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Dispute Settlement Body
30 August 2013

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 30 AUGUST 2013

Chairman: Mr. Jonathan Fried (Canada)

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1 SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.129)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.129)

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.104)

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.67)

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.16)

F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.15)

1.1. The Chairman noted that there were six sub-items under this Agenda item, which referred to status reports submitted by various delegations pursuant to Article 21.6 of the DSU. He recalled that Article 21.6 of the DSU required that the issue of implementation of recommendations and rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and shall remain on the DSB's Agenda until the issue was resolved. Once again, he called on delegations to provide informative and up-to-date information about compliance efforts, and to offer constructive comments on new developments, suggestions and ideas for progress towards the resolution of disputes. With these introductory remarks as the guiding philosophy, the Chairman proposed to turn to the first status report on the Agenda of the present meeting.

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.129)

1.2. The Chairman drew attention to document WT/DS176/11/Add.129, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 19 August 2013, in accordance with Article 21.6 of the DSU. As noted in the US status report, at least five bills had been introduced in the current Congress in relation to the recommendations and rulings of the DSB. These included H.R. 214, H.R. 778, H.R. 872, H.R. 873,

and S. 647. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

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

1.5. The representative of Cuba said that her country noted that the most recent US status report only confirmed that the United States had not taken any action to comply with its obligations in this dispute. Non-compliance on the part of the United States in this dispute had continued for the past 11 years. Powerful political and economic interests were preventing the United States from implementing the recommendations and rulings adopted by the DSB in February 2002 in the Section 211 dispute. On 2 August 2013, the Cuban newspaper Granma had published an article on this matter entitled: "La Sucia Guerra del Ron"(The Rum Dirty War). Granma revealed that the US company Bacardi had spent about US$3 million over five years, from 1998 to 2003, to take over the Havana Club trademark. In his book entitled "Bacardí y la Larga Lucha por Cuba" (Bacardi and the Long Struggle for Cuba), journalist Tom Gjelten had revealed that George W. Bush, at the request of his brother Jeb Bush, had violated international laws including WTO rules and US rules recognized by the US Patent and Trademark Office, to use the Havana Club trademark in US territory and to sell a supposed Cuban rum. All of this had been encouraged by well-known Cuban exiles and perpetrators of terrorist acts against Cuba such as Pepín Bosch. The Cuban rum trademark war had intensified after the success of the Havana Club Holdings (HCH) company, which had been founded in 1993 between the French company Pernod Ricard and Cuba Ron S.A. and whose sales had doubled in the first four years. In 1996, the Franco Cuban company HCH had won a lawsuit against Bacardi Martini in a New York court for infringement of the trademark that had been registered by Cuba and had been approved by the US Patent and Trademark Office since 1976. In response, Bacardi had continued its plan in 1997 and, among several actions, had succeeded in getting the US Congress to pass a new law, with retroactive effect, to cancel the registration of the trademark by the Cuban company CUBAEXPORT in 1976. Section 211 had thus been added as an amendment to the Omnibus Appropriations Act of 1998.

1.6. The non-compliance by the United States in this dispute served the interests of the Miami based anti-Cuban faction and its allies in the US Congress, who received considerable financial contributions from the Bacardi company in return for ensuring that no changes were made to the legislation that provided legal protection for the actions aimed at usurping the trademark of this famous Cuban rum. However, Cuba found it unacceptable that the commitment of the US Congress to the magnates and manoeuvring politicians prevailed over its responsibility to implement the DSB's recommendations and rulings. Neither was there any justification for the United States to allow its foreign policy priorities towards Cuba to take precedence over its obligations under the system of rules that the rest of the WTO Membership respected. As there was no excuse for this illegal conduct, Cuba would continue to denounce the US violations, which reflected its customary and proven disregard for the rules and principles that had been established by the international community and international law. Cuba reiterated that the only satisfactory solution to this dispute was the full repeal of Section 211.

1.7. The Chairman noted that there was a long list of speakers under this Agenda item and called on delegations to provide suggestions on constructive paths to resolution of this dispute.

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

1.9. The representative of Brazil said that his country thanked the United States for its status report regarding implementation in this dispute. Brazil noted that, once again, the United States did not report on any progress. Brazil remained concerned about this situation of non-compliance with the DSB's recommendations and urged the United States to bring its measures into conformity with WTO rules.

1.10. The representative of Jamaica said that her country thanked the parties to this dispute for the status report and updates. Jamaica, once again, joined other delegations in registering its concern about the prolonged non-compliance by the United States in implementing the DSB's recommendations and rulings on Section 211. Jamaica believed that the US failure to comply with its obligations was incompatible with the requirement of prompt and effective implementation of the DSB's recommendations and rulings as stipulated in the DSU provisions, in particular since the interests of a developing-country Member were affected. Jamaica was also concerned about the systemic implications of such non-compliance, in particular since it related to the overall credibility of the dispute settlement system and the perceived overall efficiency of the WTO. Jamaica, therefore, reiterated its long-standing position on this matter and joined other delegations in urging the United States to take all the necessary measures to implement the relevant DSB's recommendations and rulings without further delay.

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

1.12. The representative of Argentina said that his country thanked the United States for its status report and its statement made at the present meeting. Argentina regretted that the US status report and the US statement did not provide any substantive information and only reiterated that relevant draft legislation had been introduced in the US Congress, as mentioned in the previous four DSB meetings. As Argentina had stated several times before, this lack of progress was inconsistent with the principle of prompt and effective compliance stipulated in the DSU provisions, in particular since the interests of a developing-country Member were affected. Argentina, therefore, joined the request by Cuba as well as the previous speakers and called on the parties to the dispute, in particular the United States, to take the necessary measures so as to remove this item from the DSB's Agenda.

1.13. The representative of the Bolivarian Republic of Venezuela said that his country, once again, supported Cuba, a developing-country Member that had challenged the inconsistency of Section 211. The DSB had adopted its recommendations and rulings on Section 211, however, the United States had not yet complied. The situation of non-compliance not only affected Cuba but also set a negative precedent for the credibility of the WTO and its ability to solve disputes. Venezuela, therefore, urged the United States to end this non-compliance and to report on the measures it intended to take to terminate this dispute.

