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on 21 January 2008

Chairman: Mr. Bruce Gosper (Australia)

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Prior to the adoption of the Agenda

The representative of Japan said that, in light of the action taken by the United States, as reflected in WT/DS322/25, and the consequent referral to arbitration, pursuant to Article 22.6 of the DSU, the DSB was not in a position to grant authorization pursuant to Article 22.6 of the DSU and, therefore, the Agenda could be adopted without sub-items 4(a) and 4(b).[2] Japan understood that the adoption of the Agenda without sub-items 4(a) and 4(b) would not constitute a withdrawal of Japan's request for DSB authorization, as set out in documents WT/DS322/23 and WT/DS322/24.

The representative of the United States said that his country agreed with Japan that the DSB was not in a position to grant authorization pursuant to Article 22.6 of the DSU and, therefore, the Agenda could be adopted without sub-items 4(a) and 4(b). The United States confirmed Japan's understanding that the adoption of the Agenda without those sub-items would not constitute a withdrawal of Japan's request for DSB authorization.

The Chairman proposed that the DSB take note of the statements and the shared understanding between the parties concerning the referral to arbitration, and that the agenda be adopted with the changes as proposed.

The DSB took note of the statements and the shared understanding between the parties concerning the referral to arbitration, and adopted the agenda with the changes as proposed.

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.62)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.62)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT(DS160/24/Add.37)

(d) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/22/Add.2)

(e) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities (WT/DS291/37–WT/DS292/31–WT/DS293/31)

1. The Chairman recalled that Article 21.6 of the DSU required that "unless the DSB decides 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 pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved". He proposed that the five sub-items to which he had just referred be considered separately.

[2] See WT/DSB/W/368 - Item 4: "United States – Measures Relating to Zeroing and Sunset Reviews: (a) Recourse to Article 22.2 of the DSU by Japan (WT/DS322/23); (b) Recourse to Article 22.2 of the DSU by Japan (WT/DS322/24)".

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.62)

2. The Chairman drew attention to document WT/DS176/11/Add.62, 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 10 January 2008, in accordance with Article 21.6 of the DSU. As noted in that status report, a number of legislative proposals that would implement the DSB's recommendations and rulings in this dispute had been introduced in the current Congress, in both the US Senate and the US House of Representatives. The US administration continued to work with the US Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Communities said that the EC was now approaching the sixth anniversary of the condemnation of Section 211 by the DSB. The EC sincerely hoped that the bipartisan bills introduced in the US Congress to repeal Section 211 would finally progress and bring the United States into compliance with its TRIPS obligations.

5. The representative of Cuba said that the United States, a blatant non-compliant with the DSB's rulings, attracted the largest number of complaints under the dispute settlement mechanism. The United States had continued to submit laconic "compliance" status reports with no substance and had disregarded the concerns raised by a number of delegations in the DSB meetings. If Members wanted to have a strong dispute settlement mechanism, which would ensure just and equitable protection of their rights, not only the most powerful ones, then the current mechanism – once viewed as the "jewel in the crown" able to resolve conflicts and prevent trade wars – was in urgent need of reform. Perhaps punitive measures should be imposed on those Members who blatantly and persistently failed to comply with the DSB's rulings and recommendations, and Members affected by such failures should be offered fair compensation. Ten years ago, the US Congress, giving into the pressures and bribes of the extreme right-wing Cuban Americans and their partners in the firm Bacardi SA, had approved the so-called Section 211. This legislative aberration violated the international laws and treaties to which the United States was a party.

