WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/298
29 July 2011

(11-3896)

Dispute Settlement Body
17 June 2011

MINUTES OF MEETING

Held in the Centre William Rappard
on 17 June 2011

Chairperson: Mrs. Elin Østebø Johansen (Norway)

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB 2
(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States 2
(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States 5
(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States 6
(d) European Communities[1] – Measures affecting the approval and marketing of biotech products: Status report by the European Union 6
(e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States 7
(f) United States – Continued existence and application of zeroing methodology: Status report by the United States 8
(g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States 8
(h) China – Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products: Status report by China 9
2. European Communities[1] and Certain member States – Measures affecting trade in large civil aircraft 9
(a) Implementation of the recommendations of the DSB 9
3. United States – Continued Dumping and Subsidy Offset Act of 2000: Implementation of the recommendations adopted by the DSB 10
(a) Statements by the European Union and Japan 10
4. Moldova – Measures affecting the importation and internal sale of goods (environmental charge) 11
(a) Request for the establishment of a panel by Ukraine 11

[1] On 1 December 2009, the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (done at Lisbon, 13 December 2007) entered into force. On 29 November 2009, the WTO received a verbal note (WT/L/779) from the Council of the European Union and the Commission of the European Communities stating that, by virtue of the Treaty of Lisbon, as of 1 December 2009, the European Union replaces and succeeds the European Community.

5. Canada – Certain measures affecting the renewable energy generation sector 12
(a) Request for the establishment of a panel by Japan 12
6. Ukraine – Taxes on distilled spirits 14
(a) Request for the establishment of a panel by Moldova 14
7. United States – Anti-dumping administrative reviews and other measures related to imports of certain orange juice from Brazil 15
(a) Report of the Panel 15
8. Proposed nomination for the indicative list of governmental and non-governmental panelists 18

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.103)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.103)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.78)

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.41)

(e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.21)

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

(g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/38/Add.12)

(h) China – Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products: Status report by China (WT/DS363/17/Add.5)

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.103)

2. The Chairperson drew attention to document WT/DS176/11/Add.103, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning 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 6 June 2011, in accordance with Article 21.6 of the DSU. Legislative proposals had been introduced in the 112th US Congress that would implement the DSB's recommendations and rulings. 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 his delegation thanked the United States for its status report. The EU hoped that the US authorities would very soon take steps towards implementing the DSB's ruling and resolve this matter.

5. The representative of Cuba said that thus far there had been no change in the situation regarding the Section 211 dispute. In the past 220 months, the United States had done nothing towards implementing the DSB's recommendations and rulings pertaining to this dispute. The number of months that had elapsed far exceeded the 15 month-period provided under Article 21.3 of the DSU: i.e. a reasonable period of time for implementation. It had not been two or three years but nine long years of US failure to comply with the recommendations, which undermined the certainty and predictability of the multilateral trading system. Out of respect for Members of the WTO and its rules and principles, the lack of progress in this dispute should not continue indefinitely. There was no longer any deadline for the United States to comply with the DSB's recommendations or for the EU to invoke Article 22.2 of the DSU to suspend concessions or other obligations. Cuba wondered how much longer this legal vacuum would continue. It questioned whether the credibility of the multilateral trading system, based on rules and obligations, which were supposedly equal for all Members, could be maintained if one key Member had an attitude of open defiance towards international disciplines and another Member did not dispute it.

6. In the meantime, and given the fact that Section 211 remained in effect, the dispute over the legitimate ownership of the Havana Club trademark in the United States continued. The United States allowed the use, in its territory, of the renowned Cuban trademark for rum produced and sold by the Bacardi Company without registration and denied the right of renewal of the trademark by the company Cubaexport, which had been its true owner since 1976. On 21 December 2010 and 20 March 2011, Cuba had reiterated to the United States, by means of diplomatic notes, that the US Department of State needed to intervene in order for the Office of Foreign Assets Control to grant the company Cubaexport the licence that would enable it to renew the Havana Club rum trademark in the United States. Thus far, there had been no result. In Cuba's view, the United States was the only country with a different approach to the interpretation and adoption of international rules governing intellectual property rights. Spain had recently rejected the claim of trademark ownership filed by Bacardi, reasserting the rights of the Havana Club Holding, a joint venture with Pernod Ricard, which had taken over Cubaexport's international rights over the Havana Club trademark. Other countries had also recognized the Havana Club Holding's rights to this trademark.

7. Cuba questioned whether the United States had perhaps decided once and for all not to comply with the DSB's recommendations and rulings pertaining to Section 211, and whether the United States was aware that its conduct was detrimental to its own image and that of the WTO. Cuba believed that it was time to put an end to the intention of allowing the Bacardi Company, which had very close ties with Miami's anti-Cuban circles and the US far right, and its fraudulent action to appropriate the trademark in the United States. It was time for the United States to start acting in a manner consistent with due respect for the rules of the multilateral trading system, given that the United States was involved in the largest number of disputes before the DSB. Cuba urged the United States to stop disregarding its obligation under Article 21.3 of the DSU, which stipulated that "[p]rompt compliance with recommendations [...] is essential in order to ensure effective resolution of disputes to the benefit of all Members".