1.14. The representative of Nicaragua said that his country, once again, supported Cuba's position in this dispute with regard to the rights of Cuban owners of the Havana Club Rum trademark. The US status report, which had been submitted for more than 11 years, did not offer any concrete steps towards the implementation of the DSB's recommendations. Nicaragua, therefore, once again urged the United States to reconsider its unilateral economic policy against Cuba, which had a negative impact on its economy. As it had already stated on previous occasions, Nicaragua was concerned that the US failure to comply with its obligations undermined the credibility and effectiveness of the DSB and the multilateral trading system. It could also set a precedent that could affect other Members, in particular developing countries. Nicaragua hoped that the US authorities would introduce the necessary legislative reforms without delay so as to comply with the DSB's recommendations and rulings.

1.15. The representative of El Salvador said that her country thanked the United States for its status report. El Salvador joined previous speakers in expressing its concern about the lack of compliance in this dispute, in particular since the interests of a developing-country Member were affected. El Salvador was also concerned that lack of compliance affected the multilateral trading system. El Salvador urged both parties to find a way of complying with the DSB's recommendations and rulings so as to end this prolonged dispute.

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

1.17. The representative of South Africa said that her country thanked the United States for its status report, which did not report on any substantial progress since the previous DSB meetings with regard to this matter. South Africa, once again, joined the previous speakers in expressing its concern that no concrete progress had been made in the implementation of the DSB's recommendations and rulings with regard to Section 211. In that regard, South Africa referred to its previous statements made regarding its concern about the systemic effects of non-compliance with the DSB's recommendations and rulings. South Africa was also concerned about the negative impact on the economic interests of a developing-country Member. South Africa, therefore, urged the United States to bring its legislation into compliance with the DSB's rulings and recommendations.

1.18. The representative of Ecuador said that his country supported the statement made by Cuba at the present meeting. Ecuador stressed, once again, that Article 21 of the DSU specifically referred to prompt compliance with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Ecuador hoped that the United States would step up its efforts in order to promptly comply with the DSB's recommendations and rulings by repealing Section 211. In Ecuador's view, the non-compliance with the DSB's recommendations and rulings in this dispute, which had lasted for a long period of time, demonstrated that the WTO dispute settlement system had a major shortcoming.

1.19. The representative of Uruguay said that his country thanked the United States for its status report on Section 211. Uruguay regretted that the situation in this dispute had not changed and, therefore, urged the United States to implement the DSB's recommendations, as stipulated in Article 21 of the DSU, so as to remove this item from the DSB's Agenda.

1.20. The representative of Viet Nam said that his country thanked the United States for its status report. Viet Nam noted that more than ten years had passed since the DSB had adopted its recommendations in this dispute. However, the United States had not taken any action to implement the DSB's recommendations and rulings. Viet Nam, once again, urged the United States to respect the DSB's recommendations so as to uphold the rule of law for the benefit of Cuba, a developing-country Member.

1.21. The representative of the Dominican Republic said that his country thanked the United States for its status report on the implementation of the DSB's recommendations and rulings regarding the inconsistency of Section 211 with Article 42 of the TRIPS Agreement. The Dominican Republic, once again, urged the United States to take the necessary internal steps in order to comply with the DSB's recommendations and rulings. The prolonged situation of non-compliance undermined the credibility of the WTO.

1.22. The Chairman said that delegations had heard an update from the United States and noted that 17 delegations had intervened on this matter. He said that delegations should reflect on ways in which they could, at the next meeting, have a forward-looking discussion under this Agenda item.

1.23. 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.129)

1.24. The Chairman drew attention to document WT/DS184/15/Add.129, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.25. The representative of the United States said that his country had provided a status report in this dispute on 19 August 2013, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US

Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.26. The representative of Japan said that his country thanked the United States for its statement and status report submitted on 19 August 2013. Since the content of the report had not changed from the previous report, Japan's position had not changed either as expressed at the previous meetings.

1.27. 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.104)

1.28. The Chairman drew attention to document WT/DS160/24/Add.104, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.29. The representative of the United States said that his country had provided a status report in this dispute on 19 August 2013, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the EU, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

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

1.31. 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.67)

1.32. The Chairman drew attention to document WT/DS291/37/Add.67, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

1.33. The representative of the European Union said that the EU, once again, hoped that it would continue on the constructive path of dialogue with the United States. In recent DSB meetings, the EU had already reported on authorization decisions that had been taken in 2012. Most recently, on 25 June 2013, the Commission had authorized three versions of oilseed rape products[1], following the absence of an opinion from the Appeal Committee. The details were set out in the EU's written statement. In July 2013, the Appeal Committee had voted on three authorization decisions[2], rendering no opinion. The Commission would move to adopt them in the near future. As it had been stated many times before, the EU recalled that its approval system was not covered by the DSB's recommendations and rulings. The GMO regulatory regime was working normally as evidenced by the approval decisions just mentioned.

1.34. 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 United States had explained at past meetings of the DSB, the United States had substantial concerns regarding EU measures affecting the approval of biotech products. At the present meeting, the United States would recall the DSB's findings that EU member State bans on biotech varieties approved at the EU-level were inconsistent with the EU's obligations under the SPS Agreement.[3] Those findings included EU member State bans on the only variety of biotech corn, known as MON810, that had been

[1] Ms8, Rf3 and Ms8xRf3.

[2] Maize stack events MON89034 x 1507 x MON88017 x 59122 and GM maize MON89034×1507×NK603 as well as GM maize MON810 pollen.

[3] Panel Report, European Communities – Measures Affecting the Approval and Marketing of Biotech Products, WT/DS291/R, adopted 21 November 2006, paras. 8.24, 8.28.

approved for cultivation in the EU. Despite the DSB's findings that EU member State bans on MON810 were in breach of the EU's WTO obligations, several EU member States continued to maintain bans on this biotech product. For example, as the United States had noted at the April 2012 meeting of the DSB, France had renewed a ban on MON810 in March 2012. France had taken this action even though Mon810 had been approved by the EU, and had repeatedly received favourable safety assessments from the EU's own scientific authority. Earlier that month, a French court had recognized that France's ban on MON810 could not be justified. The United States urged the EU to take steps to ensure that France, as well as other EU member States, acted in accordance with the EU's own approval and the recent court decision by lifting all outstanding EU member State bans on MON810. As a result of EU delays, the EU measures affecting the approval of biotech products were causing substantial restrictions on trade. The United States urged the EU to take steps to address these problems.