6. Section 211 violated obligations set forth in the TRIPS Agreement and the Paris Convention for the Protection of Industrial Property. And yet it had been in force for years, in spite of the persistent and reasoned complaints raised by Cuba and other Members concerning this disregard of international trade rules. All Members knew how important it was, from the economic point of view, for a country to enjoy proper protection of copyright works, inventions, trademarks or industrial designs. Section 211 ignored the rights of the owners of well-known Cuban trademarks, thereby preventing these intangible assets from being successfully exploited. The United States accused other Members of non-compliance in various disputes. At the same time, the United States did not comply with the DSB's recommendations, and continued to provide Members with the same excuses regarding its non-compliance. Meanwhile, Bacardi SA, through manoeuvring and bribery of people in the right places, had taken unfair advantage of the situation. It had fraudulently marketed rum of low quality in the United States under the Havana Club trademark, and had repeatedly been taken to court in the United States. Section 211 was an extension of the US economic, commercial and financial blockade, which had been imposed on Cuba for decades. Although there was no solution in sight and efforts to denounce this situation were futile, Cuba reiterated that it would not allow this issue to be forgotten, and that it would pursue its condemnations in every possible forum. Cuba called for the immediate revocation of Section 211. If such WTO-inconsistent measures remained in force, they would pose a threat to the stability of the multilateral trading system, which appeared to favour only a few Members.

7. The representative of Brazil said that his country wished to renew its systemic concerns about the situation of non-compliance in this dispute. Despite the adoption of the Panel and the Appellate Body Reports by the DSB in this dispute several years ago, no implementing action had been taken by the United States. Brazil, once again, urged the United States to take, promptly, the requisite steps to bring the condemned measures into compliance with the DSB's recommendations.

8. The representative of China said that his country thanked the United States for its status report and its statement made at the present meeting. However, it was very regrettable that the US status report contained no substantive changes. China had been making statements on this issue for almost three years, and once again, wished to reiterate its systemic concerns with the protracted implementation process in this dispute. The prompt and full implementation of the DSB's rulings and recommendations was one of the major cornerstones of the WTO dispute settlement system. China hoped that the current US Congress would realize that it was in the interest of not only other Members, but also in the interest of the United States to put an end to this situation, which undermined the authority of the TRIPS Agreement and the creditability of the dispute settlement system. Therefore, China urged the United States to make an extra effort to bring itself promptly into conformity with the decision of the DSB.

9. The representative of Thailand said that his country wished to thank the United States for its status report and the statement made at the present meeting. Like previous speakers, Thailand wished to express its concern over the systemic implications of this dispute. Non-implementation of the DSB's rulings and recommendations undermined the rules-based multilateral trading system. Thailand, therefore, called on the United States to take the necessary and urgent steps to comply with its obligations under the TRIPS Agreement.

10. The representative of India said that her country, while thanking the United States for the status report and the statement made at the present meeting, appreciated the steps taken thus far under Section 211 as a positive step. However, India wished to renew its systemic concerns about the situation of non-compliance in this dispute. As mentioned on previous occasions, this continuous non-compliance situation clearly undermined the credibility and confidence that the Members reposed in the system and the carefully negotiated balance of rights and obligations of the entire Membership.

11. The representative of the Bolivarian Republic of Venezuela said that her country thanked Cuba for its statement regarding the most recent developments in the case at hand, and noted the status report submitted by the United States. Her country, once again, wished to draw attention to the adverse effects of the failure to implement the DSB's recommendations, which were not only harmful to the sovereignty of the WTO, but could also undermine the credibility of the rights negotiated by Members, and their confidence in the multilateral trading system. Members had witnessed expressions of goodwill on the part of the United States and yet Section 211 continued to be under discussion in the DSB. Prompt compliance with the DSB's recommendations, and particular attention to matters affecting the interests of developing-country Members, were essential requirements, stipulated in Article 21.1 and 2 of the DSU. Preventing such flagrant violations must be a priority for all Members. Alternatives must, therefore, be sought to ensure prompt compliance with the DSB's rulings. If not, compensation should be offered to those developing countries which were affected by such protracted failures to comply. For the reasons set forth above, her country strongly requested that the United States fully comply with its obligations under the TRIPS Agreement.

12. The representative of Nicaragua said that, like previous speakers, her country wished to thank the United States for its status report. Nicaragua noted that that report was very similar to the one which had been submitted by the United States at the previous DSB meeting. It was for that reason that Nicaragua continued to express its systemic concerns regarding this issue, in particular since this matter had been on the DSB's agenda for a long period of time. Nicaragua wished to encourage the

United States to take a more pro-active attitude so as to ensure a prompt compliance with the DSB's recommendations.

