RESTRICTED

WT/DSB/M/331

8 July 2013

(13-3565) Page: 1/23

Dispute Settlement Body
24 April 2013

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 24 APRIL 2013

Chairman: Mr. Jonathan Fried (Canada)

Table of Contents

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.125)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.125)

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.100)

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.63)

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.12)

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

G. United States – Measures affecting the production and sale of clove cigarettes: Status report by the United States (WT/DS406/11/Add.4)

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

1.1. The Chairman noted that there were eight sub-items under Agenda item 1 which referred to status reports submitted by various delegations, pursuant to Article 21.6 of the DSU. As Members were aware, 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 and shall remain on the DSB's Agenda until the issue is resolved". He recalled that, at the previous DSB meeting in March 2013, he had urged delegations to provide informative and up-to-date information about compliance efforts, and had encouraged delegations to make constructive comments focusing on new developments, suggestions and ideas on progress towards the resolution of disputes. At that meeting, he had mentioned that, in doing so, Members would be true to the intentions of the drafters of Article 21.6 of the DSU.

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.125)

1.2. The Chairman drew attention to document WT/DS176/11/Add.125, 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 11 April 2013, in accordance with Article 21.6 of the DSU. As noted in the US status report, at least five bills had been introduced in the current Congress in relation to the

recommendations and rulings of the DSB. These included H.R. 214, H.R. 778, H.R. 872, H.R. 873, and S. 647. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

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

1.5. The representative of Cuba said that her country noted that it had been a practice for the United States to continue to submit status reports that did not contain any information on progress in the implementation of the DSB's recommendations and rulings in this dispute, thereby violating Article 21.6 of the DSU. For many years, Cuba had heard of draft laws being introduced before various US government agencies with no results. Various initiatives, which could have worked in Cuba's favour and end this dispute, had been proposed. However, they had been rejected or remained a dead letter. With regard to the legislative texts referred to by the United States at the present meeting, no action had been envisaged, which would suggest that the legislation may be adopted. In fact, the draft H.R. 214 Cuba Reconciliation Act which, *inter alia*, provided for the repeal of Section 211 had been discussed in Congress since its 106th session. The 113th session was under way and no decision had been taken on the issue. Another draft law that had been mentioned by the United States made minimal cosmetic changes to the wording of Section 211 in an attempt to avoid Cuba's continued denouncement of that legislation. In light of this situation, Cuba emphasized that simply mentioning draft legislation that had never been approved could not be considered as progress or as a significant change in the US status report which, according to Article 21.6 of the DSU, should provide details on "progress in the implementation of the recommendations or rulings" of the DSB. Cuba regretted that it had to continue to make statements in the DSB to draw Members' attention to new violations by the United States under Section 211 and the US illegal blockade policy against Cuba.

1.6. Cuba noted that the United States proclaimed itself as a leader and champion of intellectual property rights and free trade. However, within the United States, usurpation of trademarks of a developing-country Member such as Cuba extended beyond the Havana Club to other renowned Cuban trademarks, flouting the protection that had been granted to them under the trade agreements that underpinned the WTO. New infringements of Cuban intellectual property rights were regularly legalized in the United States and were also permitted under Section 211, despite the fact that, in 2002, the DSB had ruled that Section 211 was inconsistent with the TRIPS Agreement and the Paris Convention. In response, the United States had done nothing more than to reaffirm the legal status of Section 211. Cuba found it contradictory and disgraceful to hear that the United States insist, before the DSB, that other Members establish and enforce high standards in the area of intellectual property rights, when Section 211 was inconsistent with the legal principles enshrined in US trademark legislation. Cuba questioned how many Cuban trademarks would continue to be counterfeited and marketed on US territory. In Cuba's view, the credibility and effectiveness of the multilateral trading system was being undermined by the US failure to comply with the DSB's obligations, as it continued with impunity to market Havana Club rum of Puerto Rican origin. Cuba would continue to denounce these violations, stand up for its rights and seek prompt settlement of this dispute by repealing Section 211.

1.7. The Chairman said that, at this point, he wished to remind delegations of Rule 27 of the Rules of Procedure for meetings of the DSB. He suggested that delegations who had made written statements available for this meeting could consider summarizing the essence of their statements in their oral interventions. The written statements would be then made available to all delegations shortly after the meeting.

1.8. The representative of India said that his country thanked the United States for the status report and for its statement made at the present meeting. India noted with regret that there was no substantive change in the situation. India reiterated its systemic concerns about the continuation of non-compliance, since this undermined the credibility and confidence that Members reposed in the system. India urged the United States to report full compliance without any further delay.

1.9. The representative of China said that her delegation understood the Chairman's intention to ask Members not to repeat previously stated positions or make the same statements. However,

since the United States had continued to repeat its status report, China felt obliged to repeat its position, as instructed by its capital. Therefore, China asked for the Chairman's understanding and tolerance in this regard. China thanked the United States for its status report and the statement made at the present meeting. In China's view, the prolonged situation of non-compliance in this dispute was highly incompatible with the prompt and effective implementation required under the DSU provisions, in particular since the interests of a developing-country Member were affected. China joined other Members in urging the United States to implement the DSB's rulings and recommendations without further delay.

1.10. The representative of Argentina said that his country thanked the United States for its status report and the statement made at the present meeting. Argentina noted that the US status report contained an additional paragraph with more information than what was contained in the usual status reports submitted by the United States. Argentina thanked the United States for the additional information and hoped that future status reports would provide an update on progress being made with respect to draft legislations. As Argentina had mentioned at previous DSB meetings, this situation of non-compliance in this dispute was inconsistent with the principle of prompt and effective implementation stipulated in the DSU provisions and affected the interests of a developing-country Member. Argentina, therefore, supported the statements made by Cuba and other delegations and urged both parties to the dispute, in particular the United States, to take necessary measures so as to remove this matter from the Agenda of the DSB.

1.11. The representative of Angola said that his country thanked the United States for its status report regarding the implementation of the DSB's decision and the Appellate Body's findings of 12 February 2002 on Section 211. This was a positive step forward towards finding a solution to this systemic issue. However, Angola wished to emphasize that prompt compliance with the DSB's recommendations and rulings was essential to ensuring an effective resolution of disputes to the benefit of all Members. As Members were aware, the Panel Report had concluded that Section 211 was inconsistent with Article 42 of the TRIPS Agreement. In February 2002, the Appellate Body had confirmed that Section 211 violated the national treatment and the most-favoured-nation principles under the TRIPS Agreement and the Paris Convention, and had requested the United States to bring Section 211 into conformity with its obligations under the TRIPS Agreement. The delay in the implementation of the DSB's decision, despite the fact that Section 211 had been found to be inconsistent with WTO rules and principles, affected a central element of the multilateral trading system, which provided security and predictability for all Members. It also set a negative precedent for other cases. Angola believed that concrete steps and actions by the parties to this dispute would send a positive signal of respect for WTO rules.

1.12. The representative of the Bolivarian Republic of Venezuela said that her country noted that the 125th US status report did not contain any information on progress in this dispute. In that regard, Venezuela had no option but to reiterate its disappointment and concern about the US continued disregard of the DSB's ruling of more than 11 years ago and its lack of political will to resolve this dispute. Venezuela noted that the United States continued to maintain Section 211 and had initiated State proceedings aimed at continuing to usurp the well-known Cuban trademark, the Havana Club. This was part of the North American embargo to which the Cuban people were being subjected. Therefore, Venezuela reiterated its support for Cuba and urged the United States to comply with the DSB's recommendations and to put an end to its policy of economic, commercial and financial blockade against Cuba, as requested by the international community. In Venezuela's view, this situation of non-compliance was unacceptable, affected the interests of a developing-country Member and undermined the credibility of the DSB and the multilateral trading system.

1.13. 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 and promptly comply with the DSB's recommendations and rulings by repealing Section 211.

1.14. The representative of the Plurinational State of Bolivia said that, for the past 11 years, Members had to listen to the US statements under this Agenda item, however no real progress had been made in this dispute. Bolivia, once again, reiterated its systemic concern about the US failure to comply with the DSB's recommendations and rulings. Bolivia was also concerned about the lack

of political will on the part of the United States to resolve this dispute. This situation of non-compliance undermined the credibility and integrity of the multilateral trading system and caused harm to a developing-country Member. Bolivia urged the United States to comply with the DSB's recommendations and rulings and to take steps to remove the restrictions imposed under Section 211. Bolivia supported the concerns expressed by Cuba at the present meeting.