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

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

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.16)

1.37. The Chairman drew attention to document WT/DS371/15/Add.16, which contained the status report by Thailand on progress in the implementation of the DSB's recommendations in the case concerning Thailand's customs and fiscal measures on cigarettes from the Philippines.

1.38. The representative of Thailand said that, as indicated in its most recent status report, Thailand was continuing to provide additional technical information regarding its implementation, as requested by the Philippines during the informal bilateral consultations held in Bangkok in May 2013. Thailand had provided additional confidential information that week, thereby completing its response to the Philippines' requests for information regarding the technical issues in this dispute. Thailand remained at the Philippines' disposal to answer any further questions the Philippines may have regarding this information. Thailand was also ready to respond to any further requests the Philippines may have regarding any matters of concern that had not been part of the original Panel's findings. Thailand looked forward to continuing its discussions with the Philippines and to resolving this matter in an amicable manner.

1.39. The representative of the Philippines said that his country thanked Thailand for its status report and for its statement made at the present meeting. Members were aware of the Philippines' continued concerns with Thailand's implementation of the DSB's rulings and recommendations in this case. Members had also witnessed the Philippines' tireless efforts to resolve these issues on a bilateral level in order to avoid having to return to litigation. As part of that process, Thailand had recently submitted outstanding information that had been promised to the Philippines at the bilateral meeting in Bangkok in early May 2013. The Philippines regretted the time it had taken for that information to be provided. The information, which had also been withheld from the importer concerned, was relevant in assessing whether one of Thailand's reported implementation measures was in conformity with the Customs Valuation Agreement. The Philippines would assess the information promptly. The Philippines also noted that this new information regarding a measure taken to comply concerned just one of the outstanding implementation issues that the Philippines had raised with Thailand. As the Philippines had noted in June 2013, other issues included the ongoing criminal investigations by Thai authorities against a Thai importer of cigarettes from the Philippines, Philip Morris Thailand Limited, Thailand Branch, regarding alleged under-declaration of customs values, which potentially carried criminal fines and imprisonment.

1.40. The representative of Thailand said that her country understood the Philippines concern regarding the ongoing investigations under Thai law to the extent that those investigations involved Thailand's obligations under the WTO law. Thailand would strive to ensure that it acted in a WTO-consistent manner.

1.41. The Chairman welcomed the continued intensification of the dialogue between the parties with a view to an amicable resolution of this dispute.

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

F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.15)

1.43. The Chairman drew attention to document WT/DS404/11/Add.15, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain shrimp from Viet Nam.

1.44. The representative of the United States said that his country had provided a status report in this dispute on 19 August 2013, in accordance with Article 21.6 of the DSU. In February 2012, the US Department of Commerce had published a modification to its procedures in order to implement the DSB's recommendations and rulings regarding the use of "zeroing" in anti-dumping reviews. That modification addressed certain findings in this dispute. In June 2012, the USTR had requested, pursuant to Section 129 of the Uruguay Round Agreements Act, that the Department of Commerce take action necessary to implement the DSB's recommendations and rulings in this dispute. The United States would continue to consult with interested parties as it worked to address the recommendations and rulings of the DSB.

1.45. The representative of Viet Nam said that his country thanked the United States for its status report and its statement made at the present meeting. As Members were aware, the reasonable period of time, agreed by the parties to this dispute, had expired 13 months ago. However, the United States had not taken any action to implement the DSB's recommendations and rulings. Viet Nam expressed its systemic concerns about the US non-compliance with its obligations. Once again, Viet Nam urged the United States to implement, without any further delay, the DSB's recommendations and rulings, in particular to revoke the anti-dumping duty that was inconsistent with WTO rules and to uphold the multilateral trade rules for the benefit of Viet Nam's exporters.

1.46. The representative of the Bolivarian Republic of Venezuela said that his country supported Viet Nam's concerns regarding the need for the United States to adopt the necessary measures that would put an end to this dispute.

1.47. The representative of Cuba said that her country supported Viet Nam. Once again, Cuba condemned the fact that the information submitted by the United States only referred to slow legislative procedures and that the United States had not reported on any action taken towards implementing the DSB's recommendations. Cuba noted that the non-compliance in this dispute continued and affected the economic and development interests of Viet Nam, a developing-country Member. Cuba, therefore, urged the United States to take effective measures in order to implement the DSB's rulings and to remove the measures that violated Viet Nam's rights.

1.48. 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

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

2.2. The representative of the European Union said that, once again, the EU requested that the United States stop transferring anti-dumping and countervailing duties to the US industry. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations and rulings. The EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit status reports in this dispute.

2.3. The representative of Japan said that, since the distributions under the CDSOA had been continuing, Japan, once again, urged the United States to stop the illegal distributions so as to resolve this dispute. According to the increase of the disbursement as a result of the ruling by a US domestic court, Japan would increase the scope of the target goods from one to 13 products as well as the tariff rates from 4% to 17.4% for suspension of concessions and related obligations. The adjusted measure would be effective on 1 September 2013. Detailed information was contained in document WT/DS217/64. Japan was of the view that the United States was under obligation to provide the DSB with a status report in this dispute in accordance with Article 21.6 of the DSU.

2.4. The representative of India said that his country thanked the EU and Japan for regularly bringing this issue before the DSB and for their statements made at the present meeting. India shared their concerns and supported their views. India agreed that, until such time full compliance was achieved, this matter should continue to remain under the DSB's surveillance.

2.5. The representative of Canada said that his country thanked the EU and Japan for having once again placed this item on the DSB's Agenda. Canada shared their views that the Byrd Amendment should still be subject to monitoring by the DSB until such time as the United States ceased to apply it.

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

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

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

2.9. The DSB took note of the statements.

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

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

3.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Antigua and Barbuda. It was his understanding that the representative of St. Lucia would make a statement on behalf of Antigua and Barbuda.