13. The representative of Argentina said that, like previous speakers, Argentina highlighted the fundamental importance of prompt and satisfactory resolutions of disputes to the proper functioning of the dispute settlement system. Accordingly, Argentina requested that the parties to this dispute find a solution so that this item be removed from the DSB's agenda.

14. The representative of Viet Nam said that his country wished to join previous speakers and urged the United States to immediately implement the DSB's recommendations pertaining to this dispute.

15. The representative of the United States said that his country regretted very much that some Members – including some whose record of protecting intellectual property rights appeared less than robust – continued to criticize the US commitment to intellectual property rights. These criticisms were completely unfounded. It was, of course, true that the United States remained a strong advocate of substantial protections for intellectual property internationally. However, the United States was also second to no one in providing strong intellectual property protection within its own territory.

16. 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.62)

17. The Chairman drew attention to document WT/DS184/15/Add.62, 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.

18. The representative of the United States said that his country had provided a status report in this dispute on 10 January 2008, in accordance with Article 21.6 of the DSU. As of 23 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. Details were provided in document WT/DS184/15/Add.3. The US administration would work with the US Congress with respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities by 23 November 2002.

19. The representative of Japan said that his country thanked the United States for its statement and the latest status report in this dispute. Japan also acknowledged that, in November 2002, the United States had taken some measures to implement certain parts of the DSB's recommendations, as reported by the United States. The fact remained, however, that while it had been more than six years after the adoption of the DSB's recommendations, the remaining part of the recommendations had yet to be implemented and the issue of implementation in this case was still on the DSB's agenda. Japan noted the US statement that the US administration continued to support specific legislative amendments that would address unimplemented parts of the DSB recommendations and rulings, and that it was working with the current Congress to pass such amendments. Japan strongly hoped that the United States would soon be in a position to report to the DSB on more tangible progress in this respect. A full and prompt implementation of the recommendations and rulings of the DSB was essential for maintaining the credibility of the WTO dispute settlement system. Japan urged the United States to accelerate its work to come into full compliance without further delay.

20. 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.37)

21. The Chairman drew attention to document WT/DS160/24/Add.37, 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.

22. The representative of the United States said that his country had provided a status report in this dispute on 10 January 2008, in accordance with Article 21.6 of the DSU. The US administration would work closely with the US Congress and would continue to confer with the EC, in order to reach a mutually satisfactory resolution of this matter. In this regard, the United States appreciated the EC's recent statements that it remained prepared to work with the United States to seek a resolution to this dispute. The United States shared the EC's goal of discussing how such a mutually satisfactory solution could be achieved.

23. The representative of the European Communities said that, yet again, there was no need to repeat what the EC had stated countless times. The EC was still waiting for a solution in this long-standing dispute.

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

(d) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/22/Add.2)

25. The Chairman drew attention to document WT/DS322/22/Add.2, 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.

26. The representative of the United States said that his country had provided a status report in this dispute on 10 January 2008, in accordance with Article 21.6 of the DSU. As the US status report explained, the United States was no longer performing average-to-average comparisons in anti-dumping investigations without offsets. The United States had thus eliminated the single measure that Japan had challenged and that the Appellate Body had found to be inconsistent with the WTO Agreement "as such", and the United States had complied with the DSB's recommendations and rulings with respect to that measure. In addition, in respect of the one investigation that Japan had challenged "as applied" and which had not otherwise been revoked, the United States had issued a revised determination in connection with that investigation. In respect of the administrative reviews challenged "as applied", those reviews had been superseded by subsequent reviews. The United States had, therefore, also complied with the DSB's recommendations and rulings concerning those measures.