1.15. The representative of Uruguay said that his country noted that the Chairman had requested delegations not to repeat the same statements concerning Section 211. Once again, Uruguay emphasized the importance of strict compliance with the DSB's recommendations and rulings. The DSB was the basis of the WTO legal system and a forum in which the compliance with WTO obligations had to be ensured. Therefore, Uruguay unfortunately had to, once again, urge the parties to this dispute to take up their responsibilities and redouble their efforts to resolve the matter. Uruguay noted that it had been 11 years of non-compliance with the DSB's recommendations and rulings.

1.16. The representative of Viet Nam said that his country thanked the United States for its status report. Viet Nam noted that, once again, the US status report showed little progress in the implementation of the DSB's recommendations and rulings in this dispute. Viet Nam urged the United States to implement the DSB's recommendations and rulings.

1.17. The representative of Nicaragua said that his country thanked the United States for its status report. As had been stated by Cuba, for more than 11 years, this dispute demonstrated the lack of will on the part of the United States to comply with the DSB's ruling. Nicaragua supported Cuba's systemic concerns regarding the US failure to comply with the DSB's recommendations and rulings. This situation of non-compliance undermined the credibility of the multilateral trading system and had a negative impact on a small country like Cuba. Nicaragua, once again, urged the United States to comply with the DSB's recommendations and rulings by adopting the necessary measures that would eliminate the restriction imposed under Section 211.

1.18. The representative of Brazil said that his country thanked the United States for its status report on the implementation of the DSB's recommendations in this dispute. Brazil noted that, once again, the United States reported lack of progress. Brazil remained concerned about this situation of non-compliance with the DSB's recommendations and urged the United States to bring its measures into conformity with the relevant WTO rules.

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

1.20. The representative of the Dominican Republic said that his country thanked the United States for its status report in this dispute. The Dominican Republic would have wished to abide by the Chairman's opening remarks made at the March DSB meeting. However, there had been no change in this dispute and the United States had, once again, reported non-compliance. The Dominican Republic supported the statement made by Uruguay regarding the US failure to comply with the DSB's recommendations and rulings concerning the inconsistency of Section 211 with Article 42 of the TRIPS Agreement. The Dominican Republic, once again, urged the United States to step up its internal efforts so as to comply with the DSB's recommendations and rulings. The long period of time that had passed with no implementation undermined the credibility of the WTO.

1.21. The Chairman said that, in order to assist delegations in reporting to their capitals, including the United States – which would no doubt report to its various authorities on this matter – he wished to draw Members' attention to the fact that, in addition to the United States, the delegations of the EU, Cuba, China, Argentina, Angola, Ecuador and Bolivia had made their written statements available at the present meeting, and thus delegations could refer to them in greater detail.

1.22. 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.125)

1.23. The Chairman drew attention to document WT/DS184/15/Add.125, 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.

1.24. The representative of the United States said that his country had provided a status report in this dispute on 11 April 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.

1.25. The representative of Japan said that his country thanked the United States for its statement and status report submitted on 11 April 2013. Since the content of the US status report had not changed from the previous one, Japan's position had not changed either, as expressed at the previous DSB meeting.

1.26. 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.100)

1.27. The Chairman drew attention to document WT/DS160/24/Add.100, 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.

1.28. The representative of the United States said that his country had provided a status report in this dispute on 11 April 2013, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

1.29. 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 regarding its wish to resolve this dispute as soon as possible.

1.30. 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.63)

1.31. The Chairman drew attention to document WT/DS291/37/Add.63, 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.

1.32. The representative of the European Union said that the EU, once again, wished to express its hope that it would continue on the constructive path of dialogue with the United States. Over the past three years, four technical meetings had taken place, the most recent one had been held only a few days ago. The discussions had offered a good opportunity to address directly issues of concern to both sides and to follow up closely on developments in the biotech field. The EU authorization system continued to function normally. In 2012, the Commission had authorized five

new GMOs[1] and had renewed the authorization of a sixth one.[2] Three of those decisions[3] had been adopted only six months after the relevant EFSA opinions had been published, while the recent decision on MIR162 had been adopted less than four months after the EFSA opinion.[4] Regarding the concerns expressed by the United States on the back-log of approvals, the EU, once again, recalled that the EU approval system was not covered by the DSB's recommendations and rulings. The EU underlined that the GMO regulatory regime was working normally as evidenced by the approval decisions just mentioned. At the meeting of the relevant committee of 26 April 2013 the Commission would present, for discussion and vote, an authorizing decision for three GMOs[5], and two more decisions[6] would be submitted to the following meeting.

1.33. The representative of the United States said that his country thanked the EU for its status report as well as its statement made at the present meeting. As the EU was well aware, the United States continued to have serious concerns regarding EU measures affecting the approval of biotech products. The United States had noted these concerns at the last three meetings of the DSB and, in particular, its concerns with the progress of applications for a new biotech soy variety and a new biotech corn variety. While the United States understood that the EU's scientific authority (EFSA) had published positive opinions for both products in 2012, the United States understood that consideration of those products remained delayed in the EU approval system. As the United States had noted at the last DSB meeting, the relevant Standing Committee had discussed the EFSA opinion for the corn event at its March 2013 meeting, but a regulatory proposal for approval had still not yet been presented. As this illustrated, the EU measures affecting the approval of biotech products currently resulted in serious restrictions on trade in agricultural commodities. The United States continued to urge the EU to take steps to address these matters. The United States also said that it would like to comment briefly on what the EU delegate had said with respect to technical discussions that had been taking place. The United States appreciated the opportunity to discuss with the EU its concerns with market access for products derived from biotechnology. The discussions of late had been very helpful for the United States to review in detail the status of applications before the EU authorities. That said, as the United States had expressed during those discussions and at the present meeting, the United States continued to have concerns regarding delays in approvals and the negative impact this had had, and hoped that the parties could resolve this matter.

1.34. The Chairman thanked the EU and the United States for their statements. Although he had detected some repetition in each of their statements, he thought that both parties had provided a substantive update on their respective perspectives and on initiatives that had been taken in their capitals and with each other in consultations. This helped to inform the broader Membership of the nature of the dispute and gave Members a chance to consider whether, and in what ways, they might be helpful in nurturing the two sides towards a mutually acceptable solution. He thanked both parties for providing a good model of status report updates.

1.35. 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.12)

1.36. The Chairman drew attention to document WT/DS371/15/Add.12, 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.

1.37. The representative of Thailand said that her country wished to refer Members to its most recent status report in this dispute, which had been circulated on 12 April 2013. Thailand and the Philippines would hold informal consultations in this dispute in Bangkok the following week. Thailand hoped that the informal consultations would lead to a mutually satisfactory outcome to

[1] A5547-127 soybean, 356043 soybean, MON87701 soybean, MON87701 x MON89788 soybean, MIR162 maize.
[2] 40-3-2 soybean.
[3] Authorization decision for 356043 and MON87701 soybeans, MON87701 x MON89788 soybean.
[4] EFSA opinion: 21 June 2012; decision on authorization: 18 October 2012.
[5] Ms8, Rf3 and Ms8xRf3.
[6] Maize stack events MON89034 x 1507 x MON88017 x 59122 and GM maize MON89034×1507×NK603.

the dispute without the need for further WTO proceedings. In that regard, Thailand looked forward to constructive discussions.

1.38. The representative of the Philippines said that his country thanked Thailand for its status report and for its statement made at the present meeting. As referred to by Thailand, the Philippines had agreed to hold a further bilateral meeting to discuss outstanding issues of compliance. The meeting would take place the following week in Bangkok. From the Philippines' point of view, this was the last attempt to avoid further litigation. The Philippines, therefore, expected tangible progress towards a resolution of the outstanding issues from that meeting. Should there be no progress, the Philippines was ready to return to dispute settlement proceedings.