8. The representative of the Plurinational State of Bolivia said that his country wished to reiterate its concerns about the current situation in this dispute resulting from the US failure to comply with its WTO obligations. In light of difficulties to conclude the Doha Round of negotiations in 2011, many Members were concerned about the credibility of the multilateral trading system. Thus, this type of situation, such as the US failure to comply with its obligations, had a negative impact on the credibility of the multilateral trading system, and in particular on the dispute settlement system. It was important for Members to comply with their obligations. Bolivia urged the United States to comply with the DSB's rulings and remove the restrictions imposed under Section 211. Bolivia supported the concerns expressed by Cuba at the present meeting.

9. The representative of Brazil said that his country thanked the United States for its status report pertaining to this dispute. Once again, the United States reported lack of progress, a situation that continued to be a matter of concern to Brazil. Thus, Brazil urged the United States to bring its measures into conformity with the multilateral trading rules in the nearest future.

10. The representative of Ecuador said that his country supported Cuba's statement and recalled, once again, that Article 21 of the DSU made specific reference to the prompt compliance with the DSB's recommendations and rulings, in particular with regard to matters affecting the interests of developing countries. Ecuador hoped that the United States would intensify its efforts to ensure rapid compliance with the DSB's recommendations and rulings.

11. The representative of the Dominican Republic said that his country thanked the United States for its status report pertaining to this dispute. The Dominican Republic was concerned about systemic implications of Section 211, which was inconsistent with Article 42 of the TRIPS Agreement. Once again, the Dominican Republic urged the United States to accelerate its domestic procedures so as to comply with the DSB's rulings and recommendations.

12. The representative of the Bolivarian Republic of Venezuela said that her country, once again, supported Cuba's statement and reiterated its call on the United States to end its policy of economic, trade and financial blockade imposed on Cuba. That policy had led to a series of actions taken by the United States since the 1960s. In this particular situation, for more than nine years, the United States had failed to comply with the Appellate Body's ruling to repeal Section 211, which was inconsistent with the TRIPS Agreement and the Paris Convention. Venezuela regretted that, in its status report, the United States provided the same information as in its previous reports. In Venezuela's view, this constituted "action without results". Venezuela requested the United States to provide further details on the work being done with Congress so that Members could be kept informed, as required by the DSU. Apart from the harm caused to Cuba, Venezuela was concerned that the non-compliance with multilateral trading rules undermined the credibility of the DSB. As it had done on previous occasions, Venezuela urged the United States to comply with the DSB's recommendations.

13. The representative of Zimbabwe said that his country supported previous speakers in urging the United States to implement the DSB's recommendations and rulings. Zimbabwe hoped that, after almost a decade, at the next DSB meeting, the United States would report that it had begun implementing the DSB's decision.

14. The representative of China said that her country thanked the United States for its status report and its statement made at the present meeting. China regretted that the United Stated had, once again, reported non-compliance. This prolonged situation of non-compliance was not in line with the principle of prompt and effective implementation stipulated in the DSU, in particular since the interests of a developing-country Member were involved. China supported Cuba and joined previous speakers in urging the United States to implement the DSB's rulings without further delay.

15. The representative of Angola said that her country thanked the United States for its status report but recalled that the prompt compliance with the DSB's recommendations and rulings was essential to ensuring effective resolutions 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, with regard to Section 211, affected the security and the predictability of the multilateral trading system and set a negative precedent for other cases. Angola believed that concrete signs and actions by the parties in this case would send a positive signal of respect for WTO rules.

16. The representative of Paraguay said that his country shared the concerns expressed by Cuba and other speakers about delays in complying with the DSB's recommendations and rulings in this dispute. These were not just trade but also systemic concerns. Paraguay, therefore, urged the United States to comply with the DSB's recommendations and rulings.

17. The representative of Mexico said that his country thanked the United States for its status report and urged the parties to resolve this dispute through one of the legal remedies provided for in the DSU provisions. Mexico noted that, if a dispute between two parties was not resolved, any other Member could initiate its own dispute on the same matter. Mexico further noted that the discussion under this Agenda item could provide useful input for the ongoing discussions carried out in the context of the DSU negotiations, in particular with regard to the issue of effective compliance.

18. The representative of the United States said that, in response to "systemic" concerns voiced in certain interventions, as it had noted on previous occasions, for those few disputes where US efforts to come into compliance 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. In this dispute, the United States had previously provided some details on those efforts. In the US Senate, the bill S. 603 had been introduced on 16 March 2011 and had been referred to the Senate Committee on the Judiciary. In the US House of Representatives, H.R. 1166 had been introduced on 17 March 2011 and had been referred to the House Committee on the Judiciary.

19. The representative of Cuba said that the United States had just informed Members that steps had been taken to resolve this dispute. However, Members had not yet seen any results and the United States continued to violate the provisions of the TRIPS Agreement. Cuba noted that, in the most recent Section 301 Report, the US Trade Representative urged the countries on the Priority Watch List, with the worst violations of intellectual property rights, to develop plans of action so as to be removed from that List. However, the Report did not indicate how the United States would correct its own violations of international law. In the meantime, the United States continued with its non-compliance. Cuba drew Members attention to the fact that, at the beginning of May 2011, an assistant for intellectual property and innovation of the Office of the US Trade Representative had stated that the US Administration would continue to use all the available commercial tools to address the non-compliance and implementation issues, given the importance of safeguarding intellectual property rules, an area of vital importance to the US economy and its exports. In Cuba's view, the United States was asking other countries to do what it was not in a position to do itself.