3.2. The representative of St. Lucia, speaking on behalf of Antigua and Barbuda, read out the following statement: "We are reading the statement prepared by and on behalf of the delegation of Antigua and Barbuda, which has requested that this item be placed on the Agenda for today's meeting. First off, Antigua and Barbuda notes with increasing dismay that the United States continues to refuse to comply with its obligation under the DSU to provide a monthly status report

to the DSB on its progress, or in this case, lack thereof, on its compliance with the recommendations and rulings of DBS in DS285. It seems that the United States somehow does not consider itself bound by the rules of the WTO when it comes to a dispute with a small and vulnerable country such as Antigua and Barbuda. That is indeed unfortunate and very hard for our country to comprehend, particularly given the oft-repeated statements of the United States insisting that other WTO Members comply with their obligations under the WTO agreements. With an irony that has sadly become routine, in just the past few days the USTR announced its intention to launch 'investigations' to assess whether certain other WTO Members 'are keeping their markets free of trade barriers in accordance with their commitments' under the WTO agreements. From where we sit, this statement beggars belief. Further, it goes without saying that the United States has failed to comply with the recommendations and rulings in DS285 and has made no meaningful effort to do so. One can just imagine if the situation were reversed and trade violations by Antigua and Barbuda had led to job losses for 5% of the population of the United States and loss of revenue equivalent to over 40% of GDP. We are inclined to believe that things may have played out a bit differently had such been the case. What is troubling Antigua and Barbuda most at this point, however, is the singular and pronounced failure of the United States to engage with Antigua and Barbuda in a meaningful way over the course of this dispute in a way that would bring a fair resolution of this matter. While we understand that the delegation from the United States is likely to claim to the contrary, the unvarnished truth is that the United States has utterly failed to sit down with Antigua and Barbuda and work with our country as an equal, to engage honestly and openly and to seek a sincere and proper resolution to this dispute. Perhaps from the perspective of the United States, ignoring Antigua and Barbuda and refusing respectful accommodation has simply worked for them. After all, our remote gaming industry is destroyed and United States operators are finding a clean and open playing field as they hungrily expand their own remote gaming operations within the borders of the United States. Perhaps our case is like the Cuban trademark case relating to Havana Club that has been languishing in this Body, where the United States has similarly not had to face any consequence deriving from its casual dismissal of Antigua and Barbuda and our seemingly hollow 'victory' at the WTO. No one can complain that Antigua and Barbuda lacked patience in this matter; that there was a rush to judgment; that every opportunity was not provided to the United States to honour its obligations before the DSB. If, after ten years, the United States returns to the DSB to make platitudinous statements, and cannot summon the political will to settle a trade dispute with one of the smallest economies in the world, then Antigua and Barbuda will have no choice other than to exercise the only option that this Body has provided. Antigua and Barbuda therefore takes this opportunity to inform fellow delegations that since obtaining authorization from this Body in January to suspend concessions and other obligations to the United States in accordance with Article 22 of the DSU, the United States has yet to make any compensatory offers; has yet to request a substantive meeting; has yet to seek any kind of clarification on proposals made by our side. The silence is deafening, and in the silence other voices get heard. In light of these further sad realities, Antigua and Barbuda has no choice but to press ahead with plans to put into effect the authorized suspension of concessions and other obligations. The Government has formed a high-level committee chaired by our Attorney General to design, develop and implement the legal and operational frameworks for the suspensions. This committee has recently met and its work is proceeding. Antigua and Barbuda will provide further particulars on the activation of the suspensions to this Body at the appropriate time. If, as now seems to be the case, Antigua and Barbuda is to get nothing else from its ten years of labour and compliance with the rules and procedures of the WTO, perhaps we can realise some much needed, although in context, woefully inadequate, financial compensation for our people."

3.3. The representative of the Bolivarian Republic of Venezuela said that, once again, his country supported Antigua and Barbuda, a small developing-country Member whose economy was based primarily on services, which accounted for 78% of the sectoral composition of its GDP. Thus, any restriction on the supply of a service adversely affected Antigua and Barbuda. The DSB had adopted a ruling several years ago recommending that the United States put an end to this situation. However, the United States had failed to do so. Venezuela, therefore, urged the United States to comply with the DSB's recommendations and to submit status reports on implementation in this dispute.

3.4. The representative of Brazil said that his country thanked Antigua and Barbuda for inscribing this item on the DSB's Agenda and St Lucia for making the statement on behalf of Antigua and Barbuda. As it had expressed before, Brazil was of the view that the WTO dispute settlement system had proved to be a useful tool to resolve trade disputes among Members through a rules-

based system. However, the credibility and the effectiveness of the system depended on the premise that the mechanism worked for the benefit of all Members, regardless of their size or level of development. In that regard, Brazil, once again, encouraged both parties to the dispute to engage in effective negotiations with a view to reaching a mutually agreed solution to this long-standing dispute, in line with the DSB's rulings on this matter.

3.5. The representative of Jamaica said that her country wished to be associated with the statement made by St. Lucia on behalf of Antigua and Barbuda. Jamaica remained consistent in calling for a timely conclusion to this protracted dispute, especially in light of the clear DSB's ruling in favour of Antigua and Barbuda. Jamaica reiterated its call for all WTO Members to fully comply with their obligations, including those arising from the DSB's rulings. Jamaica underscored that, particularly for small vulnerable economies within the WTO, it was important that the integrity of the dispute settlement mechanism be preserved as a critical component of a rules-based system governing international trade. Jamaica, once again, called on both parties to the dispute to redouble their efforts to achieve a just and lasting solution in the interest of the multilateral trading system.

3.6. The representative of Cuba said that her country supported the statement made by St. Lucia on behalf of Antigua and Barbuda. Cuba regretted that, for a long period of time, the same Member had, once again, failed to meet its obligations. The continued non-compliance violated the rights of a small delegation and St. Lucia had mentioned the figures that showed the impact of such non-compliance on the economy of a small country, Antigua and Barbuda. This was an unjustified failure to comply with the DSB's recommendations and rulings. Cuba, therefore, urged the United States to end to this long-standing dispute which, as mentioned by several delegations, questioned the effective functioning of the DSB. Cuba called on the United States to resolve this matter as quickly as possible.