1.39. 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.11)

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

1.41. The representative of the United States said that his country had circulated a status report in this dispute on 11 April 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 US Trade Representative had requested, pursuant to Section 129 of the Uruguay Round Agreements Act, that the US Department of Commerce take action necessary to implement the DSB's recommendations and rulings. The United States would continue to consult with interested parties as it worked to address the recommendations and rulings of the DSB.

1.42. The representative of Viet Nam said that his country thanked the United States for its status report and its statement made at the present meeting. Viet Nam recalled that the reasonable period of time that had been mutually agreed by both parties had expired nine months ago but the United States had not taken any action to implement the DSB's recommendations and rulings. Viet Nam reiterated its systemic concerns about the US non-compliance in this dispute and its failure to meet its international obligations. Viet Nam, once again, urged the United States to implement, without any further delay, the DSB's recommendations and rulings and, in particular, to revoke the anti-dumping duty order that was inconsistent with WTO rules.

1.43. The representative of Cuba said that her country wished to reiterate the importance of effective compliance with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. In Cuba's view, unjustified lack of compliance by a country with great economic weight like the United States was of great concern. Cuba noted that this was, unfortunately, another case of non-compliance on the part of the United States. Cuba urged the United States to take stock of the pending non-compliance issues in the DSB and to find solutions to all its disputes that were currently before the DSB.

1.44. The representative of the United States said that it was important to recognize that the United States had come into compliance fully and promptly in the vast number of disputes in which it had been a party. As the Agenda of the present meeting demonstrated, there remained a few instances where US efforts to come into compliance had not been successful. However, the United States did continue to work towards compliance and it was important not to allow the comments regarding the US compliance record to go unanswered.

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

G. United States – Measures affecting the production and sale of clove cigarettes: Status report by the United States (WT/DS406/11/Add.4)

1.46. The Chairman drew attention to document WT/DS406/11/Add.4 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US measures affecting the production and sale of clove cigarettes.

1.47. The representative of the United States said that his country had provided a status report in this dispute on 11 April 2013, in accordance with Article 21.6 of the DSU. As noted in the status report, US authorities continued to confer with interested parties and work to implement the recommendations and rulings of the DSB in a manner that was appropriate from the perspective of the public health.

1.48. The representative of Indonesia said that his country thanked the United States for its status report and wished to reiterate its statement made at the previous DSB meeting on 26 March 2013. Indonesia noted that the reasonable period of time for the United States to implement the DSB's recommendations and rulings in this dispute would expire in about three months. Indonesia appreciated the US position to uphold its interest to promote the public health, as long as the measure was not more trade restrictive than necessary. Therefore, Indonesia urged the United States to report on more concrete progress on the implementation of the DSB's recommendations and rulings in this dispute at the next DSB regular meeting.

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

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

1.50. The Chairman drew attention to document WT/DS381/18 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case regarding the US measures concerning the importation, marketing and sale of tuna and tuna products.

1.51. The representative of the United States said that, as Members were aware, the United States had provided a status report in this dispute on 11 April 2013, in accordance with the DSU. As noted in its status report, on 5 April 2013, the United States had published, in the Federal Register, a proposed rule related to the US dolphin-safe labeling standards that had been at issue in this dispute.[7] The proposed changes included in the Federal Register would help ensure that consumers received accurate information concerning whether the tuna in a product labeled "dolphin safe" had been caught in a manner that caused harm to dolphins. The United States would continue to work to implement the recommendations and rulings of the DSB by the end of the reasonable period of time.

1.52. The representative of Mexico said that his country took note of the US publication in the Federal Register of draft regulations amending certain requirements on "dolphin-safe" labelling, in order to comply with the WTO decision in this dispute. Unfortunately, the proposed regulations did not remove discrimination against Mexican tuna. Mexico believed that Mexican tuna products would continue to be denied access to a "dolphin-safe" label, even though the Mexican fleet complied with the world's most extensive and sophisticated dolphin protection regime, the Agreement on the International Dolphin Conservation Program. The proposed regulations recognized that the United States did not apply the same "dolphin-safe" labelling rules to other countries. Their aim was to step up the monitoring of fishing practices in oceans other than the Eastern Pacific. However, they did not provide for an effective verification and enforcement mechanism. The proposed regulations, therefore, did not eliminate the economic injury caused to the Mexican industry, nor did they address the damage caused to the environment and dolphins by fishing fleets from other countries in other oceans. In that regard, Mexico was examining all the legal options available to it.

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

1.53. The representative of the United States said that his country thanked Mexico for its comments on US implementation efforts in this dispute, but the United States would take some exception to the way in which Mexico had characterized the proposed rule. It was the US view that the proposed rule would bring it into compliance with the DSB's recommendations and rulings. That said, the United States took note of Mexico's comments at the present meeting and would welcome further bilateral discussion with Mexico to discuss this matter.

1.54. The Chairman noted that the reasonable period of time for compliance was unfolding and hoped that constructive consultations could assist in resolving differences between the parties on implementation in this dispute.

1.55. 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 the EU wished to inform the DSB that the authorized level of retaliation against the United States would amount to US$60,774,402 from 1 May 2013. The regulation containing the EU measures had been published on 18 April 2013 and would soon be notified to the DSB. The EU noted the great increase in the levels of disbursements from US authorities to its industry and the corresponding increase in sanctions. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations and rulings. The EU was concerned that the US lack of implementation in this dispute was worsening. Once again, the EU requested that the United States stop transferring anti-dumping and countervailing duties to the US industry and 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, as the EU had mentioned, given the fact that the distributions under the CDSOA had been continuing to date, Japan, once again, urged the United States to stop the illegal distributions so as to resolve this dispute. Japan noted 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 Brazil said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. As had been expressed at previous meetings, Brazil was of the view that the United States was under obligation to submit status reports in this dispute until such time that no more disbursements were made pursuant to the Byrd Amendment. Only then would the issue be resolved within the meaning of the DSU and the United States would be released from its obligation to provide status reports in this dispute.

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

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

2.7. The representative of Thailand said that her country supported the statements made by 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 his country appreciated the opportunity to respond to some of the comments made at the present meeting. The United States thanked the other delegates for sharing their views on this item and the EU for the information that it had provided. The United States regretted to hear the EU's announcement about its proposed level of

retaliation and was looking forward to reviewing the EU's notification on this issue. However, the United States wished to be clear that, at the present meeting, the United States was not able to share the EU's characterization about the level of authorization as the DSB had only authorized the suspension of concessions as had been provided in the Award of the Arbitrator. With respect to comments made calling for the United States to provide further status reports in this matter, the United States had addressed at length in the last DSB meeting and would refer to the comments that had been made at that meeting. The United States had taken all steps necessary to implement the recommendations and rulings of the DSB in this dispute and it was not necessary to repeat that again at the present meeting.

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. He noted that the representative of Dominica, with the authorization of Antigua and Barbuda, would make a statement under this Agenda item. Before giving the floor to Dominica, he recalled that Members had briefly touched on this subject at the March DSB meeting under "Other Business". At that meeting, the representative of Dominica had made a statement on behalf of Antigua and Barbuda. That generated a bit of a side debate as to what was appropriate to take up under "Other Business". Certain delegations had highlighted the fact that substantive items should be placed on the Agenda in advance of the meeting. Other delegations had pointed out that any Member was free to raise any items under "Other Business". There was also a debate on whether written statements, which had not been circulated in advance, should be incorporated into the minutes of meetings under "Other Business". Following a good exchange on this matter at that meeting, he had invited delegations who had further thoughts on the matter to provide comments. In the meantime, the delegation of Antigua and Barbuda had requested that the longer version of the statement prepared for the March DSB meeting be circulated as a DS document to all Members. He was informed that that statement would be circulated as document WT/DS285/26. In light of this, the question raised at the last DSB meeting as to whether the longer version of the statement would appear in the minutes or not was, in effect, a moot question. He then invited the representative of Dominica to make the statement on behalf of Antigua and Barbuda.