20. 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.103)

21. The Chairperson drew attention to document WT/DS184/15/Add.103, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

22. The representative of the United States said that his country had provided a status report in this dispute on 6 June 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 DSB's recommendations and rulings 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.

23. 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. With respect to the remaining part of the DSB's recommendations, Japan hoped that the United States would soon be in a position to report to the DSB on more tangible and concrete progress, as the United States appeared to have done under the previous sub-item 1(a) on the Agenda 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".[2] Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

24. 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.78)

25. The Chairperson drew attention to document WT/DS160/24/Add.78, 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.

26. The representative of the United States said that his country had provided a status report in this dispute on 6 June 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.

27. The representative of the European Union said that the EU took note of the US status report and remained keen to work with the US authorities towards the complete resolution of this dispute.

28. 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.41)

29. The Chairperson drew attention to document WT/DS291/37/Add.41, 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.

30. The representative of the European Union said that, as the EU had mentioned at the previous DSB meeting, the EU welcomed the continuation of the technical dialogue with the United States. This 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

[2] Article 3.3 of the DSU.

dialogue would allow the parties to leave litigation aside. The EU, once again, 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, including one authorization for cultivation. At the Agriculture Council held on 17 March 2011, two authorizations[3] had been examined, together with the renewal of the authorization of maize 1507. The final adoption by the Commission of these three products was expected on 17 June 2011. Progress had also been made on other applications for authorization. Four more draft applications had been voted in the Standing Committee in February 2011.[4] The Council would examine those applications in the coming weeks. In April, EFSA had adopted another scientific opinion on a GM soybean (A5547-127).

31. 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 welcomed the information provided a moment ago that the EU expected to make, during the present day, its first biotech approvals since July 2010. Unfortunately, dozens of biotech applications still remained pending in the EU approval system. Those pending applications included applications for the approval of products that the DSB had specifically identified as being unduly delayed in contravention of the EU's obligations under the SPS Agreement. Many of the pending applications had already received favourable assessments from the EU's own scientific authority. After a favourable scientific review, the next step in the EU's approval process was for an application to be considered during one of the monthly meetings of a regulatory committee. However, the EU had been recently cancelling the monthly meetings of the regulatory committee that considered biotech products. The EU had cancelled its scheduled meeting for June 2011, and this was the third cancellation in 2011. The EU's decisions not to hold meetings to consider pending biotech applications appeared to be contributing to delays in approvals. The United States would ask that the EU take steps to address these matters.

32. The representative of the European Union said that the GMO regulatory regime was not the subject of the original Panel's findings, and neither its "operation" nor the status of specific applications not dealt with in the original Panel were covered by this Agenda item.

33. 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.21)

34. The Chairperson drew attention to document WT/DS322/36/Add.21, 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.

35. The representative of the United States said that his country had provided a status report in this dispute on 6 June 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 ongoing work on the December proposal.

[3] (Maize MON89034xMON88017 and cotton GHB614MON89034.)

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

36. 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 internal consultation process and ongoing work was under way, based on the proposal announced by the US Department of Commerce on 28 December 2011. While taking the US implementation efforts as a positive step forward, Japan 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 continuing its 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.

37. The representative of China said that her country thanked the United States for its status report and its 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 issues. However, as mentioned by China in its comments made at the previous DSB meeting on the US proposal of 28 December 2010, China remained to be very concerned as to how the United States would implement the DSB's decision on zeroing issues. Thus, China would follow this matter closely and urged the United States to fully comply with the DSB's rulings and recommendations without undue delay.

38. 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.18)

39. The Chairperson drew attention to document WT/DS350/18/Add.18, 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.

40. 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 6 June 2011, and earlier in the discussion under Agenda item 1(e) of the present meeting. The United States referred Members to that report and that statement for further details.

41. The representative of the European Union said that the EU thanked the United States for its most recent status report. Since the United States had not reported any steps to address the concerns raised by the EU in the DSB, the EU referred Members to its statements made in January and February 2011. The EU remained ready to engage with the United States in discussions within 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.

42. 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.12)

43. The Chairperson drew attention to document WT/DS294/38/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 laws, regulations and methodology for calculating dumping margins.

44. 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 6 June 2011, and earlier under Agenda item 1(e) of the present meeting. The United States referred Members to that report and that statement for further details.

45. The representative of the European Union said that the EU thanked the United States for its status report and referred Members to its statements made under Agenda item 1(f) concerning the US proposal of 28 December 2010.

46. 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.5)

47. The Chairperson drew attention to document WT/DS363/17/Add.5, 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.

48. The representative of China said that her country had provided its status report in this dispute on 6 June 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 with relevant parties.

49. The representative of the United States said that his country thanked China for its status report and its statement made at the present meeting. 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.