27. The representative of Japan said that his country thanked the United States for its statement concerning its status report regarding implementation of the DSB recommendations and rulings in this dispute. In the report, the United States had mentioned that, as from 22 February 2007, the United States was no longer using the zeroing methodology in weighted average-to-weighted average (W-to-W) comparisons in original investigations. As stated at the present meeting, the United States had also announced on 27 December 2007, that it had taken steps to implement the DSB's recommendations and rulings with respect to the anti-dumping investigation regarding imports of cut-to-length carbon quality steel products. Japan recognized that these were positive steps forward in the right direction. However, this step by the United States had addressed only a part of the DSB's recommendations and rulings. Despite the expiry of the reasonable period of time, mutually agreed between Japan and the United States, on 24 December 2007, in Japan's view, the United States had

taken no further steps than to abolish zeroing regarding W-to-W comparisons in the original investigations. For the remaining part of the DSB's recommendations concerning the other WTO-inconsistent zeroing measures, Japan found little progress in the status of the US implementations. In other words, according to the status report, the United States had not taken any measures to comply with regard to transaction-to-transaction (T-to-T) comparisons in the original investigations as such, periodic reviews as such, individual periodic reviews as applied, new shipper reviews as such, and individual sunset reviews, on all of which the Appellate Body had clearly found the inconsistency with the WTO Agreement. Nor did Japan find any indication on the part of the United States of its intention to make further efforts towards implementing the recommendations and rulings concerning these measures.

28. In addition, the United States had stated in the status report, with respect to the assessment reviews at issue in this dispute, that the results had been superseded by subsequent reviews in each case and that, therefore, no further action was necessary for the United States to bring these challenged measures into compliance with the recommendations and rulings of the DSB. Japan found it hard to understand this logic. Even after the subsequent reviews, the same measure still remained in force and under that measure the United States continued to collect WTO-inconsistent anti-dumping duties. The claims the United States was making raised a serious concern that the WTO dispute settlement system was unable to redress illegal individual anti-dumping actions, as long as the Member concerned subsequently conducted periodic reviews under a retrospective duty assessment system. The United States could not avoid its obligation to bring the measure into conformity according to the recommendations and rulings of the DSB, by falsely claiming that such measure no longer existed.

29. Japan believed that a full and prompt implementation of the DSB's recommendations and rulings was essential for the effective resolution of particular disputes. It was also essential for maintaining the credibility and proper functioning of the WTO dispute settlement system. It was Japan's deep regret that the United States had failed to do so. The Appellate Body Report shall be unconditionally accepted by the parties to the dispute, once adopted by the DSB, irrespective of their views on the Panel and Appellate Body Reports. In the light of the common objectives of the WTO dispute settlement shared by Members, Japan had felt obliged to take the next steps provided in the DSU. Accordingly, on 10 January 2008, Japan had requested authorization from the DSB to suspend the application to the United States of tariff concessions or other obligations pursuant to Article 22.2 of the DSU. Finally, Japan wished to urge the US administration to accelerate its efforts to come into full compliance with the DSB's recommendations and rulings and the US obligations under the covered agreements.

30. The representative of the European Communities said that the deadline for implementation of the DSB's ruling in this dispute had now expired. And, again, the EC was confronted with a failure of the United States to comply with the DSB's recommendations and rulings. He recalled that, with regard to the issue of zeroing, the EC was also awaiting full implementation of the rulings in its own zeroing case against the United States (DS294). In addition, the EC had had to initiate another dispute because of the continued application of zeroing by the United States, which was now pending before a panel (DS350). To justify its inaction, the EC had heard from the United States that the illegality of zeroing was not yet settled in the WTO. This was anything but correct. The issue of zeroing had been subject to numerous litigations since the first case brought against the EC in 1998. To-date, 12 disputes had been brought against the use of zeroing by the United States, whether as the unique subject of the dispute or as part of a wider dispute. All issues of law had been extensively pleaded and analyzed. There was no doubt left that zeroing ran foul of fundamental obligations of the Anti-Dumping Agreement, which were to establish dumping in respect of an exporter and a certain product, and to conduct a fair comparison between the export prices and normal value. The fact that the United States had sought a change to the WTO obligations in the future was not valid ground for not complying with the obligations as they currently stood. Going down the route suggested by the

United States would be the end of a system based on rules, which were enforced and respected to the equal benefit of all Members. The EC hoped that the United States would finally accept this and put an end to all remaining illegal practices of zeroing.