3.2. The representative of Dominica, speaking on behalf of Antigua and Barbuda, read out the following statement: "The delegation of Antigua and Barbuda requested that this item be placed on the Agenda for today's meeting of the DSB in order to draw attention to the fact that to date, the United States has not complied with the recommendations or rulings of the DSB in dispute WT/DS285. Nor have the United States and Antigua and Barbuda negotiated and approved an agreed compromise in the matter. And, despite our bringing this matter to the attention of the DSB on a number of occasions, the United States continues to fail to comply with its obligation under the DSU to provide the DSB with a status report in writing of its progress in the implementation of the recommendations or rulings on a monthly basis until the dispute is resolved. We have also asked the United States on a number of occasions to comply with its monthly reporting obligations under the DSU, or at least explain why it has failed and refused to do so. To date, the United States has done neither, so instead of receiving monthly progress reports from the United States and having our dispute on the regular Agenda for DSU meetings, every month now it seems we are going to be required to put the item on the Agenda, express our dismay at the lack of progress in our case and at the failure and refusal of the United States to follow a very basic and unambiguous obligation of it under the DSU. If that is what it will take to keep our long-standing unresolved trade dispute before this Body, then that is what Antigua and Barbuda will do. But particularly in light of the woeful result we have achieved to date here at the WTO in claiming our proper rights under the GATS and the DSU, the more or less cavalier flaunting of its reporting obligations by the United States in DS285 does nothing to lessen our increasing fear that there is nothing on offer here for small, vulnerable economies."

3.3. The representative of the United States said that his country thanked the Chairman and Dominica for delivering the statement on behalf of Antigua and Barbuda. The United States

remained committed to constructive dialogue with Antigua to resolve this matter. The United States remained of the view that a negotiated resolution was the best outcome and would continue to proceed with those efforts. In relation to comments made at the present meeting about the need for the United States to provide status reports in this dispute and for this item to remain on the Agenda of the DSB, the United States recalled that it had invoked the GATS Article XXI process to withdraw the gambling concessions at issue in this dispute. In conjunction with that action, the United States had reached agreement with all other interested Members to complete that process by offering substantial new services concessions. Only Antigua had prevented the completion of that process by its actions. While the United States noted Antigua's willingness to discuss this issue at the DSB, the United States believed that the GATS Article XXI process was the proper forum for further discussion of this matter.

3.4. The representative of Jamaica said that his country supported the statement made by Dominica on behalf of Antigua and Barbuda. It was unfortunate that this case remained unresolved after such a protracted period and despite the clear and unambiguous DSB rulings in favour of Antigua and Barbuda. Jamaica had increasingly heard that the WTO's credibility and the wider multilateral system were at stake, largely due to persistent challenges confronting the WTO's negotiating pillar. Despite that, the dispute settlement aspect of the WTO's work had continued to demonstrate that it was possible for countries at any level of development to file cases and to expect a clear and transparent adjudication of trade disputes. The protracted failure to bring closure to this dispute, however, could have systemic and other implications for the dispute settlement process. Jamaica, once again, urged both parties to the dispute to leave no stone unturned in bringing the dispute to a swift, just and lasting conclusion. Developing countries and LDCs would continue to pay close attention to the outcome of this dispute, as it reflected on their ability to fully benefit from the multilateral trading system and the dispute settlement process in particular.

3.5. The representative of Trinidad and Tobago said that her country supported the statement made by Dominica on behalf of Antigua and Barbuda. Trinidad and Tobago recalled its statement made on behalf of CARICOM at the DSB meeting on 27 February 2013. At that meeting, CARICOM states had urged the United States to engage Antigua and Barbuda in meaningful and constructive negotiations in order to arrive at a mutually acceptable settlement to this long-standing dispute. The WTO's dispute settlement system was widely regarded as one of the most useful and critical features of the multilateral trading system. In that regard, in order to maintain the high degree of confidence in the system, Trinidad and Tobago looked forward to an amicable resolution of this matter in the near future.

3.6. The representative of Cuba said that her country supported the statement made by Dominica on behalf of Antigua and Barbuda. Cuba agreed with previous speakers that this was a regrettable case of non-compliance. Once again, Cuba urged the United States to resolve its pending disputes and, in particular, those affecting the interests of developing-country Members.

3.7. The representative of Brazil said that his country thanked Antigua and Barbuda for including this item on the DSB's Agenda. As it had previously stated, Brazil was of the view that the WTO dispute settlement system had proved to be a useful tool for resolving trade disputes among Members through a rules-based mechanism. However, the credibility and 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. Bearing that in mind, Brazil encouraged both parties to the dispute to engage in effective negotiations with a view to reaching a mutually-agreed solution to the long-standing "US-Gambling" case, in line with the DSB's rulings in this dispute.

3.8. The representative of the Dominican Republic said that his country supported the statement made by Dominica on behalf of Antigua and Barbuda. The Dominican Republic noted that this case affected the interests of a small economy and that non-compliance undermined the credibility of the rules-based system. The Dominican Republic, therefore, urged the United States to comply with the DSB's recommendations so as to ensure equal opportunities in trade for small and vulnerable economies.

3.9. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Dominica on behalf of Antigua and Barbuda, as well as the statements made by previous speakers on this matter. Venezuela noted that this was another case of failure

by one Member to respect the DSB's recommendations and rulings. The United States continued to repeatedly fail to comply with the DSB's ruling of 2005. Venezuela recalled that, in 2007, the compliance panel had confirmed that the United States had failed to comply with the DSB's recommendations and rulings. Non-compliance in this dispute affected a small developing-country Member whose economy was services-based, with services comprising about 78% of its GDP. Thus, any restriction on services would have a serious impact on Antigua and Barbuda's income. Venezuela supported Antigua and Barbuda, a member of the Bolivarian Alliance, and condemned the US lack of compliance. Venezuela urged the United States to comply with the DSB's recommendations and rulings.

3.10. The representative of Dominica, speaking on behalf of the Organization of Eastern Caribbean States (OECS), recalled the statement made at the 17 December 2012 DSB meeting on behalf of OECS member States. The member States of the OECS continued to call for a speedy resolution of this long-standing dispute in line with the DSB's rulings and recommendations and, more importantly, in line with the fundamental principles, objectives, goals and WTO Agreements, in order to take in account the needs of a small and vulnerable developing-country Member.

3.11. The DSB took note of the statements.

4 INDONESIA – IMPORTATION OF HORTICULTURAL PRODUCTS, ANIMALS AND ANIMAL PRODUCTS

A. Request for the establishment of a panel by the United States (WT/DS455/7)

4.1. The Chairman recalled that the DSB had considered this matter at its meeting on 26 March 2013 and had agreed to revert to it. He drew attention to the communication from the United States contained in document WT/DS455/7, and invited the representative of the United States to speak.

4.2. The representative of the United States said that, as noted at the last DSB meeting, the United States was concerned about Indonesia's broad use of import licensing measures on horticultural products, animals, and animal products. Among other things, Indonesia's discretionary and non-automatic import licensing regime required importers to obtain import recommendations from the Ministry of Agriculture and import permits from the Ministry of Trade. Indonesia also set import quotas for animals and animal products and its import licensing regime was non-transparent. These measures had had a significant adverse impact on exports to Indonesia of a range of products from the United States and other Members, including fruits, vegetables, flowers, dried fruits, juices, and meat. Further, they appeared to be in breach of some of Indonesia's core WTO obligations involving trade in goods. For several years, the United States had attempted to resolve its concerns through dialogue with Indonesia, but unfortunately those efforts had failed to resolve the dispute. The United States remained open to any action by Indonesia to remove its WTO-inconsistent measures and remained willing to find a mutually satisfactory solution to the dispute. However, at the present time, the United States was not in a position to conclude that Indonesia had taken action that addressed the problems identified in the US panel request. Accordingly, the United States was renewing the request that it had first made at the March 2013 DSB meeting and asked the DSB to establish a panel to examine the matter set out in the US panel request, with standard terms of reference.