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

2. European Communities and Certain member States – Measures affecting trade in large civil aircraft

(a) Implementation of the recommendations of the DSB

51. The Chairperson 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. She recalled that at its meeting on 1 June 2011, the DSB had adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, pertaining to the dispute on: "European Communities and Certain member States – Measures Affecting Trade in Large Civil Aircraft". She invited the European Union to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

52. The representative of the European Union said that the EU intended to implement the DSB's recommendations and rulings in this dispute in a manner that respected its WTO obligations, and within the time-limit set out in the SCM Agreement. The EU had already begun to evaluate options for doing so.

53. The representative of the United States said that his country welcomed the EU's statement that the EU would comply with the DSB's recommendations and rulings in this dispute. Article 7.9 of the Subsidies Agreement provided a six-month period from the adoption of the Panel and Appellate Body Reports for the EU and its member States to take appropriate steps either to withdraw the subsidies or to remove the adverse effects of the subsidies. That six-month period would expire on 1 December 2011. The United States recalled that the subsidies found to be WTO-inconsistent, including launch aid, equity financing, and infrastructure payments, were enormous. The United States also recalled that those subsidies had been found to have caused adverse effects of lost market share in some of the biggest aircraft markets in the world and lost sales totalling hundreds of aircrafts. Accordingly, full compliance in this dispute, by the EU and four of its member States withdrawing those enormous subsidies or removing their adverse effects, would be economically very significant for the United States. The United States said that it would be monitoring developments in the EU closely and remained ready to work with the EU and the member States as they moved forward on implementation.

54. The DSB took note of the statements, and of the information provided by the European Union regarding its intentions in respect of implementation of the DSB's recommendations.

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

(a) Statements by the European Union and Japan

55. 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.

56. The representative of Japan said that the CDSOA remained operational[5] and, 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, so as to resolve this dispute. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report in this dispute.

57. The representative 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 in a document 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'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 and to submit status reports pertaining to this dispute.

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

[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.xml

58. The representative of Canada said that his country thanked the EU and Japan for placing this item on the Agenda and agreed that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

59. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the Agenda of the DSB. As the United States continued to make disbursements pursuant to the Byrd Amendment, this dispute was not resolved. Once again, Brazil urged the United States to fully implement the DSB's recommendations and rulings in this dispute and, until then, to provide status reports as required by Article 21.6 of the DSU.

60. 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 statements made by previous speakers and continued to urge the United States to fully comply with the DSB's rulings and recommendations on this matter.

61. The representative of India said that his country thanked Japan and the EU for regularly bringing this issue before the DSB. As India had previously mentioned, the CDSOA remained fully operational, affecting the rights of Members and undermining the credibility of the dispute settlement mechanism. India requested the United States to report full compliance without any further delay and agreed with previous speakers that until such time, this issue should continue to remain under surveillance of the DSB.

62. The representative of the United States said that, as his country had 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 welcomed the EU's recognition that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007. The United States, therefore, did not understand the purpose for which the EU and Japan had inscribed this item on the Agenda of the present meeting. With respect to comments regarding further status reports in this matter, 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. Finally, in relation to the EU's statement referring to its "annual adjustment", as had been previously stated, the United States would be reviewing carefully the measures taken by the EU. As the United States had previously observed, the DSB only authorized the suspension of concessions or other obligations as provided in the Award of the Arbitrator.

63. The DSB took note of the statements.

4. Moldova – Measures affecting the importation and internal sale of goods (environmental charge)

(a) Request for the establishment of a panel by Ukraine (WT/DS421/4)

64. The Chairperson recalled that the DSB had considered this matter at its meeting on 24 May 2011 and had agreed to revert to it. She drew Members attention to the communication from Ukraine contained in document WT/DS421/4, and invited the representative of Ukraine to speak.

65. The representative of Ukraine said that her country wished to bring to the attention of the DSB its request for the establishment of a panel in this dispute for the second consideration. In its panel request, which had been circulated in WT/DS421/4 on 13 May 2011 pursuant to Article 6 of the DSU, Ukraine was requesting that the DSB establish a panel with standard terms of reference, as set

out in Article 7.1 of the DSU, to examine this matter. In Ukraine's view, the measures were in violation of the national treatment principle. The Law of Moldova on "Charge for Contamination of Environment" imposed a charge on the imports of products, the use of which contaminated the environment. However, it seemed that like domestic products were not subject to this charge. Pursuant to this law, Moldova also applied "a charge for a plastic or 'tetra-pack' package containing products (except for dairy produce)". It appeared that packages containing domestically produced like products were not subject to this charge. Ukraine considered that Moldova's measures were inconsistent with its obligations under the GATT 1994. Moldova seemed to have acted inconsistently with Article III:1 and 2 of the GATT 1994, by subjecting the products of the territory of other Members imported into Moldova, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products and affording protection to domestic production. Moldova also seemed to have acted inconsistently with Article III:4 of the GATT 1994, by failing to accord to Ukraine's products, imported into Moldova, treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. Ukraine had hoped that the matter could be resolved at the consultations stage without recourse to a panel. However, Moldova seemed unwilling to accord a sympathetic consideration to Ukraine's concerns and had not afforded adequate opportunity for consultations requested in document WT/DS421/1 of 21 February 2011. In that regard, Ukraine regretted to report that no WTO-consistent solution had been proposed by Moldova. Nevertheless, Ukraine remained open to further contacts with Moldova and hoped that it would be possible to find a solution to this matter through the panel to be established at the present meeting.