3.7. The representative of the Dominican Republic said that his country supported the statement made by St. Lucia on behalf of Antigua and Barbuda and called for a resolution of this dispute, which affected a small developing-country Member. The Dominican Republic noted that many small vulnerable economies had relied on the dispute settlement mechanism to defend their trade interests. The Dominican Republic, therefore, urged the United States to engage in dialogue with Antigua and Barbuda so as to resolve this matter. Failure to resolve this dispute would have a negative impact on the ability of the system to solve trade disputes.

3.8. The representative of Argentina said that his country thanked Antigua and Barbuda for inscribing this item on the DSB's Agenda. However, Argentina regretted that there had been no progress on the matter. Argentina, therefore, expressed its renewed concern about the systemic implications of protracted failure to comply with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Article 21.1 of the DSU clearly stated that "prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members". Argentina, therefore, joined previous speakers who had expressed similar concerns and urged the parties to this dispute to redouble their efforts to reach a fair and equitable solution to this long-standing dispute.

3.9. The representative of the United States said that his country remained committed to constructive dialogue with Antigua to resolve this matter. While Members were aware that the United States had invoked the GATS process to withdraw the gambling concession at issue, the United States remained of the view that a negotiated resolution was the best outcome here, and would continue with those efforts. The United States had recently received a new proposal from Antigua and Barbuda, which it was reviewing carefully, and looked forward to further discussion in the near future.

3.10. The DSB took note of the statements.

4 UNITED STATES – MEASURES CONCERNING THE IMPORTATION, MARKETING AND SALE OF TUNA AND TUNA PRODUCTS

A. Statement by Mexico

4.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Mexico. He then invited the representative of Mexico to speak.

4.2. The representative of Mexico said that on 9 July 2013, the United States had published in the Federal Register a measure to comply with the DSB's rulings and recommendations. As the United States had reported at the June DSB meeting, that measure had entered into force on 13 July 2013, the date of expiry of the reasonable period of time for implementation that had been agreed between Mexico and the United States. That new US measure did not comply with the WTO ruling since it maintained two separate regulatory regimes. The first one consisted of highly effective provisions agreed at international level to protect dolphins in the zone where Mexico fished (Eastern Pacific Ocean). The second one consisted of an unregulated measure without any enforcement mechanism that had been established outside of the Eastern Pacific Ocean where fleets such as the US fleet operated, resulting in a high level of dolphin mortality and causing harm to the marine ecosystem due to the fishing methods used in those fishing zones. As Mexico had previously stated, the new measure unfortunately did not remove discrimination against Mexican tuna, nor did it address the damage caused to the environment and dolphins by fishing fleets from other countries in other oceans. Contrary to the US view, Mexico considered that the new measure adopted under the "dolphin-safe" labelling regime was inconsistent with the DSB's rulings and recommendations. On 2 August 2013, Mexico and the United States had reached an understanding regarding the procedures under Articles 21 and 22 of the DSU. That understanding had been circulated to the DSB. Pursuant to Article 21.6 of the DSU, Mexico considered that this dispute had not yet been resolved and, therefore, requested that this item be inscribed on the DSB's Agenda for the present meeting. Mexico continued to examine the measure and to consider all the legal options available to it in order to find an effective solution to this dispute, including the suspension of concessions and/or other obligations. Mexico urged the United States to implement measures that would comply with the DSB's rulings and recommendations.

4.3. The representative of the Bolivarian Republic of Venezuela said that his country supported the statement made by Mexico and urged the United States to find a satisfactory solution to this dispute and to comply with the DSB's rulings.

4.4. The representative of the United States said that, as his country had informed the DSB at the July meeting, it had amended its dolphin-safe labelling requirements so as to bring those requirements into compliance with the recommendations and rulings of the DSB. The amended regulations enhanced documentary requirements for certifying that no dolphins had been killed or had been seriously injured when tuna were caught so that they also now covered tuna caught in oceans other than the eastern tropical Pacific Ocean (ETP). Those changes ensured that consumers were not misled or deceived about whether the tuna in a product labelled "dolphin safe" had been caught in a manner that caused harm to dolphins. In sum, that final rule brought the United States into compliance with the DSB's recommendations and rulings within the reasonable period of time agreed to by Mexico and the United States. The rule demonstrated that the United States could prevent consumer deception and protect dolphins consistent with WTO rules.

4.5. The Chairman said that, having completed items 2, 3 and 4 of the present Agenda, he wished to offer one observation because, in the course of those three Agenda items, some delegations had raised questioned as to why those items were on the Agenda. Aside from the fact that the Agenda had been adopted by consensus at the beginning of the meeting, he simply wished to remind delegations that, under Article 21.6 of the DSU, there was a clear statement by the negotiators of that section, which stated that the issue of implementation of the recommendations or rulings may be raised at the DSB by any Member at any time, following the adoption of the Reports by the DSB. That was in addition to the requirement that the issue of implementation shall be placed on the DSB Agenda after six months following the date of establishment of the reasonable period of time and shall remain there until the issue was resolved. That was why there was at times a succession of additional items.

4.6. The DSB took note of the statements.

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

A. Request for the establishment of a panel by the European Union (WT/DS460/4)

5.1. The Chairman drew attention to the communication from the European Union contained in document WT/DS460/4, and invited the representative of the European Union to speak.

5.2. The representative of the European Union said that, regrettably, the EU found itself left with no choice but to request the establishment of a panel in this dispute. While the consultations had been helpful in clarifying a number of questions concerning the Chinese measures, they could not resolve the dispute. The EU believed that the anti-dumping duties imposed on imports of steel tubes from the EU were inconsistent with the WTO Anti-Dumping Agreement and were thus unjustifiably hampering access to the Chinese market. The EU regretted that China had not signalled any intentions to remove those measures. The EU was therefore seeking the establishment of a level playing field by ensuring that China respected its WTO obligations. The EU noted that the matter in this dispute was the same as in DS454 where a panel had already been established and composed. In light of Article 9.3 of the DSU, the EU indicated that it would agree to the same panelists as in that dispute and was ready to engage with a view to harmonizing the timetable for the two cases.