31. The representative of the United States said that it was clear from Japan's intervention that the United States and Japan had a disagreement about whether the United States had taken measures to comply with the DSB's recommendations and rulings or whether those measures were consistent with a covered agreement. The United States was, therefore, puzzled why Japan had chosen to pursue a request for retaliation and arbitration under Article 22.6 of the DSU at this time. It was well known that Japan was one of the most active proponents of "sequencing". Japan had advocated the position that the DSU text required a complaining party to have recourse to Article 21.5 when there was a disagreement about compliance. For instance, Japan had said that, in its view, "when there was disagreement [with regard to compliance], a prevailing party could not resort to Article 22.6 without resolving this disagreement through the process of Article 21.5".[3] Japan had also advocated that sequencing was important to the proper functioning of the dispute settlement system. When commenting on a US request to suspend concessions under Article 22.2, Japan had said that "it was important not to resort to unilateralism, and before the DSB authorized a request for suspension of concessions, there should be a factual determination of a violation of the WTO Agreement or non-compliance with the rulings of the panel or the Appellate Body. This would safeguard the long-term integrity, fairness and impartiality of the system. Japan had proposed to suspend the US request and wait for the determination of the panel under Article 21.5".[4]

32. In light of these prior statements, the United States wondered whether Japan intended to persist in its current course of action, and if so, what conclusion Members should draw from Japan's apparent change of position on sequencing. Second, regarding Japan's comments concerning the "as such" measure, Japan had only challenged one measure "as such", which it had referred to as the "zeroing procedures". The Panel and the Appellate Body had also concluded that the "zeroing procedures" "do not correspond to separate rules or norms, but simply reflected different manifestations of a single rule or norm" (AB Report, para. 88).

33. The representative of the European Communities said that, in light of the US comments, he wished to state that the EC was very strongly in favour of the sequencing mechanism when there was a genuine disagreement on implementation. The first step should be a compliance panel under Article 21.5 of the DSU and only then one could request arbitration under Article 22.6 of the DSU.

34. The representative of Japan said that his delegation wished to respond to the comment made by the United States. He said that the United States had stated that, by abolishing the zeroing methodology in W-to-W comparison investigations, it had removed the zeroing measures identified by the Panel and the Appellate Body. Because of that, there had to be some disagreement between Japan and the United States with respect to the implementation of "as such" measure found to be WTO-inconsistent. Japan was not sure whether there was any disagreement within the meaning of Article 21.5 of the DSU. Japan did not disagree that the United States had eliminated zeroing in W-to-W comparison in investigations and was not saying that that action was WTO-inconsistent. Japan was puzzled by the US intervention that there had to be some disagreement. Japan's position was that those actions, namely, abolishing zeroing methodology in W-to-W comparison investigations, had neither addressed Japan's concern nor the DSB's recommendations and rulings. Japan took note of the US statement and would continue to consult with the United States. With respect to the US comment on Japan's position regarding sequencing, Japan had been and continued to be a strong advocate of sequencing. Japan and the EC had put forward their proposal on sequencing in the context of the DSU negotiations. Japan was surprised about the US statement questioning Japan's position on this

[3] WT/DSB/M/54, p. 13.
[4] WT/DSB/M/54, p. 22.

matter. This was so especially because, in this particular case, Japan considered that the United States had made very little progress towards the implementation of the DSB's recommendations and rulings. Under such circumstances, Japan had requested authorization to retaliate in order to reserve its legitimate rights provided under the DSU provisions. However, Japan was still open to discussions with the United States regarding a sequencing agreement.

35. The DSB took note of the statements.

(e) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities (WT/DS291/37-WT/DS292/31-WT/DS293/31)

36. The Chairman drew attention to document WT/DS291/37-WT/DS292/31-WT/DS293/31, which contained the status report by the European Communities on progress in the implementation of the DSB's recommendations in the case concerning the EC's measures affecting the approval and marketing of biotech products.