66. The representative of Moldova said that her delegation was aware that, pursuant to the DSU provisions, Moldova could not oppose the establishment of the panel requested by Ukraine on this matter, since this issue was before the DSB for its second consideration. Nevertheless, Moldova wished to underline that it had continued to inform Ukraine of its measures in order to resolve this dispute. In that regard, the draft Law on the amendments of the Law on Charge for Contamination of the Environment of 25 February 1998 had already been discussed and coordinated among all national competent authorities and was currently awaiting examination and approval by the government. Furthermore, on 31 May 2011, the Deputy Prime Minister, Minister of Economy of the Republic of Moldova, Mr. Valeriu Lazăr, had proposed to the Ukrainian Deputy Prime Minister, Mr. Kliuev to continue to consult at the bilateral level, and had expressed Moldova's willingness to work on a solution that would resolve this matter. Unfortunately, Moldova had not received any reply or reaction from Ukraine on this issue.

67. 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.

68. The representatives of Argentina, China and the European Union reserved their third-party rights to participate in the Panel's proceedings.

5. Canada – Certain measures affecting the renewable energy generation sector

(a) Request for the establishment of a panel by Japan (WT/DS412/5)

69. The Chairperson drew attention to the communication from Japan contained in document WT/DS412/5, and invited the representative of Japan to speak.

70. The representative of Japan said that his country had made this request for the establishment of a panel on 1 June 2011.[7] As had been explained in the panel request, this was a clear case of domestic content requirements, which were explicitly condemned in several provisions under the

[7] WT/DS412/5.

WTO Agreement as an origin-based discrimination. The measures at issue and their WTO-inconsistent aspects were clear and simple. In May 2009, the Canadian province of Ontario had introduced the so-called feed-in tariff programme. Under that programme, the Canadian measures at issue provided for guaranteed, long-term pricing for the output of renewable energy generation facilities that contained a defined percentage of domestic content. Thus, under those measures, technologically advanced and highly competitive and sophisticated solar panels, or other renewable energy generation equipment produced in Japan, were discriminated against in the market of the Canadian province of Ontario simply because of their origin.

71. Japan wished to clarify that it challenged this feed-in tariff programme of Ontario, not because it promoted renewable energy generation, but because it contained WTO-inconsistent domestic content requirements. Such a WTO-inconsistent origin-based discrimination had nothing to do with, and ought to play no part in, Ontario's endeavour to promote renewable energy generation. Japan considered that the measures at issue were inconsistent with Canada's obligations under the WTO Agreement because they constituted a prohibited subsidy, and also discriminated against equipment for renewable energy generation facilities produced outside the province of Ontario in favour of such equipment produced in Ontario.

72. In particular, the measures were inconsistent with the following provisions: (i) Articles 3.1(b) and 3.2 of the SCM Agreement, because the measures were subsidies within the meaning of Article 1.1 of the SCM Agreement that were provided contingent upon the use of equipment for renewable energy generation facilities produced in Ontario over such equipment imported from other WTO Members including Japan; (ii) Article III:4 of the GATT 1994, because the measures accorded less favourable treatment to imported equipment for renewable energy generation facilities than accorded to like products originating in Ontario; and (iii) Article 2.1 of the TRIMS Agreement, in conjunction with paragraph 1(a) of its Illustrative List, because the measures were trade-related investment measures inconsistent with Article III:4 of the GATT 1994, which required the purchase or use by enterprises of equipment for renewable energy generation facilities of Ontario origin over imports from other WTO Members including Japan. Japan had requested consultations on 13 September 2010 and had engaged in the consultations in good faith with Canada with a view to reaching a mutually satisfactory solution. While the consultations had provided useful opportunities for the parties to better understand their respective positions on this matter, the parties were unable to resolve their differences. Japan, therefore, requested, pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the GATT 1994, Article 8 of the TRIMS Agreement and Articles 4.4 and 30 of the SCM Agreement, that a panel be established to examine the matter as set out in its panel request with standard terms of reference in accordance with Article 7.1 of the DSU.

73. The representative of Canada said that his country was disappointed that Japan had decided, at the present meeting, to request a panel in respect of the Ontario Green Energy and Green Economy Act and the related feed-in-tariff programme. Canada was confident that this legislation and the feed-in-tariff programme were consistent with Canada's WTO obligations. On 25 October 2010, Canada had held consultations with Japan concerning the Ontario legislation and feed-in-tariff programme. During those consultations, Canada had provided information to Japan on the operation of the programme, a programme that had been established to increase the supply of renewable energy in the province of Ontario. Those consultations were helpful but, unfortunately, despite Canada's work with Ontario to find a solution to Japan's concerns, consultations had not yet concluded successfully. Canada and Japan continued to enjoy a strong and constructive trade relationship, which, at times, understandably involved certain differences of opinion. At the present meeting, Canada was regrettably not in a position to agree to the establishment of a panel.