5.3. The representative of China said that his country was disappointed that the EU had requested the establishment of a panel in this dispute. On 17 and 18 July 2013, China had held consultations with the EU in good faith; it had introduced the relevant facts and had answered the EU's questions. The WTO Agreements permitted Members to levy on any dumped product an anti-dumping duty in order to offset or prevent dumping. With respect to the investigations at issue in this dispute, the investigating authorities of China had found that the imports of high-performance stainless steel seamless tubes from the EU constituted dumping and that the dumped imports caused material injury to the domestic industry of China. As a result, China had decided to levy an anti-dumping duty on the dumped high-performance stainless steel seamless tubes from the EU. The imposition of the anti-dumping measure was consistent with China's obligations under the WTO rules. At Japan's request, the DSB had recently established a panel in DS454 to examine the similar measure now challenged by the EU. In order to allow the proceedings in the two disputes to be promptly harmonized, China could agree to the establishment of a panel in DS460 at the present meeting. China confirmed that the panelists in DS454 could be accepted in this dispute. China hoped that this would reduce the burden on the Panel, the Secretariat and the parties.

5.4. The representative of Japan said that, since the EU's claims under DS460 were related to the same Chinese anti-dumping measures on the High-Performance Stainless Steel Seamless Tubes ("HP-SSST"), Japan was ready to cooperate with the harmonization of the procedures under Article 9.3 of DSU. In that regard, Japan reiterated its position that the delay of the procedures should be avoided and requested the cooperation from the EU and China on this matter.

5.5. The representative of China said that his delegation noted that the EU had accepted the panelists in the DS454 dispute. Therefore, China wished to confirm that it could also accept the same panelists in this dispute.

5.6. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

5.7. The representatives of India, Japan, Korea, Turkey and the United States reserved their third-party rights to participate in the Panel's proceedings.

5.8. The Chairman said that at this point he wished to make a few observations. He said that it had been brought to his attention in this matter that several times in the past the DSB had established a single panel under Article 9.1 of the DSU rather than under Article 9.3 of the DSU. The DSB had done that even on a number of occasions where there had been a time lag, up to three or four months between the time of the first request to establish a panel and the second request from another country. When that had occurred, Members had been given a further ten days to reserve third-party rights, even with the single panel. That had triggered in his mind, having read Article 9.1 and 9.3 of the DSU, the need to undertake further research on the DSB's

past practice. With the assistance of the Secretariat, what was discovered was that in the past, in each and every case where a single panel had in effect been kept for the second complainant, no action had taken place on the part of the panel or the parties to the dispute in question. In the two disputes before the present DSB meeting, however, the panel had already been composed on 29 July 2013, following acceptance of the first request for panel establishment. Thus far, the DSB had never established a single panel under Article 9.1 of the DSU under the circumstances that were before the present meeting. It was against this backdrop that, at least in his view, it seemed that the request for the establishment of a new panel had been or was being properly treated as an Article 6 matter, keeping in mind that Article 9.3 of the DSU stated that wherever possible, the same panelists should be used, as each of the three parties had said, so as to streamline procedures. Article 9.3 of the DSU stated that "if more than one panel is established to examine the complaints related to the same matter, to the greater extent possible, the same persons shall serve as panelists on each of the panels and the timetable for the panel process in such disputes shall be harmonized". He thanked the EU, China and Japan for their cooperation on this matter. He noted that the relationship between Article 9.1 and 9.3 of the DSU was an interesting point of drafting that went back to the Uruguay Round, and was of the view that some delegations may wish to reflect on further in the future. The trigger point seemed to be the point of establishment of the first panel but practice had been up to, but not including, the point of composition following establishment. He offered those comments as personal observations and not as the Chair's definitive interpretive ruling.

5.9. The DSB took note of the statements.

6 COLOMBIA – MEASURES RELATING TO THE IMPORTATION OF TEXTILES, APPAREL AND FOOTWEAR

A. Request for the establishment of a panel by Panama (WT/DS461/3)

6.1. The Chairman drew attention to the communication from Panama contained in document WT/DS461/3, and invited the representative of Panama to speak.

6.2. The representative of Panama said that the purpose of the panel request, as could be seen from the documents circulated, was a compound tariff that Colombia imposed on the importation of certain textiles, apparel and footwear. Panama was referring the matter to the DSB because neither the consultations nor the many other efforts that had been taken bilaterally, including at the presidential level, had led to a mutually agreed solution. In Panama's view, the measure at issue was clearly inconsistent with Colombia's WTO obligations. This was a matter of great importance for Panama's export sector, in that it significantly affected its exports. The measure threatened to cause irreparable damage in the latter months of the marketing year, and it was therefore urgent to find a prompt solution to this dispute. Panama, therefore, hoped that the DSB would establish a panel at the present meeting in order to examine this dispute. Panama also hoped that the panel would issue a prompt decision with respect to the consistency of Colombia's measure with its WTO obligations. Meanwhile, Panama remained willing to engage in constructive discussions with Colombia in order to arrive at a mutually agreed solution.

6.3. The representative of Colombia said that her country objected to Panama's panel request. In Colombia's view, the measure in question was not inconsistent with WTO provisions. Colombia regretted Panama's disapproval of Decree No. 074 of 2013, but considered this Decree to be consistent with its WTO obligations. The Decree provided for the application of a mixed specific and *ad valorem* tariff. Colombia believed it had the right to apply this type of tariff since, according to Appellate Body case law, the GATT Article II obligation did not limit a Member's ability to apply the type of tariff it considered most appropriate. In that respect, Colombia agreed with the legal opinion of the Advisory Centre on WTO Law, which it had requested before Decree No. 074 was issued. Colombia not only considered its measures to be consistent with the obligations arising from its WTO Membership, but believed that the measures were essential for its trade policy, for compliance with its customs regulations, and for security reasons. These last two policy objectives could be met legitimately in accordance with the WTO Agreements. The security aspect was also vital to Colombia, as WTO Members were well aware. With regard to the possibility of a mutually agreed solution, Colombia was more than willing to address Panama's concerns. Colombia had made this clear at the consultations held on 25 July 2013 and in the various exchanges between Colombian and Panamanian officials in which the possibility of reaching a mutually agreed solution was discussed. Colombia emphasized that those discussions had been conducted at the highest

level, with direct contact between the Ministers of Trade and Heads of State of both countries. Colombia remained convinced that those discussions would take a more positive turn and that the two countries would soon be able to resolve jointly the concerns in question. Colombia recalled that, under Article 3.7 of the DSU, Members were required, before bringing a case, to exercise their judgement as to whether action under those procedures would be fruitful. In line with that, Colombia believed that, with the necessary will, there was a good chance that an agreement would be reached, in accordance with the provisions of Article 3 of the DSU. This would avoid initiating dispute settlement proceedings which would burden each of the parties, other Members and the WTO itself. Furthermore, the purpose of the dispute settlement mechanism was precisely to secure a positive solution to the dispute. Colombia believed that, in this case, the parties could agree to such a solution. For that reason, Colombia, once again, urged Panama to continue negotiating an agreement that was satisfactory to both parties, and objected to the panel request which it considered premature in the context of the development of discussions with Panama.