4.3. The representative of Indonesia said that his country regretted that the United States had requested the establishment of the panel to examine this matter. Indonesia had taken seriously the US concerns that Indonesia's regulations on the importation of some horticultural products, animals, and animal products were inconsistent with the provisions of Articles X:1, X:3(a), and XI(1) of the GATT 1994; Article 4.2 of Agreement on Agriculture; as well as Articles 1.2, 3.2, and 3.3 of the Agreement on Import Licensing. Following the consultations held in Geneva on 21 and 22 February 2013, Indonesia had undertaken profound measures to respond appropriately to those concerns. With a strong good faith intention, Indonesia had also conducted intensive consultations amongst relevant ministries and other relevant stakeholders. Indonesia wished to refer to a number of high-level political meetings it had initiated to resolve this matter, namely: following the Cabinet meeting on 13 April 2013, a special meeting had been scheduled on 17 April 2013, chaired by the Coordinating Minister for the Economy in Indonesia; and on 19 April 2013, a meeting had been held between the Minister for Trade of the Republic of

Indonesia and the Acting USTR during the APEC's Ministers Responsible for Trade meeting in Surabaya. At the meeting on 19 April 2013 in Surabaya, Indonesia had again reiterated its strong commitments as a WTO Member and its good faith intention to resolve the case in accordance with the WTO Agreements. Indonesia had conveyed to the United States that the regulations under scrutiny would be amended or replaced. Those measures would be carried out with the spirit of providing enhanced transparency, certainty, and simplicity, as well as taking into account Indonesia's commitments in the WTO. Efforts had also commenced to bring the administration of imports of such products under a "one-roof services" system. This mechanism would be integrated into Indonesia's National Single Window (INSW) so as to ensure the application of non-discriminatory treatment of the importation of products in question. Amendment or replacement of the regulations pertaining to the importation of horticultural products would take place as soon as possible. Meanwhile, amendment or replacement of the regulations concerning the importation of animal and animal products would take place on a gradual basis due to the specific nature of the tasks to be addressed. Indonesia reserved the right to administer its import policies in accordance with Article XX of the GATT 1994.

4.4. Finally, Indonesia wished to refer to Article 4.7 of the DSU which stated: "If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the complaining party may request the establishment of a panel." Indonesia, therefore, understood that the process to resolve this matter was still being undertaken and the "consultation" that was governed by that provision had not failed. For those reasons, Indonesia was not in a position to agree to the establishment of a panel. However, Indonesia stood ready to contribute and take positive actions under the DSU provisions. Indonesia would continuously engage in bilateral exchanges and discussions with a view to achieving a mutually satisfactory outcome to this dispute.

4.5. The representative of the United States said that his country thanked Indonesia for, and appreciated, its explanation of the steps it had taken to address the matter raised in the US panel request. The United States was looking forward to receiving additional information on any steps that Indonesia had taken or planned to take, including copies of amendments and things of that nature. The United States would be pleased to review those details carefully and was optimistic that they could help resolve this dispute, if they removed the WTO-inconsistencies the United States had identified. However, at the present meeting, the United States was not in a position to say that the measures referenced addressed the serious WTO-inconsistences that had been identified in its panel report, which was why the United States was reluctantly continuing to move forward with this dispute.

4.6. The Chairman said that, before concluding this matter, he wished to make a clarification given that Indonesia had cited Article 4.7 of the DSU, suggesting that consultations had not yet failed. However, given that the request for the establishment of the panel was on the DSB's Agenda for the second time, the DSB must agree to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference. He hoped that continued consultations would lead to an amicable resolution of this dispute and a withdrawal or termination of the panel proceedings.

4.7. 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.

4.8. The representatives of Australia, Canada, China, the European Union, Japan, Korea and Chinese Taipei reserved their third-party rights to participate in the Panel's proceedings.

5 CHINA – MEASURES IMPOSING ANTI-DUMPING DUTIES ON HIGH-PERFORMANCE STAINLESS STEEL SEAMLESS TUBES FROM JAPAN

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

5.1. The Chairman drew attention to the communication from Japan contained in document WT/DS454/4, and invited the representative of Japan to speak.

5.2. The representative of Japan said that his country had made this request for the establishment of a panel on 11 April 2013. As had been explained in the panel request, this

dispute concerned China's anti-dumping measures on high-performance stainless steel seamless tubes ("HP-SSST") originating from Japan, thereby challenging their consistency with several provisions of the WTO Agreement. As set out in the request for the establishment of a panel, Japan's concerns related to every aspect of China's investigation. It appeared that MOFCOM's explanation was insufficient throughout the investigation and it did not meet the transparency requirements and procedural obligations under the WTO Agreement. For example, China had failed to make an objective examination on the injury determination based on positive evidence, including price effect analysis and the consequent impact of the alleged dumped imports on domestic producers of such products. China had failed to inform the essential facts underlying its determination and make available all relevant information on the matters of fact and law and reasons which had led to the imposition of the final measures. China's treatment of confidential information had not allowed the interested parties to obtain a reasonable understanding of the substance of the confidential information. With respect to the determination of the dumping margin for all other Japanese companies, China had improperly applied facts available, and had failed to disclose adequately to all interested parties the essential facts and make available all relevant information on the matters of fact and law and reasons which had led to the imposition of final measures. Japan considered that China's anti-dumping measures at issue were inconsistent with its various obligations under the WTO Agreement, as had clearly been explained in Japan's panel request. Japan had requested consultations on 20 December 2012 and had engaged in consultations in good faith with China on 31 January and 1 February 2013 with a view to reaching a mutually satisfactory solution. While the consultations had provided useful opportunities for the parties to better understand their respective positions on this matter, the consultations had not resolved the dispute. Japan, therefore, requested, pursuant to Article 6 of the DSU, that a panel be established to examine the matter as set out in its panel request with standard terms of reference in accordance with Article 7.1 of the DSU.

5.3. The representative of China said that her country was disappointed that Japan had requested the establishment of a panel to examine this dispute. As noted by Japan, on 31 January and 1 February 2013, China had held consultations with Japan in good faith. During the consultations, China had introduced the relevant facts, had provided explanations to Japan and had answered its 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, China's investigating authorities had found that the imports of high-performance stainless steel seamless tubes from Japan constituted dumping and the dumped imports had caused material injury to China's domestic industry. As a result, China had decided to levy an anti-dumping duty on the dumped high-performance stainless steel seamless tubes from Japan. The imposition of the anti-dumping measure was consistent with China's obligations under the WTO rules. Therefore, pursuant to the DSU, China was not in a position to agree to the establishment of a panel at the present meeting.

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

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

A. Report of the Panel (WT/DS425/R and WT/DS425/R/Add.1)

6.1. The Chairman recalled that, at its meeting on 20 January 2012, the DSB had established a panel to examine the complaint by the European Union pertaining to this dispute. The Report of the Panel contained in document WT/DS425/R and Add.1 had been circulated on 26 February 2013 as an unrestricted document. The Report of the Panel was before the DSB for adoption at the request of the European Union. The adoption procedure was without prejudice to the right of Members to express their views on the Report.

6.2. The representative of the European Union said that the EU thanked the Panel and the Secretariat for their work in this dispute. The EU welcomed the Panel's findings. The Panel had upheld the EU claims with regard to all aspects of the investigation challenged by the EU, i.e. price effects analysis, injury determination and causality as well as the transparency of the proceedings. Consequently, crucial aspects of China's assessment, necessary for the imposition of the duties, had been found to be inconsistent with the requirements of the Anti-Dumping Agreement. The EU also believed that those clear findings had an effect beyond the particular investigation in this dispute and would be in the interest of all Members. In that context, the EU particularly welcomed

the Panel's findings with regard to the methodology followed by China's authorities in its price effects analysis. In light of the clear findings of the Panel, the EU trusted that China would promptly take the necessary steps to ensure WTO compatibility of the measure. The EU expected that this would lead to the removal of the duties on x-ray security inspection equipment from the EU.

6.3. The representative of China said that her country thanked the Panel and the Secretariat for their timely and efficient work in this dispute. China did not agree with the EU on its assessment that all aspects of China's investigation in this Panel Report were inconsistent with the Anti-Dumping Agreement. China drew Members' attention to the fact that the Panel supported China's claims regarding certain issues at issue in this dispute such as disclosure before final determination, public notice of final determination, and positive-evidence based examination of the state of the industry and non-attribution analysis. China welcomed those findings and believed that they were correct and represented a proper resolution of this issue. However, China did not believe that the Panel Report was entirely free from error. In particular, China was troubled by the Panel's approach to price effect analysis and disclosure before final determination. The Anti-Dumping Agreement provided considerable latitude to investigating authorities in conducting an anti-dumping investigation, permitting different approaches and findings by WTO Members that may nevertheless all be in compliance with the Anti-Dumping Agreement. While China was troubled by the Panel's approach to these issues, China believed that there might be other opportunities where more definitive resolution of those controversial issues would be clarified by a future panel or Appellate Body decision.