74. The representative of the European Union said that the EU was seriously concerned about the discriminatory nature of Ontario's Feed-in-Tariff (FIT) Programme which established local content requirements on goods and labour used by electricity producers. The EU was concerned that the FIT

Programme was inconsistent with Canada's WTO obligations. The EU stressed that it supported the development of renewable energy, an area in which the EU had itself set ambitious targets for 2020. However this should be done in compliance with WTO rules by which Canada, like other WTO Members, was bound. In view of its substantial trade and systemic interest in the issue, the EU had participated as a third party in the consultations requested by Japan in September 2010. Unfortunately those consultations had not led to any solution to this dispute. Therefore, the EU would follow this issue very closely and reserved all its rights in that respect.

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

6. Ukraine – Taxes on distilled spirits

(a) Request for the establishment of a panel by Moldova (WT/DS423/4)

76. The Chairperson drew attention to the communication from Moldova contained in document WT/DS423/4, and invited the representative of Moldova to speak.

77. The representative of Moldova said that her country noted with regret that Ukraine had acted inconsistently with the first sentence of Article III:2 of the GATT 1994 by applying a lower tax rate on domestic distilled spirits, namely "Cognac", than on certain other imported like distilled spirits, thereby nullifying or impairing the benefits accruing to Moldova under the GATT 1994. In the event that the beverages falling within the category of "spirits" were found by the Panel not to be "like products" to domestic "Cognac" within the meaning of the first sentence of Article III:2 of the GATT 1994, Moldova further claimed that Ukraine had acted inconsistently with the second sentence of Article III:2 of the GATT 1994 by applying a lower tax rate on domestic distilled spirits, namely "Cognac", than on certain other imported directly competitive or substitutable distilled spirits, so as to afford protection to the domestic production, thereby nullifying or impairing the benefits accrued to Moldova under the GATT 1994.

78. Moldova's claims were set out as follows. With regard to Article III:2, first sentence, she noted that under the amendments made to Law no. 178 from 7 May 1996 on "rates of excise duty on ethyl alcohol and alcoholic beverages" in 2008, (provisions further included in the new Ukrainian Tax Code no. 2755 of 2 December 2010), different excise tax rates were applied to "spirits" falling under HS 2208 20 12 00 and HS 2208 20 62 00, namely "Cognac", and to the rest of the alcoholic beverages falling under HS 2208. This difference in tax burden was made even more dramatic by a systemic postponement of the term of equalization of the mentioned rates. Thus, the tax burden on some Moldovan distilled spirits reached a value almost four times greater than the tax burden on Ukrainian "like products", named "Cognac". Moldova considered that "Cognac" and all alcoholic beverages falling within the category of "spirits" were "like products" within the meaning of the first sentence of Article III:2 of the GATT 1994. Therefore, Moldova claimed that by levying a tax on the alcoholic beverages falling within the category of "spirits" which was in excess of the tax applied to domestic "Cognac", Ukraine violated the first sentence of Article III:2 of the GATT 1994.

79. With regard to Article III:2, second sentence, she said that in case any of the beverages falling within the category of "spirits" were found by the Panel not to be a "like product" to domestic "Cognac", Moldova claimed that, at the very least, they would still be "directly competitive or substitutable" products. Moreover, Moldova believed that the above-mentioned tax differences between "Cognac" and the rest of the alcoholic beverages falling under HS 2208 could not be regarded as "*de minimis*". Nevertheless, Moldova noted that most of the alcoholic beverages falling within the category of "spirits", which were exported in substantial quantities to Ukraine, were classified under a different category from the "Cognac" tariff position. In contrast, the so-called "Cognac" was primarily manufactured in Ukraine and almost all of the consumed "Cognac" in Ukraine was produced domestically. For the above reasons, Moldova claimed that, by applying a higher tax on distilled spirits (to the extent that they were not "like products" to "Cognac", but still

"directly competitive or substitutable" products) than on "Cognac", Ukraine afforded protection to its domestic production of so-called "Cognac", thereby violating the second sentence of Article III:2 of the GATT 1994.

80. In light of the above and Moldova's proposal, on 13 April 2011, Moldova had held consultations with Ukraine in Kiev with a view to reaching a mutually satisfactory solution. Unfortunately, the consultations failed to settle the dispute. At the present meeting, Moldova was resorting to its right under the DSU to request the establishment of a panel to examine this matter, since no mutually satisfactory solution had been found. Pursuant to Article 6 of the DSU and Article XXIII:2 of GATT 1994, Moldova was requesting that a panel be established, with standard terms of reference, as set out in Article 7.1 of the DSU, to examine the matter as set out in Moldova's panel request, which had been circulated in document WT/DS423/4. Moldova remained open for further dialogue with Ukraine and hoped that a sustainable solution would be found to this matter.