37. The representative of the European Communities said that this case was an example of good faith cooperation between complainants and a defendant in relation to compliance with a WTO panel report. The EC had been holding regular technical discussions with the three complainants, which had addressed all relevant biotech-related issues of their concern. In recognition of the usefulness of this dialogue and progress made in the processing of pending applications, the three complainants had agreed to further extend the initial 12-month reasonable period of time for implementation until 11 January 2008. Two of the complainants (Argentina and Canada) had even agreed to a second extension of the reasonable period of time of five and one months respectively. The United States, while tabling a retaliation request, had concluded a sequencing agreement that would suspend proceedings conducive to the determination of any retaliation until compliance procedures under Article 21.5 of the DSU were concluded. Numbers might be illustrative in assessing progress. Seventeen applications had been approved since the WTO panel had been established in August 2003. Only in 2007, seven new GM products had been authorized and four other products would likely be approved in early 2008. The EC believed that given the inevitably sensitive nature of biotech issues, dialogue was the appropriate way forward and remained open to continue discussions with the three complainants.

38. The representative of the United States said that that his country thanked the EC for its written status report and for its statement made at the present meeting. The reasonable period of time for the EC's compliance in this dispute had expired on 11 January 2008. Although now over four and a half years had elapsed since the United States had filed its consultation request in May 2003, the issues covered in the dispute remained unresolved and the United States remained very concerned with the EC's treatment of agricultural biotech products. The EC had cited progress in making approvals, and indeed some approvals had occurred. The United States would note, however, that the DSB had found that the EC had adopted a general moratorium starting in 1999 – nearly eight years ago – and lasting at least through mid-2003. A handful of approvals over an eight year period was, unfortunately, of little commercial significance. Rather, the essential facts were that over 40 biotech applications were currently pending in the EC approval system – including many applications currently approved and marketed in major world markets. At least one pending application had been filed over 10 years ago.

39. The United States was, likewise, concerned that some of the member State product bans found by the DSB to be in breach of the EC's SPS obligations remained unchanged. Moreover, additional EC member States had adopted new bans on the very same biotech products covered by the member State measures found to be in breach of SPS obligations. The United States was especially disappointed that the Government of France, on 11 January 2008 – the very last day of what should have been a period for compliance – had announced that it would be adopting a new ban on the only

biotech variety currently grown commercially in the EC. Quite obviously, such actions were not conducive to a resolution of this dispute. The United States believed that it had been very patient throughout this dispute. Before initiating this dispute in May 2003, the United States had waited for four years for the EC to follow WTO rules, as well as its own published procedures and the recommendations of its own scientists. Even though the dispute settlement proceedings had taken three and a half years from the filing of the consultation request to the adoption of the Panel report, the United States had agreed to a one year reasonable period of time for compliance. The United States had further agreed to extend that period from 21 November 2007 until 11 January 2008.

40. On 17 January 2007, the United States had preserved its rights by filing with the DSB a request for authorization to suspend concessions. As the EC and the United States had informed the DSB, the parties had entered into a sequencing agreement under which the US request would be referred to arbitration and such arbitration proceedings would be suspended for a limited period of time. This process was intended to encourage further discussion and cooperation between the United States and the EC and was a further illustration of US patience. There was, however, a limit to how long the United States could wait before further exercising its rights under the DSU. US seed companies, farmers, and exporters continued to experience significant commercial losses as a result of the EC's treatment of biotech products. Furthermore, the EC's policies not only impeded US trade, but also discouraged the adoption of technology that had the potential to address many global problems. Biotech crops had the improved yields necessary to feed the world's growing population, offered tremendous opportunities for better health and nutrition, and could protect the environment by reducing soil erosion and pesticide use. For these reasons, the United States looked forward to continuing its dialog with the EC and urged the EC to take prompt action to address the outstanding issues regarding the EC's treatment of biotech products.

41. The representative of Argentina said that his country wished to thank the EC for submitting its first status report regarding the implementation of the DSB's recommendations. The report had been circulated in document WT/DS293/31, pursuant to Article 21.6 of the DSU. Given the EC's willingness to comply, Argentina had been holding discussions on a technical level with the EC, which had, thus far, proved positive. In view of the foregoing, on 11 January 2008, Argentina had decided to extend the reasonable period of time for implementation for five months with the aim of securing further significant progress on issues of mutual interest. Argentina agreed with the points made by the EC in its statement and welcomed the channel for dialogue, which had been established, in the hope that it would promote a definitive solution to the pending issues.