6.4. The Chairman noted two different legal views and said that he had also heard a common spirit of a willingness to continue an exchange of views and dialogue with a view to reaching an amicable solution.

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

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

A. Recourse to Article 21.5 of the DSU by Canada: Request for the establishment of a panel (WT/DS384/26)

B. Recourse to Article 21.5 of the DSU by Mexico: Request for the establishment of a panel (WT/DS386/25)

7.1. The Chairman proposed that the two sub-items to which he had just referred be considered together. He then drew attention to the communication from Canada contained in document WT/DS384/26 and invited the representative of Canada to speak.

7.2. The representative of Canada said that, as had been set out in detail in document WT/DS384/26, Canada requested the establishment of a panel, under Article 21.5 of the DSU, to determine the consistency with the WTO Agreement of the measure taken by the United States to comply with the DSB's recommendations and rulings in the "US - COOL" dispute. Canada would have preferred not to have taken this step. However, the amendments that had been made by the United States in May 2013 to the COOL measure had further aggravated, rather than remedied, the national treatment violation found by the Panel and the Appellate Body. Since 2002, when the United States COOL measure had first been proposed, Canada had consistently raised concerns regarding its impact on the competitive position of Canadian cattle and hogs in the US market. After the COOL measure's entry into force, first through the Interim Final Rule in 2008 and later through the Final Rule of 2009, Canada had initiated dispute settlement proceedings, the results of which had been adopted by the DSB on 23 July 2012. In the reports adopted by the DSB, both the Panel and the Appellate Body had found that the COOL measure was inconsistent with Article 2.1 of the TBT Agreement because it had accorded imported livestock treatment less favourable than that accorded to like domestic livestock. The United States was granted until 23 May 2013 to bring the COOL measure into compliance with its WTO obligations. On 8 March 2013, the United States had published proposed amendments to its COOL regulations and had invited comments. In its comments, and in other representations to the United States, Canada had stated its view that those amendments would not bring the COOL measure into compliance with the US WTO obligations. Canada's comments and concerns had been echoed by a wide range of industry actors across North America, who had also emphasized the harm that the amended COOL measure would cause to their operations. Canada was disappointed that its concerns, and those of many others, had not been taken into account in the amendments to the COOL regulations that had been issued, as a Final Rule, on 23 May 2013. Instead, the amended COOL measure issued on 23 May 2013 expanded the labelling requirements and it did so in a manner that would result in increased segregation and costs for firms using animals born or raised outside of the United States, or the meat produced from such animals. By increasing the discrimination previously found by the Panel and the Appellate Body, the effect of the amended COOL measure was diametrically opposed to what the United States had been required to do to bring itself into

compliance. Therefore, as had been outlined in document WT/DS384/26, Canada disagreed with the United States that the amendments to the COOL measure complied with the DSB's recommendations and rulings.

7.3. Canada considered that the amended COOL measure remained inconsistent with the US obligations under the WTO Agreement. Specifically, Canada considered that this measure was inconsistent with Articles 2.1 and 2.2 of the TBT Agreement, and Articles III:4 and XXIII:1(b) of the GATT 1994. The fact that Mexico would express similar views, and was at the present meeting making a similar request for a compliance panel, was testament to the harm that this measure was having on the North American trade in livestock. Canada recalled that on 10 June 2013 Canada and the United States had notified to the DSB an understanding that had been reached between them regarding the procedures under Articles 21 and 22 of the DSU.[4] That Agreement provided that Canada was not required to hold consultations with the United States prior to requesting the establishment of a panel under Article 21.5 of the DSU. Consequently, Canada requested that a panel be established under Article 21.5 of the DSU, with standard terms of reference, to determine whether the amended COOL measure complied with the US WTO obligations.

7.4. The Chairman then drew attention to the communication from Mexico contained in document WT/DS386/25 and invited the representative of Mexico to speak.

7.5. The representative of Mexico said that, on 23 May 2013, the United States had published a measure in the Federal Register which, the United States believed, brought it into compliance with the DSB's rulings and recommendations in the "US - COOL" dispute. However, the published measure was even stricter than the original one. The new measure would cause even greater harm to Mexican cattle exports as well as greater and more serious trade distortions, as it unnecessarily increased costs for the livestock sector. The Panel and the Appellate Body Reports had recognized that requiring meat product labels to specify whether the meat was derived from cattle born in Mexico involved segregation practices that affected Mexican livestock throughout the production chain, resulting in high costs that were transferred to Mexican producers and encouraged the US market to use US livestock for the processing of meat products. This dispute had begun in 2008 and, in spite of the fact that Mexico had obtained favourable ruling, exports of Mexican cattle continued to be subject to measures that affected conditions of competition in the US market. On 13 June 2013, Mexico and the United States had notified the DSB of the Agreed Procedures under Articles 21 and 22 of the DSU in relation to this dispute. Mexico would continue to challenge the discriminatory practices of the United States within the WTO framework and would seek to ensure that it complied fully with its international obligations. In light of the foregoing, Mexico requested that a compliance panel be established, under the Agreed Procedures between Mexico and the United States, to determine whether the new Country of Origin Labelling measure, issued by the United States on 23 May 2013, complied with the rulings and findings of the Panel and Appellate Body and with the other provisions of the WTO covered agreements, or whether it still failed to meet such obligations. Mexico urged the United States to adopt measures that fully complied with the DSB's rulings and recommendations and to refrain from applying measures that unduly distorted trade.