81. The representative of Ukraine said that her country was surprised that Moldova had requested the establishment of a panel to examine this matter. It was disappointing and discouraging that this panel request was made shortly after the parties had held their first round of consultations. Ukraine had duly replied to Moldova's request for consultations and had made everything possible for the consultations to start at the earliest convenient date. The parties had held an informative and promising meeting on 13 April 2011. Given the specificity of the goods under consideration, during the first meeting, Ukrainian experts had asked a number of relevant questions and had requested Moldovan counterparts to provide specific technical information deemed necessary and helpful in understanding their concern. Ukraine had received the much appreciated materials just a few weeks ago and was still considering them. Ukraine had regarded Moldova's cooperative approach as a willingness to seek a solution with Ukraine. As all knew, any technical information must be carefully studied to help experts to accurately assess the problem. Since the parties were at an early stage of the consultations and had just started looking into the substance of the matter, Ukraine could not find any logic or justification in Moldova's statement that: "the consultations failed to settle the dispute". In Ukraine's view, that conclusion was rather hasty and one-sided, and considered that Moldova's request for establishment of a panel was premature. Therefore, Ukraine objected to the establishment of a panel. Ukraine hoped that Moldova would rely on the DSU provisions regarding consultations, rather than to overburden the dispute settlement system by starting panel procedures for a case which could be resolved through consultations. That would also encourage Ukraine to continue consultations, in close cooperation with Moldova, in order to find a mutually satisfactory solution.

82. The representative of the European Union said that, for the record, the EU wished to indicate that it was sensitive to the use of the term: "cognac" and would prefer the term: "so-called cognac".

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

7. United States – Anti-dumping administrative reviews and other measures related to imports of certain orange juice from Brazil

(a) Report of the Panel (WT/DS382/R)

84. The Chairperson recalled that at its meeting on 25 September 2009, the DSB had established a panel to examine the complaint by Brazil pertaining to this matter. The Report of the Panel contained in WT/DS382/R had been circulated on 25 March 2011 as an unrestricted document. Subsequently, at its meeting on 21 April 2011, the DSB had adopted a draft decision, set out in document WT/DS382/7, with regard to the time-period for adoption or appeal in this dispute. The Report of the Panel was before the DSB for adoption at the request of Brazil. The adoption procedure was without prejudice to the right of Members to express their views on the Report.

85. The representative of Brazil said that his country thanked the members of the Panel and the Secretariat for the time and effort dedicated to resolving this dispute. Brazil also thanked the third parties to this dispute for their written and oral submissions supporting positions similar to those of Brazil. As Members were aware, the central issue that had been challenged in this case was the consistency with the covered agreements of the methodology known as "zeroing". This issue, of course, was not a new one when Brazil had initiated the "Orange Juice" dispute. "Zeroing" had first been found to be inconsistent with the covered agreements in 2001 in the "Bed Linen" case. A decade had passed and "zeroing" had been challenged and condemned several times, but the debate on its legality had continued to drain valuable time and resources from Members and the WTO. At first sight, the dispute initiated by Brazil could be seen as just one more case in a long string of disputes against "zeroing". Indeed, this was just one of 14 challenges that had thus far been brought against the United States by nine different WTO Members. At this time, however, in an important shift of attitude, the United States, for the first time in cases involving the application of "zeroing" in reviews, had decided not to appeal the Panel Report. Brazil welcomed this decision, which strengthened the WTO as a whole and the dispute settlement mechanism in particular.

86. With respect to the Panel's findings in this dispute, Brazil commended the Panel's conclusion that "zeroing" was "unfair". The Panel had clarified that the "fairness" requirement of the first sentence of Article 2.4 of the Anti-Dumping Agreement applied beyond the mere selection of transactions and the use of adjustments to account for differences in price comparability. It was concerned with the "comparison" itself. It was the comparison between export price and normal value that must be "fair". Therefore, and according to the Panel, "a comparison methodology (such as 'simple zeroing') that ignores transactions which, if properly taken into account would result in a lower margin of dumping, must be considered 'unfair' and […] inconsistent with Article 2.4 [of the Anti-Dumping Agreement]". Another finding of the Panel regarding Article 2.4 of the Anti-Dumping Agreement deserved attention. The Panel had concluded that "[…] the obligation under Article 2.4 is focused on the 'comparison' between export price and normal value, not its impact. In other words, it was the nature of the 'comparison' itself and not the results of that comparison that is disciplined under [that article]". That meant that "zeroing" was "unfair" irrespective of whether the final margin of dumping actually applied was considered to be *de minimis*, for instance.

87. Brazil also warmly welcomed the Panel's findings concerning the "continued use" measure. The Panel, following a previous decision by the Appellate Body, had confirmed that an "ongoing conduct" by a Member was a measure that could be brought to challenge in the WTO dispute settlement system. In so deciding, the Panel had reaffirmed that Members did not have to challenge continuously each and every investigation and review as a separate and independent measure. This would lead to a potentially endless loop of litigation. The possibility to challenge the "ongoing conduct" clearly served better the purpose of prompt settlement of disputes. Moreover, the Panel had correctly understood the nature of Brazil's claim under the "continued use" measure and had stated that, "[…] it is the very existence of the 'zeroing' instruction […], independent of its application that is the subject of Brazil's complaint". In sum, the "continued use" of "zeroing" was inconsistent with Article 2.4 of the Anti-Dumping Agreement irrespective of the outcome of the calculation. The Panel's findings on the above-mentioned issues were of systemic importance and Brazil was convinced that they would positively contribute to the prompt settlement of any eventual new dispute on "zeroing".