42. The representative of Canada said that her country thanked the EC for its status report, dated 10 January 2008. As the EC had stated, Canada, along with the other complainants in this matter, had been holding discussions on a technical level with the EC since the DSB's adoption of the Panel Report on 21 November 2006. During the course of the reasonable period of time, Canada had agreed to one extension of the original reasonable period of time to 11 January 2008, and had now agreed to a further extension of the reasonable period of time to 11 February 2008. Canada had agreed to this further short extension of the reasonable period of time in order to continue to pursue the technical dialogue that it had been engaged in, over the past 14 months. It was Canada's expectation that during this time, further technical discussions would yield progress in addressing Canada's concerns.

43. 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 Communities and Japan

44. The Chairman said that this item was on the agenda of the present meeting at the request of the EC and Japan. He invited the respective representatives to speak.

45. The representatives of the European Communities said that the United States had now completed its seventh illegal distribution under the CDSOA. Slightly more than US$262 million had been distributed to US companies, which had put the total amount disbursed thus far under the CDSOA close to US$2 billion. Another US$112 million was being held due to pending litigation and might be distributed later. The EC wished to ask again the United States if and what steps it intended to take to stop the transfer of anti-dumping and countervailing duties to its industry. The EC also renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit implementation reports in this dispute.

46. The representative of Japan said that on 5 December 2007, the US Customs and Border Protection issued the "FY2007 Annual Disbursements Report". Based on the information contained in that report, the total figure for fiscal year 2007 disbursements under the CDSOA, which had just been completed, amounted to some US$262 million. These latest disbursements demonstrated that the CDSOA had been repealed only in form, but was still operational. Although Japan recognized that duties collected on entries entered as from 1 October 2007 were no longer subject to the distributions, "the distribution process will continue until all entries made before [that date] are liquidated and the duties are collected".[5] In the US system, such liquidation and collection could take for years to come, and the distributions that would cause negative trade impacts on Japan and other WTO Members, would continue. Under these circumstances, Japan failed to see the rationale behind the US assertion that it had taken all necessary steps for implementation in this case. Japan, once again, urged the United States to immediately terminate the illegal disbursements and repeal the CDSOA not just in form, but also in substance. Under Article 21.6 of the DSU, the issue of implementation must be under surveillance by the DSB until the issue was resolved. Japan wished to remind the United States that it was still under obligation to provide the DSB with a status report pursuant to that provision. Japan reserved all its rights under the DSU until the United States would come into full compliance.

47. The representative of India said that her country expressed its appreciation to the EC and Japan for maintaining this issue before the DSB once again. While India appreciated and took note of the US statement in the previous DSB meeting to the effect that anti-dumping or countervailing duties that were being collected on products entered into the United States after 30 September 2007 would not be handed out to the US domestic industry, there remained the fact that distribution still did occur under the Byrd Amendment with trade-distortive effects on foreign producers and exporters. India asked the United States if and what steps it intended to take to stop the transfer of anti-dumping and countervailing duties to its industry, and urged the United States to cease its WTO-inconsistent disbursements.

48. The representative of China said that his country thanked the EC and Japan for, once again, raising this item at the DSB meeting. China supported the view expressed by previous speakers and wished to join them in urging the United States to fully comply with the DSB's rulings.

49. The representative of Canada said that her country was pleased that duty deposits collected by the United States after 30 September would no longer be subject to the Byrd Amendment. While this

[5] 71 Federal Register at 31336 et seq. (dated 1 June 2006).

was a significant step forward, duty deposits collected by the United States before 1 October 2007, would, nevertheless, continue to be subject to the Byrd Amendment. Until the United States ceased to administer the Byrd Amendment, Canada shared the view that surveillance by the DSB should continue.