7.6. The representative of the United States said that his country was disappointed that Canada and Mexico had requested the establishment of a panel on this matter. The US Department of Agriculture's May 2013 final rule ensured that US consumers were provided with detailed and accurate origin information for muscle cuts of meats in order to allow consumers to make informed purchasing decisions. Under the final rule, country of origin labels must include information about where each of the production steps (i.e., born, raised, slaughtered) had occurred for covered muscle cut commodities derived from animals that had been slaughtered in the United States. That final rule brought the United States into compliance with the DSB's recommendations and rulings in this dispute within the period determined by the WTO arbitrator. While the United States was fully prepared to defend the amended COOL measure in a compliance proceeding, it remained prepared to work in a constructive manner with Canada and Mexico outside the framework of litigation to address their respective concerns with the US COOL program. For those reasons, the United States was not in a position to agree to the establishment of a panel.

[4] WT/DS384/25.

7.7. The Chairman said that, although the parties concerned had agreed on a sequencing agreement, they had not agreed beyond saying that the provisions of, and the procedures of Article 21.5 of the DSU shall be applied and thus it was open to a Member to say it needed more time and there was an opportunity to consult. For that reason, the DSB would not take any decision but would, instead, take note of the statements, and depending on further discussions, may find itself reverting to these matters at its next meeting.

7.8. The DSB took note of the statements and agreed to revert to these matters.

8 CHINA – COUNTERVAILING AND ANTI-DUMPING DUTIES ON GRAIN ORIENTED FLAT-ROLLED ELECTRICAL STEEL FROM THE UNITED STATES

A. Statement by China

8.1. The representative of China, speaking under "Other Business" said that at its meeting on 16 November 2012, the DSB had adopted the Appellate Body Report and the Panel Report in the dispute: "China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States" (DS414). On 3 May 2013, the WTO Arbitrator had determined that the reasonable period of time for China to implement the DSB's recommendations and rulings in this dispute was eight months and 15 days, which had expired on 31 July 2013. On 31 July 2013, the Ministry of Commerce of China had published the Announcement on the Implementation of the WTO Rulings against Grain Oriented Flat-rolled Electrical Steel (Announcement [2013] No. 51). Thus, China had come into full compliance within the reasonable period of time. His country wished to confirm that China and the United States had concluded a sequencing agreement in this dispute on 19 August 2013, which had been circulated as document WT/DS414/14. With respect to the implementation of the DSB's recommendations and rulings in this dispute, China believed that it had taken all necessary steps to bring the measure into full compliance. At the same time, China remained open to further discussions with the United States to discuss any concerns that the United States may have.

8.2. The DSB took note of the statement.

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

9.1. The Chairman, speaking under "Other Business", said that regarding the appointment of a new member to the Appellate Body, as all Members should be aware, as of the present meeting, four candidates had been nominated for one position in the Appellate Body. The nominations had been submitted by the following delegations: Kenya, Cameroon, Australia and Egypt. As it had been agreed by the DSB pursuant to its decision of 24 May 2013 contained in WT/DSB/60, the last day for nominations was 30 August 2013. Pursuant to that DSB decision, a Selection Committee had been established to carry out the selection process. Consistent with past practice, the Selection Committee was composed of the Chairs of the General Council, the Goods Council, the Services Council and the TRIPS Council as well as of the Director-General and the Chair of the DSB. He also recalled that the DSB had agreed to request the Selection Committee to conduct interviews with candidates and to hear the views of delegations in September/October and to make its recommendation by no later than 7 November 2013. That would enable the DSB to take a decision on the appointment at its regular meeting in November, which had been rescheduled for 25 November 2013. After the deadline of 30 August expired later that day, he would be in contact with members of the Selection Committee to reconfirm the process that would be followed and to agree on a specific timetable for interviews, as well as to set aside time to hear the views of delegations on the candidates before making a final recommendation. As soon as the timetable for the process was agreed, he would send a fax to all delegations with an update on the process and he would ask the Secretariat to make the necessary arrangements to set up appointments for the Committee to hear the views of delegations. As in the past, delegations were also free to make their views known to the Selection Committee in writing. Any such written communication should be sent to the Chairman of the DSB in care of the C-TNC Division. A deadline for written comments would be communicated to delegations shortly by fax. Consistent with past practice, delegations wishing to meet with the candidates were invited to contact directly the Missions of the respective nominating Members in order to make appropriate arrangements. Delegations may wish to wait for the dates of when the candidates would be in Geneva before contacting the nominating Missions.

Regarding the reappointment of Mr Peter Van den Bossche, he informed delegations that he was continuing his consultations on the possible reappointment of Mr. Van den Bossche for a second four-year term as an Appellate Body member.

9.2. The DSB took note of the statement.

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

10.1. The Chairman, speaking under "Other Business", recalled that, at the July 2013 DSB meeting, he had presented to delegations a draft revised version of the Annual Report of the DSB which was in a new format to make it more readable and more accessible to a broader Membership. He had presented the draft as a room document. At that meeting, he had explained that the principal motivation for making changes was to produce a text that would be in line with the request of the General Council made in 2012 to all Chairs of the WTO Bodies to work with Members, in order to reduce the overall volume of official documents submitted for production, thereby reducing translation and printing costs. He had invited delegations to comment and had received some constructive comments endorsing the overall approach and offering a few refinements. In particular, he thanked Mexico and the United States for offering thoughtful comments, which were mainly of an editorial nature. He had taken those comments into account and, together with the Secretariat, had further revised the draft which was being distributed at the present meeting. He reminded delegations that the Annual Report of the DSB was prepared in pursuance of the "Procedures for an Annual Overview of WTO Activities and for Reporting under the WTO" set out in WT/L/105. The 2013 Report would be presented for adoption in its final version and in the three languages of the WTO at the DSB meeting on 22 October, following which it would be submitted to the General Council at its meeting on 5/6 November. The General Council would then take note of the Report and submit it to MC9, which would undertake an overview of WTO activities on the basis of Annual Reports from the General Council and from other WTO bodies. He urged delegations with any further comments on the draft Report to inform him as soon as possible.

10.2. The DSB took note of the statement.

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