88. That positive note, however, could not be extended to the Panel's reasoning on some legal issues brought to its attention. For instance, Brazil regretted that the Panel had not been clearer in respect to the correct definition of "dumping". The Panel had agreed with Brazil that "'dumping' was a concept that related to an individual exporter's pricing behaviour" and that "[…] the notion of 'dumping' is indeed fundamental and of critical importance to the operation of the Anti-Dumping Agreement". However, the Panel had not drawn the correct conclusions from those findings. If the purpose of anti-dumping duties was precisely to remedy the injurious effect of the exporter's pricing behaviour, the Panel's conclusion should have been unequivocal in the sense that "dumping" and

"margin of dumping" were to have been understood in relation to a product under investigation as a whole, encompassing all of the export transactions, and that they could not have been found to exist on a transaction-specific basis. The Panel could also have taken the next step and concluded that a harmonious and coherent interpretation of the Anti-Dumping Agreement implied a uniform definition of dumping that applied equally in investigations and reviews. The Panel's reluctance to accept those conclusions, after so many years of litigation and several Appellate Body Reports, was disappointing. It was no minor comfort, however, that the Panel, ultimately, had decided to follow the previous case-law. This decision provided security and predictability to the multilateral trading system. Recent and positive developments in the United States revealed a willingness of the US authorities to deal with the question of "zeroing" in a constructive manner. Brazil was confident that the United States would fully comply with the DSB's recommendations and rulings in this dispute. Brazil and the United States had already consulted and agreed on a reasonable period of time of nine months for implementation.

89. The representative of the United States said that his country thanked the members of the Panel and the Secretariat for their work on this dispute. The United States had made very clear its significant concerns with the Appellate Body's evaluation of the WTO-consistency of "zeroing" in past disputes and would not repeat its concerns at the present meeting. The United States continued to believe that those reports went beyond what the text of the agreements provided and what negotiators had agreed to in the Uruguay Round. Although the Panel in this dispute had ultimately elected to adhere to rulings on "zeroing" made by the Appellate Body in past disputes, the United States recognized the Panel's careful, independent assessment reflected in its reasoning on the issue. The Panel, like previous panels, had properly understood that the Anti-Dumping Agreement could be permissibly interpreted as allowing the use of zeroing in reviews. The Panel had explained that "there exists no single answer" to the question of whether "dumping" could be defined on a transaction-specific basis or, rather, whether it must be defined for the "product as a whole".[8] In addition, the Panel had expressly acknowledged "the objective lack of clarity in the current definition of 'dumping' that is set forth in the Anti-Dumping Agreement (a conclusion which [the Panel] believes is inescapable after almost a decade of unprecedented, and often conflicting, panel and Appellate Body opinions on the matter)".[9] But in the end, notwithstanding its own independent view and the standard of review set out in Article 17.6 of the Anti-Dumping Agreement, the Panel, in its own words, had "follow[ed] the Appellate Body", and had found that "zeroing" was inconsistent with the WTO Agreement.[10]

90. In addition to concerns about the finding on "zeroing", the United States had concerns that the Panel had chosen to base the ultimate outcome of the "Orange Juice" dispute not on its own interpretation of the WTO Agreement texts, but on findings that had been reached in other disputes. The DSU did not establish a system in which panel or Appellate Body reports became binding precedents. Instead, the WTO Agreement[11] explicitly reserved to Members, in the Ministerial Conference or the General Council, the "exclusive authority" to issue binding – or what the DSU[12] referred to as "authoritative" – interpretations of the covered agreements. The United States also noted that the express reservation of authority should not be disregarded, as some had argued, in the name of "security and predictability". Security and predictability in the system were not advanced when, as was the case with "zeroing", the results of dispute settlement had the effect of adding to or diminishing the rights and obligations to which the Members had agreed in the text of the covered agreements. Notwithstanding its systemic concerns about the findings in this and earlier zeroing disputes, the United States recognized the systemic importance of compliance with dispute settlement

[8] Panel Report, para. 8.1.
[9] Panel Report, para. 7.134.
[10] Panel Report, para. 7.135.
[11] WTO Agreement, Article IX:2.
[12] DSU, Article 3.9.

findings. To that end, the United States had devoted significant resources to comply with the DSB's recommendations and rulings in zeroing disputes. As the United States had previously explained to the DSB, 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. In that light, and as had previously been agreed with Brazil, the United States wished to state that it intended to implement the DSB's recommendations and rulings in this dispute in a manner respecting its WTO obligations, and that it would need a reasonable period of time in which to implement. As had been mentioned by Brazil in its statement, Brazil and the United States had further reached an agreement regarding an appropriate reasonable period of time, and the parties would circulate that agreement to Members, shortly.

91. The representative of the European Union said that the EU welcomed the fact that the Panel had followed the guidance provided in numerous rulings of the Appellate Body on zeroing. However, the EU did not agree with a statement contained in the Panel Report, suggesting to "solve the zeroing controversy" in the Rules negotiations. The EU considered that there was no "controversy" with regard to the issue whether the practice of zeroing was allowed under current WTO rules. The issue had been resolved a long time ago by the Appellate Body and, since then, had been confirmed many times.

92. The DSB took note of the statements and adopted the Panel Report contained in WT/DS382/R.

8. Proposed nomination for the indicative list of governmental and non-governmental panelists

93. The Chairperson drew attention to document WT/DSB/W/452, which contained an additional name 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 name contained in document WT/DSB/W/452.

94. The DSB so agreed.