50. The representative of Thailand said that his delegation wished to join previous speakers in thanking the EC and Japan for continuing to bring this item before the DSB. Thailand noted with appreciation the positive steps taken by the United States not to disburse to its industries AD/CVD duties collected on goods entering the United States from 1 October 2007. However, Thailand remained concerned that AD/CVD duties collected on goods that entered the United States prior to 1 October 2007 would continue to be disbursed to the domestic industry under the Byrd Amendment. The updated figures, mentioned by the EC and Japan, relating to the latest round of disbursements, validated Thailand's concern. Thailand, therefore, urged the United States to cease its WTO-inconsistent disbursements, to repeal the Byrd Amendment with immediate practical effect, and to resume providing status reports until such actions were taken and this matter had been fully resolved.

51. The representative of Brazil said that his country, once again, thanked the EC and Japan for keeping this item on the DSB's agenda and joined them in urging the United States to eliminate trade-distortive effects of the disbursements under the Byrd Amendment. The United States was still distributing disbursements under the CDSOA to the US domestic industry as a result of a WTO-inconsistent measure, at the expense of foreign producers and exporters and of WTO Members' rights. Brazil wished to emphasize that full compliance on the part of the United States would only come through the complete cessation of all disbursements under the Byrd Amendment.

52. The representative of the United States said that, as his country had already explained at previous DSB meetings, the US President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States welcomed the EC and Japan'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 was, therefore, all the more surprised to hear statements that the United States had not implemented the DSB's recommendations and rulings. The United States questioned whether its understanding was correct that the Members making such statements were saying that they considered that the United States had not implemented the DSB's rulings and recommendations, notwithstanding the fact that anti-dumping duties and countervailing duties that were being collected on goods now entering the United States would not be distributed to domestic firms. With respect to the comments regarding further status reports and the DSB's surveillance in this matter, as the United States had already explained at previous DSB meetings, the United States had taken all steps necessary to implement the DSB's recommendations and rulings in these disputes. In this light, the United States failed to see what purpose would be served by further submission of status reports repeating the progress the United States made in the implementation of the DSB's recommendations and rulings.

53. The DSB takes note of the statements.

3. Australia – Measures affecting the importation of apples from New Zealand

(a) Request for the establishment of a panel by New Zealand (WT/DS367/5)

54. The Chairman recalled that the DSB had considered this matter as its meeting on 17 December 2007 and had agreed to revert to it. He drew attention to the communication from New Zealand contained in document WT/DS367/5, and invited the representative of New Zealand to speak.

55. The representative of New Zealand said that, at the DSB meeting held on 17 December 2007, his country had briefly described its concerns with respect to Australia's measures for the importation of New Zealand apples. He did not propose to repeat that description at the present meeting. New Zealand had taken note of Australia's statement at the 17 December meeting, including Australia's comment that bilateral channels were the most effective way to deal with the issue. New Zealand, too, regretted that bilateral discussions on the specific matters described in its panel request had up to now not resulted in a mutually agreeable solution to New Zealand's concerns. His country, therefore, once again requested that the DSB establish a panel at the present meeting to examine the matters set forth in New Zealand's panel request.

56. The representative of Australia said that her country was disappointed that New Zealand had decided to make a second request for the establishment of a panel in this dispute. Australia reiterated its view that the measures set out in the Final Import Risk Analysis Report for Apples from New Zealand were consistent with Australia's WTO obligations. Australia appreciated the importance New Zealand attached to the apples issue, but remained convinced that bilateral channels were the most effective way to resolve this matter. Australia understood that New Zealand, in fact, shared Australia's desire for a bilateral solution. Australia acknowledged that a panel would be established at the present meeting. However, it considered that New Zealand's panel request failed to satisfy the requirements of Article 6.2 of the DSU. Australia had raised the substance of its concerns with New Zealand and, therefore, would not go through the issue at the present meeting. Australia reserved its right to bring these procedural deficiencies to the attention of the Panel, should these proceedings progress to that stage.

57. 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.

58. The representatives of Chile, the European Communities, Japan, Chinese Taipei and the United States reserved their third-party rights to participate in the Panel's proceedings.

4. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/367)

59. The Chairman drew attention to document WT/DSB/W/367, which contained additional names proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. Unless there was any objection, he wished to propose that the DSB approve the names contained in document WT/DSB/W/367.

60. The DSB so agreed.