6.4. The representative of the United States said that his country welcomed the issuance of the Panel Report in this dispute. The United States noted that the Panel dealt with several important procedural and substantive issues related to China's application of trade remedies, some of which were similar to issues that had been addressed by the DSB in its recommendations and rulings in 2012 in the dispute: "China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States" (DS414). It appeared that the DSB was, with ever greater frequency, being called upon to consider Members' concerns regarding China's application of trade remedies, as had been illustrated by the previous item on the Agenda of the present meeting, as well as two other pending disputes related to these issues. In each of these cases, Members appeared to have identified similar issues regarding lack of robustness of China's injury analysis, procedural defects in its investigations, and its apparent failure to comply with important transparency obligations. The United States hoped that China would carefully consider these developments as it applied its trade remedies laws and worked to bring its measures into compliance in connection with the GOES matter.

6.5. The representative of China said that her country welcomed the statement and remarks made by the United States on the Panel Report in this dispute concerning x-ray security inspection equipment. However, China could not agree that some matters concerning the "GOES" dispute would be the same as the dispute under consideration. In China's view, each dispute was specific and unique in terms of the legal interpretation of the covered agreement based on the different factual situations. China did not see whether the US comments could help or be useful in resolving this dispute.

6.6. The Chairman said that the purpose of this item on the DSB's Agenda was for the parties to the dispute, the third parties or any other interested party to express their views on the Panel Report, as stipulated in Article 16.4 of the DSU.

6.7. The DSB took note of the statements and adopted the Panel Report contained in document WT/DS425/R and Add.1.

7 APPOINTMENT/REAPPOINTMENT OF APPELLATE BODY MEMBERS

A. Proposal by the Chairman

7.1. The Chairman said that, as he had promised at the previous DSB meeting, he had circulated a more formal proposal for a procedure regarding the appointment and reappointment of certain Appellate Body members. He recalled that, in March 2013, he had informed Members that the second four-year term of office of Mr. David Unterhalter and the first four-year term of office of

Mr. Peter Van den Bossche would expire on 11 December 2013. He had also informed delegations that Mr. Van den Bossche, who was eligible for a second four-year term, pursuant to Article 17.2 of the DSU, had expressed his interest and willingness to be reappointed. Thus, on 12 April 2013, he had sent out a proposed approach to delegations by fax that contained five elements for the DSB to decide: (1) to agree to launch a selection process for one position in the Appellate Body, currently held by Mr. David Unterhalter; (2) to establish a Selection Committee comprising the Director-General and the 2013 Chairpersons of the General Council, the Goods Council, the Services Council, the TRIPS Council and the DSB, following customary practice based on the procedures set out in document WT/DSB/1; (3) to set a deadline of 30 August 2013 for Members' nominations of candidates for Mr. Unterhalter's position; (4) to agree that the Selection Committee carry out its work in September/ October 2013 and make its recommendations to the DSB by no later than 7 November 2013, so that the DSB could take a final decision on this matter at the latest at its regular meeting on 20 November 2013; and (5) to request the DSB Chair to carry out consultations on the possible reappointment of Mr. Peter Van den Bossche, who was eligible and willing to be reappointed for a second four-year term. Having circulated his proposal in advance, the Chairman understood that there had been some debate, deliberation and consideration of his proposal by certain Members. This was reflected in a room document made available by Norway and the United States to all Members at the present meeting. The Chairman said that he had had a chance to review those proposed refinements to his proposal and, in his view, they were for the most part editorial in nature. They were also consistent with his intent and, in some respects, helpful in clarifying his intent. He said that he valued the encouragement reflected in the revised proposal to preserve the August summer break in that all Members were encouraged to use best efforts to meet the August deadline a little earlier if possible, but noted that this was only to encourage Members who wished to make nominations to consider doing so in July. He said that he would invite Norway or the United States to say a few words on the room document first and then he would open the floor to other delegations for comments.

7.2. The representative of the United States said that his country appreciated the 12 April 2013 Chairman's communication to Members circulating proposed language for a DSB decision on the approach to the appointment and reappointment of Appellate Body members in 2013. The United States appreciated the Chairman's willingness to receive suggestions from Members with respect to the decision and to work with Members on improving the language. The United States also appreciated the comments offered by the Chairman at the present meeting in support of its proposal. The United States had spoken with the Chairman and a number of delegations on ideas to further clarify the decision, and the joint proposal that the United States had produced with Norway had been sent to delegations and was also available in the room. The joint suggestions to the proposed decision were modest, but the United States believed they strengthened the decision in, at least three, important ways. First, the proposed language was consistent with past DSB decisions and practices governing an Appellate Body appointment process. The suggested changes ensured such consistency. Second, the proposed language clarified the role of the DSB Chair on the Selection Committee and clarified the specific tasks Members were asking the Selection Committee to undertake in that process. Third, the proposed language suggested a time-period that may assist Members in putting forward candidates so that Members would be best positioned to consider a broad and highly-qualified pool of candidates to fill the position currently held by Mr. Unterhalter as well as, as the Chair had noted, to preserve the holiday when Members may not be focused on the selection process. The United States and Norway had had extremely positive feedback on the proposed language from many Members, and the discussions they had with Members had further reinforced the co-sponsors' belief that the proposed revisions helped to clarify and strengthen the proposed decision. The United States believed that the proposed revisions put forward with Norway were quite straightforward, but, if Members would be interested in hearing more about the suggested edits, the United States would be happy to go through those suggestions in more detail.

7.3. The representative of Norway said that, as a co-sponsor of the proposal, her delegation wished to echo the statement just made by the United States and she underlined the importance that Norway attached to the consistency of the text with past DSB decisions and practice.

7.4. The representative of Japan said that his country appreciated and supported the suggestions proposed by the United States and Norway. Japan understood that the suggestions sought to clarify the Chairman's proposal without changing any substance and that these suggestions were consistent with the language used in past selection processes. Japan thanked the Chairman for providing his proposal prior to the present meeting. Japan wished to reiterate that it was in

Members' interest to have sufficient time to consider highly-qualified candidates for the position currently held by Mr. Unterhalter.

7.5. The representative of China said that her country had received the joint proposal from the United States and Norway a few hours before the meeting. While China appreciated receiving the proposal in advance of the meeting, it had not had the chance to communicate with its capital on this matter. The proponents had stressed that the suggested changes were minor. Although China believed that the changes were minor, at this point it had instructions to support the Chairman's proposal as it currently stood. At the present meeting, China wished to make preliminary remarks on the proposal by the United States and Norway and would reserve its right to revert to this matter at a later date in the event that it received further comments from capital. With regard to the suggestion in paragraph 2, the insertion of "to be chaired by the DSB Chair" reflected the current practice, and China could support it. However, that language was not contained in document WT/DSB/1 and thus, in China's view, to use the language "consistent with" may be problematic. China sought further clarification from the proponents as to why they believed that adding "chaired by the DSB Chair" was consistent with the procedures set out in document WT/DSB/1. If it were not consistent with the procedures set out in WT/DSB/1, China would wish to use the original language proposed by the Chairman. With regard to the suggestion in paragraph 3, China understood that there was only one deadline for Members' nominations of candidates, namely 30 August 2013. If 31 July was only a best endeavour deadline and would not impose any obligation on Members, China could agree to it so as to encourage Members to submit nominations before the summer break. With regard to the suggestion in paragraph 4, the insertion of "to conduct interviews with candidates and hear the views of delegations" reflected the current practice and was reflected in past documents. It was China's understanding that those two activities would not restrict the Selection Committee's mandate to carry out other duties, if necessary, before formulating its recommendation consistent with the provisions on the selection procedure contained in document WT/DSB/1. China reserved its right to revert to this matter.

7.6. The Chairman thanked China for its constructive remarks and recognized that the suggestions proposed by the United States and Norway had been circulated at short notice. He said that he would make final comments after hearing Members' observations and that he would not seek to push through a decision if it did not adequately reflect a full consensus of the present DSB meeting.

