21 June 2005. In the final determination of each investigation, as amended, the USDOC had used the "zeroing" methodology in determining the final dumping margins for three individually investigated Chinese exporters respectively.

59. China considered that, the measures at issue as identified in the panel request, the USDOC's use of "zeroing" in calculating the margins of dumping for the individually investigated exporters and the "separate rate" for the cooperating non-mandatory respondents were inconsistent with the US obligations under the Anti-Dumping Agreement. Specifically, China considered that the measures were inconsistent with the first sentence of Article 2.4.2 of the Anti-Dumping Agreement. The application of "zeroing" in calculating the margins of dumping by the United States had been repeatedly declared WTO-inconsistent by various panels and the Appellate Body. China and the United States had reached an agreement on procedures with respect to this dispute, which had been circulated in document WT/DS422/4 on 14 October 2011. China believed that the agreement would ensure that the proceedings move smoothly and quickly, and would contribute to the prompt settlement of the dispute. At the present meeting, China was requesting that the DSB establish a panel to examine the matters set forth in its panel request, with standard terms of reference in accordance with Article 7.1 of the DSU. According to the procedural agreement between China and the United States, China understood that the United States would not oppose the establishment of a panel at the present meeting.

60. The representative of the United States said that, while his country believed that the initiation of this dispute was unnecessary, it was pleased that the parties had been able to reach a procedural agreement which should expedite the proceedings and decrease the burden on the parties and the dispute settlement system. As had been noted by China, that agreement had been circulated to Members in document WT/DS422/4. Consistent with the procedural agreement, the United States did not oppose the establishment of a panel at the present meeting. The United States also noted that the US Department of Commerce had discontinued zeroing in the context of average-to-average comparisons in investigations.

61. 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.

62. The representatives of the European Union, Honduras, Japan, Korea, Thailand and Viet Nam reserved their third-party rights to participate in the Panel's proceedings.

4. Adoption of the 2011 draft Annual Report of the Dispute Settlement Body (WT/DSB/W/460 and Add.1)

63. The Chairperson said that, pursuant to the procedures for an annual overview of WTO activities and for reporting under the WTO, contained in document WT/L/105, she was submitting for adoption the draft text of the 2011 Annual Report of the DSB contained in document WT/DSB/W/460 and Add.1. The report covered the work of the DSB since the previous annual report contained in document WT/DSB/51 and Add.1. She noted that for practical purposes, the overview of the state of play of WTO disputes covering the period from 1 January 1995 to 30 September 2011, prepared by the Secretariat on its own responsibility, was included in the addendum to this report. She proposed that, after the adoption of the Annual Report at the present meeting, the Secretariat be authorized to update the Report under its own responsibility in order to include actions that had been taken by the

DSB at the present meeting. The updated Annual Report of the DSB would then be submitted for consideration by the General Council at its meeting scheduled for 30 November 2011.

64. The DSB took note of the statement and adopted the draft Annual Report of the DSB contained in WT/DSB/W/460 and Add.1 on the understanding that it would be further updated by the Secretariat.[7]

5. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/464)

65. The Chairperson drew attention to document WT/DSB/W/464, which contained additional names proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. She proposed that the DSB approve the names contained in document WT/DSB/W/464.

66. The DSB so agreed.

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

67. The Chairperson, speaking under "Other Business", said that, as had been announced at the outset of the present meeting, she wished to make a statement concerning the process for the appointment of two new Appellate Body members. In that regard, she reminded delegations that consultations with interested delegations who wished to express their views on the candidates to the Selection Committee would take place on 31 October, 1 and 2 November 2011. She understood that some delegations had already contacted the Secretariat to make appointments. Those who still wished to do so were invited to contact the Council and TNC Division to make an appointment. Alternatively, delegations could send their comments in writing addressed to her, in her capacity as Chair of the DSB, in care of the Council and TNC Division, no later than 31 October 2011. She informed delegations that, after completing its consultation process with delegations, the Selection Committee would meet for final deliberations in order to arrive at a decision regarding its recommendations to fill the two positions in the Appellate Body. In that regard, she noted that since the November DSB meeting was now rescheduled, as announced by fax dated 20 October 2011, the Selection Committee's recommendations would have to be issued at the latest on 7 November 2011 so that the decision on the appointment of two new members of the Appellate Body could be taken by the DSB at its regular meeting on 18 November 2011.

68. The DSB took note of the statement.

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[7] The Annual Report was subsequently circulated in document WT/DSB/54 and Add.1