7.7. The representative of the European Union said that the EU had been prepared to support the Chairman's proposal on the appointment/reappointment of Appellate Body members. The EU had learned about the proposed changes by the United States and Norway for the first time the previous day. As had just been mentioned, some Members had only heard about those suggestions through an e-mail sent a few hours prior to the present meeting. There had not been sufficient time to consider them. The EU regretted that the proponents had not engaged with the EU and many other delegations earlier, which would have allowed all participants to prepare better for the discussions. As regards the actual language proposed by the United States and Norway, the EU had some difficulties understanding the differences between the original language and the proposed language in paragraphs 2, 4 and 5. However, the EU did not intend to stand in the way if Members preferred the language suggested by the United States and Norway to that proposed by the Chairman, although the EU had been ready to agree to the Chairman's proposed language. With regard to the language in paragraph 3 and in particular the proposal to bring the deadline for nominations forward to 31 July 2013, the EU was in a position to support it. However, the EU wished to stress one issue that was, in its view, the most important one, irrespective of whether or not Members were able to agree on the text of the decision at the present meeting. The EU wished to encourage Members to submit nominations of candidates of the highest calibre for this important position, as required by the DSU. The EU hoped that there would be a good number of nominations for the position currently held by Mr. David Unterhalter. In that way, the Membership as a whole would have a wide choice and would maximize the chances of high-quality appointments.

7.8. The representative of Chile said that his country thanked the Chairman for the proposal on the appointment and reappointment of Appellate Body members. In Chile's view, the Chairman's proposal was good and it was consistent with past practice. Chile noted that the United States and Norway had made some editorial rather than substantive changes to the Chairman's proposal that could help to clarify the text. Chile wished to take this opportunity to present its view on the systemic issue for the appointment of a new member of the Appellate Body, pursuant to

Article 17.3 of the DSU. Like the current Appellate Body members, a new Appellate Body member must also be a well-recognized person with recognized qualifications in international law and must be familiar with the covered agreements and the multilateral trading system. They must be highly professional. In Chile's view, those criteria had to be considered during the selection process. Geographical or regional considerations were not essential, in accordance with Article 17.3 of the DSU, which provides that members of the Appellate Body should be generally representative of the WTO Membership. Chile acknowledged that provision but, in its view, that provision did not imply that the new member of the Appellate Body should necessarily come from the same geographical region as the outgoing member.

7.9. The representative of Switzerland said that his country thanked the Chairman for the proposal. He also thanked the United States and Norway for their suggested changes which, Switzerland believed, were mainly editorial. Switzerland could go along with the suggested changes, in particular with regard to paragraph 3, but was ready to engage in further discussions should Members so wish.

7.10. The representative of Brazil said that his country thanked the Chairman for the proposal and the United States and Norway for their suggestions. Brazil saw some merit in the changes, in particular with regard to the best endeavour deadline for the submission of nominations. Brazil understood that it would be just a reference date to request best efforts from Members, but that the deadline of 31 August 2013 would still stand. With regard to paragraph 2, Brazil shared China's concerns and would appreciate US clarification on this matter. Brazil considered that it was important that the proposal, once adopted, would guarantee the selection of the best possible candidate for the Appellate Body.

7.11. The representative of India said that his country thanked the Chairman for the proposal and also the United States and Norway for their proposal. India had received the suggestions from the United States and Norway only recently – in the afternoon of the previous day. Due to a public holiday in India, his delegation did not have instructions from its capital. At the present meeting, India had instructions to support the Chairman's proposal, but since these new changes had been proposed, India would have to wait for instructions from the capital. However, India had a few comments or clarifications to seek from the United States that were more or less in line with what had been stated by China. With regard to paragraph 2, there was a reference to document WT/DSB/1. India had checked that document and it did not mention who would be the chair of the Selection Committee. The past practice was that the DSB Chair was the Chairman of the Selection Committee and India agreed with that past practice. However, in India's understanding, that had been reflected correctly by the usage of the words "customary practice", which had been proposed to be deleted and replaced with the word "consistent". Thus, India sought clarification from the United States as to why it had proposed to delete "customary practice" and replace it with "consistent". With regard to paragraph 3, he noted that two deadlines were mentioned. One was the main deadline which was 30 August 2013, and the second deadline was 31 July 2013, which India was informed was the best efforts deadline. In India's view, if the intention were to encourage Members, it would be preferable to use the language "we encourage Members to file nominations as early as possible". In that regard, India did not see merit in adding another deadline to the existing deadline of 30 August 2013. With regard to paragraph 4, and as China had correctly pointed out, it was India's understanding that the word "carry out its work" was a broader term that provided the Selection Committee with the flexibility to carry out its work. This included: "to conduct interviews with candidates and hear the views of delegations". However, if that was deleted and instead only "to conduct interviews with candidates and hear the views of the delegations" were added, in India's understanding, this would actually limit the task of the Selection Committee. There could then be a question as to what work the Selection Committee had to carry out other than interviewing the candidates and hearing the views of delegations. One possibility could be to deliberate and consult with delegations. India wanted to understand why the proponents had not considered inserting "carry out its work including conducting interviews". India reserved its right to come back to these issues once it received further instructions from the capital.

7.12. The representative of Canada said that his country was prepared to support the Chairman's proposal at the present meeting. Nonetheless, Canada thanked the United States and Norway for circulating the room document with some changes to the Chairman's proposal. Canada considered those changes to be acceptable since many of them, as the Chairman had noted, were largely editorial in nature and sought to make the decision more precise in certain elements. In Canada's

view, none of those proposed changes changed the substance of the Chairman's decision. If Members were to accept those changes at the present meeting and adopt the decision, as amended, the process would proceed exactly as it would have done without the changes. The only difference would be more certainty in some elements and more transparency as to how it might unfold. The only revision that introduced a new element, which other delegations had noted, was the addition of an interim deadline. Canada agreed that this was a welcome effort to give Members more time to consider the candidates and possibly give Members more time to consider whether an earlier pool of candidates was sufficient. To the extent that those changes had the effect of ultimately broadening the pool of candidates and making the exercise a more competitive one, Canada would view that as an improvement. However, as other delegations and the Chairman had mentioned, Canada recalled that ultimately the proposal did not change the final deadline and any delegation wishing to wait for that deadline was entitled to do so. It was unfortunate that the room document containing the proposed changes had not been circulated well in advance of the present meeting. That would have provided some of the delegations with more time to consult. In the interest of time and of avoiding too much delay in adopting the decision, especially in light of the recognition by even those delegations that wanted the opportunity to consult that the revisions were generally of an editorial in nature, Canada would encourage delegations to support, or at least not object to the decision to be adopted as amended by the suggestions proposed by the United States and Norway. Canada also noted that, according to that decision, Members would still have time if they felt it necessary to delay this even further.

7.13. The representative of Nigeria said that his country thanked the Chairman for the proposal and the United States and Norway for their suggested changes to the proposal. At the present meeting, Nigeria had instructions to support the Chairman's proposal, dated 12 April 2013. However, given that it had just received a new proposal, Nigeria had no option but to consult with its capital. Nigeria believed that it was paramount to select the best candidate, in accordance with the guidelines contained in document WT/DSB/1.

7.14. The representative of Australia said that her country thanked the Chairman for his proposal and the United States and Norway for their suggested changes. Australia was comfortable with the changes proposed by the United States and Norway, but would have preferred to adopt the original version circulated by the Chairman. Australia's primary interest was to ensure that the DSB was able to take a positive decision on this issue without delay so that the formal selection process for Mr. Unterhalter's replacement could begin without further delay.

7.15. The representative of Argentina said that, at the present meeting, his country had instructions to support the Chairman's proposal and regretted that it had not received the paper from the United States and Norway in advance of the meeting. Argentina was in a position to accept the proposed changes given that they were mainly editorial. Argentina supported the view that it was important to ensure that Members selected the best candidate for the Appellate Body position.

7.16. The Chairman said that he noted from the discussion that there was a broad agreement to endorse a process that should identify and lead to ultimately Members' selection of the best candidate. In developing a formal decision for adoption, he would undertake to reflect that overarching philosophy. He acknowledged the comments made by India, China and Nigeria about the need to consult further with capitals. He further acknowledged the difficulty of drafting in a meeting of 159 Members but, as a native English speaker, he wished to offer a mundane observation. Using the words "consistent with" meant that what was said was not out of line with the cross-referenced document. To use the terms: "in accordance with" or "as reflected in" or "further to", indicated that what was said was actually contained in the cross-referenced document. However, if one said "is consistent with" it meant that what was being said did not run afoul of the cross-referenced document, but it was not necessary that the provision actually appeared in the cross-referenced document. In that regard, he was less concerned than China and a few others by the words "consistent with". However, on reflection, if Members wanted to improve the text, they could say "consistent with customary practice and the spirit of". In his view, that was what was intended in paragraph 2. With regard to paragraph 3, in light of India's comments, if Members were to say "as early as possible", "in advance of our holidays", in his view, there did not seem to be any disagreement with the objective in two respects. First, as stated by some delegations, it was necessary to preserve August for holidays. Second, there was a more substantive desire, as mentioned by a number of delegations, that the earlier candidates were brought forward, the better the global consideration and the chances of having the best possible

candidates. Without opening up a systemic discussion on what Chile had flagged regarding the geography of candidates, perhaps Members should consider having that discussion at an informal, open-ended meeting. With regard to paragraph 4, he said that what had been mentioned by delegations was easily resolved. As suggested by India and implied by China, consideration could be given to the language "to carry out its work including conducting interviews with a view to making recommendations". That made it clear that the recommendations came at the end after due deliberation. In conclusion, he noted a significant degree of consensus for refinement, including a few items that were not in the proposal submitted by Norway and the United States, such as a chapeau that highlighted the ultimate goal of seeking the best possible candidates. He noted that India, China and Nigeria wanted to consult with their capitals. He was, however, not troubled by the fact that the DSB may not have a final decision at the present meeting because, in effect, the nominations would be opened shortly and Members had through July and August to submit nominations. In that regard, should the formal adoption of that DSB decision come a little later than the present meeting, that would be fine. But in light of the spirit shown, he did not wish to consider an interim decision. Instead, he suggested allowing enough time for delegations to go back to capitals if they needed to. Should Members wish, he could incorporate some of the comments and circulate his own updated refinement of the text to take account of Members' views. He proposed to circulate a revised proposal by the end of the week with the request that Members provide any comments by 8 May 2013. Unless Members had strong objections to such a revised proposal, he would consider the revised text as agreed by the DSB. The revised decision, agreed by consensus of 8 May 2013, would allow the DSB to formally launch the process well in advance of its next meeting at the end of May.

7.17. The representative of the United States said that his country thanked the Chairman for his comments, which were extremely helpful, and to some extent, did pre-empt what the United States was going to say. From a broader standpoint, as the United States was developing this language, it did think that it would benefit from having views from other Members and did wish that it could have circulated a document earlier. However, as things had worked out, it had been hard to circulate a draft any earlier than it had and the United States did appreciate the feedback that it had heard at the present meeting. The United States said that it would like to comment on a couple of the comments made by other Members. The United States had heard several Members asking whether outlining those steps with respect to the role of the Selection Committee was necessary. The proponents had wanted more clarity about what the Committee actually would do. Specifying that the Committee was chaired by the Chair of the DSB and that its role was to conduct interviews and hear the views of Members added clarity so that Members were clear regarding what they were agreeing to. Regarding paragraph 2, the United States would echo what the Chair had said in that "consistent with" allowed items that had not been referenced specifically in WT/DSB/1. Regarding paragraph 3, it sounded like there was an interest among Members in expediting this process before the summer break and that a specific date would be useful to focus the mind. The United States took note of India's comments, but cautioned that removing the second date may not achieve the desired results. Regarding paragraph 4, the United States drew Members' attention to WT/DSB/M/205, where that language was used in a previous DSB decision. However, perhaps it would have been useful to indicate that that was just an illustrative list. Coming back to paragraph 2, there had been a question of whether the use of "following customary practice" was better than what the United States and Norway had proposed. However, the goal was to create clarity and that phrase did not have a specific meaning. The co-sponsors' concern was that the use of a phrase like that could be interpreted in an ambiguous fashion. The co-sponsors were cautious about reinserting ambiguous language when the goal was creating certainty.

7.18. The representative of Norway said that her country thanked delegations for their comments. Norway also thanked the Chairman for his helpful comments and did not have much to add to what the United States had just stated.

7.19. The Chairman said that he did not hear any objection from the proponents of the amendments to the suggestion that he would take ownership of the document and he had not seen any Member objecting to what he had suggested. Therefore, he would circulate a further revised text before the end of the week, perhaps a little more advanced as a text of a decision rather than just a proposal for a decision and it would have a chapeau.

7.20. The representative of Nigeria said that his country was not objecting to the Chairman's proposal, but wished to know if it could still submit comments should it receive further instructions from capital.

7.21. The Chairman said that it was not his expectation that the revised proposal would be endorsed by 26 April 2013. He thought that by 26 April 2013 Members would have forwarded to their capitals an updated text that would have taken full account of the concerns and diversity of views expressed at the present meeting. Members would then have from 26 April through to 8 May 2013 to further review, reflect, offer further refinements and hopefully build a consensus on the text. In that regard, Members would have further time to think of better drafting and ways of improving the text, bearing in mind the philosophical consensus amongst Members.

7.22. The representative of India said that his country sought clarification on one point. If Members were to receive the revised text on 26 April and had to react by 8 May, he wished to know if comments would have to be sent to all Members or just to the Secretariat.

7.23. The Chairman said that he would undertake to ensure the circulation of the comments received.

7.24. The representative of Australia said that her delegation sought further clarification from the Chairman on what he meant when he said that he was not troubled about a final decision not being made at the present meeting as candidatures were open.

7.25. The Chairman said that he was not formally trying to launch a process in advance of the decision being adopted. What he said was that Members were all aware that by December 2013, they would need to have completed the selection process. That meant that capitals could already begin to think, cogitate and consult domestically. The process, at a more mundane level, would inevitably remain the same, which was that nominations of candidates together with their CVs would be sent to the Chair of the DSB with a copy to the Secretariat, through the Council and TNC Division. They would be circulated as Job documents to all Members. But that was only once the process had started. He did not mean to state that nominations were open at the present time.

7.26. The representative of the European Union said that the EU wished to take the opportunity to ask Members to thoroughly consider the nominations and put forward candidates that could best serve the Membership in that important position.

7.27. The Chairman said that, unlike nominations for a position of the WTO Director-General, Members were not limited to nominating persons of their own nationality.

7.28. The representative of China said that her country wished to give its preliminary assurance that it was comfortable with the language just used, which addressed the concerns raised by China. If that would be the basis for the Chairman's new version of the decision to be adopted by the DSB, then China would strongly recommend its capital to consider it.

7.29. The Chairman said that he would circulate the revised document on 26 April 2013 first in English and then in French and Spanish as soon as possible thereafter. He thanked Members for their understanding and active engagement.

7.30. The DSB took note of the statements.

8 2012 ANNUAL REPORT OF THE APPELLATE BODY

A. Statement by the Chairman

8.1. The Chairman, speaking under "Other Business", said that, as he had stated at the beginning of the meeting, he wished to draw Members' attention to the fact that the Annual Report of the Appellate Body for 2012 had been circulated on 9 April 2013 to all Members. The Report was contained in document WT/AB/18 and was also posted on the WTO website. He drew Members' attention to the Report, not because he had been asked to do so, but because he had read the Report and had found it to include a wealth, richness, and abundance of valuable information. In that regard, he wished to recommend it to Members for their reading and for reading in their

capitals. In particular, he drew Members' attention to page 2 of the Report where the Appellate Body itself had invited comments and enquiries regarding the Report and had provided an address for that purpose. He encouraged Members to consider whether they wished to take advantage of that invitation. He also asked Members to reflect on, once they had read the Report and consulted with their capitals, whether they thought that the Report might merit or benefit from an informal discussion at an open-ended, informal DSB meeting, either amongst Members or even possibly with the participation of, or an exchange of views with, members of the Appellate Body. He stressed that he was not driving this in any particular direction. He was quite agnostic whether Members should do anything collectively or whether some Members may wish to do something individually. In his view, there was enough there and, at the very minimum, each and every Member should read the Annual Report of the Appellate Body. Should any delegation wish to comment, or would wish to pass their comments through the Chairman, he would be happy to assist.

8.2. The DSB took note of the statement.

_____