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Dispute Settlement Body
28 January 2013

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 28 JANUARY 2013

Chairman: Mr. Shahid Bashir (Pakistan)

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

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.122)

1.2. The Chairman drew attention to document WT/DS176/11/Add.122, 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 17 January 2013, in accordance with Article 21.6 of the DSU. Legislation had been introduced in the current Congress to implement the recommendations and rulings of the DSB. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

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, since the present meeting was the first meeting of the DSB in 2013, her country wished to draw Members' attention to the DSB's Annual Report circulated on 30 November 2012 (WT/DSB/58/Add.1) which, *inter alia*, analysed the implementation of the DSB's recommendations in Section III. Cuba noted that nine disputes had been under the DSB's surveillance in 2012. Five of those disputes concerned the US failure to meet its obligations in disputes that had already been decided by the DSB. For example, Cuba noted that Section 211 remained in force, despite the fact that, in February 2002, the DSB had ruled that this measure was inconsistent with the TRIPS Agreement and the Paris Convention. 122 status reports had been submitted by the United States in relation to the Section 211 dispute but none provided a solution to this dispute. The United States undermined the objectives of Article 21 of the DSU, since it did not report on any substance nor did it provide any indication of steps being taken by the United States to promptly comply with the DSB's recommendations and rulings. As a result, almost 11 years after the DSB's ruling, Article 21 of the DSU was no longer effective and became a dead letter. Section 211 undermined the intellectual property rights of the owner of a Cuban trademark in the United States, a country that was a self-proclaimed leader and defender of intellectual property rights. Cuba noted that the US Office of the Trade Representative maintained an updated list of WTO Members that violated or that may violate intellectual property rights, and applied remedies and conducted investigations in that regard. The United States also promoted plurilateral intellectual property agreements such as ACTA.

1.6. According to the new annual report published by the WIPO entitled: "World Intellectual Property Indicators 2012", despite the global crisis and the weak performance of the world economy, the number of applications for intellectual property titles had continued to grow significantly. The report showed that, at the end of 2011, the US Patent and Trademark Office ranked second worldwide in terms of the number of applications received and that, for more than 100 years, it had ranked among the top three in the world. In other words, the United States was one of the WTO Members that benefitted the most from intellectual property protection and international intellectual property standards. However, the United States continued to violate intellectual property rights and consistently failed to comply with its WTO obligations, while unilaterally assuming the right to judge other WTO Members and even impose sanctions on them. Section 211 was found to be inconsistent with WTO rules and the DSB had adopted recommendations to bring it into conformity with the TRIPS Agreement. Section 211 was illegal and undermined the legitimate rights of Cuban trademark owners, as it had prevented the company CUBAEXPORT from renewing the registration of the Havana Club trademark in the United States for more than 30 years. In addition, the US authorities had disregarded the rights of this owner so that the Bacardi Company could engage in the fraudulent and illegal sale of products that were not produced in Cuba, using the Havana Club trademark, which manifestly indicated Cuban origin. Cuba would continue to request that the United States comply with the DSB's recommendations and rulings, and in particular, that it repeals Section 211, which had been denounced as being part of the measures and legal provisions underlying the US policy of unjust, illegal and genocidal blockade against Cuba, which had been overwhelmingly rejected by the international community. Cuba refused to accept the situation in which one Member could continue to disregard the claims and rights of others, or unilaterally decide to introduce practices that ran counter to the WTO rules. Cuba urged the United States to repeal Section 211, as that was the only way to put a satisfactory end to this dispute.

1.7. The representative of China said that her country thanked the United States for its status report and the statement made at the present meeting. 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 urged the United States to implement the DSB's rulings and recommendations without further delay.

1.8. The representative of Viet Nam said that his country thanked the United States for its status report and the statement made at the present meeting. Once again, Viet Nam was concerned about the US non-compliance in this dispute. Viet Nam urged the United States to implement, without any further delay, the DSB's recommendations and rulings, in line with WTO rules.

1.9. The representative of Nicaragua said that her country, once again, supported Cuba's concerns regarding the rights of Cuban owners of the Havana Club Rum trademark. Nicaragua noted that, in its status reports, which had been provided for the past ten years, the United States had not reported on any concrete steps towards implementing the DSB's recommendations. Nicaragua, therefore, urged the United States to reconsider its unilateral economic policies against Cuba, which had negative effects on that country. Nicaragua was concerned that the failure of the United States to comply with its obligations undermined the credibility of the DSB and the multilateral trading system. It also set a precedent that would affect other Members, in particular developing countries. Nicaragua hoped that, with the new US Administration, the United States would modify its legislation and bring Section 211 into conformity with the DSB's rulings and recommendations.

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

1.11. The representative of the Dominican Republic said that his country thanked the United States for its status report concerning the implementation of the DSB's recommendations and rulings of February 2002, regarding the inconsistency of Section 211 with WTO rules as set out in Article 42 of the TRIPS Agreement. The Dominican Republic urged the United States to step up its internal procedures so as to comply with the DSB's recommendations and rulings. He noted that the long period of time that had passed with no implementation undermined the WTO's credibility.

1.12. The representative of Argentina said that his country thanked the United States for its status report and the statement made at the present meeting. However, Argentina regretted that the United States, once again, reported non-compliance and lack of progress in this dispute. This situation of non-compliance was inconsistent with the principle of prompt and effective implementation stipulated in the DSU provisions, in particular since the interests of a developing-country Member were affected. In that regard, and as it had already stated on previous occasions, Argentina drew attention to the fact that when Members with relatively greater economic weight failed to comply with the DSB's recommendations and rulings, to the detriment of the interests of developing-country Members, the stability of the multilateral trading system was affected more than the commercial interests of countries. Argentina supported the statements made by Cuba and other delegations at the present meeting. Argentina urged the parties to the dispute, in particular the United States, to take all the necessary measures in order to finally remove this item from the DSB's Agenda.

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

1.14. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Cuba at the present meeting regarding Section 211. More than ten years had passed since the DSB had ruled on the inconsistency of Section 211 with Article 42 of the TRIPS Agreement, the principles of national treatment, most-favoured-nation treatment and the Paris Convention. Venezuela regretted that Section 211 continued to remain in force, in violation of the TRIPS Agreement. This undermined the dispute settlement system, which was considered to be one of the main achievements of the Uruguay Round. Venezuela thanked the United States for its status report, but regretted that the report contained the same information as the previous

reports submitted by the United States. The only changes made were the date and the document symbol. In Venezuela's view, this amounted to "action without results" and proved that the United States lacked the political will needed to comply with the DSB's ruling. Venezuela requested that the United States show its full commitment and seriousness by providing more detailed and transparent information in its future status reports concerning the steps it had taken towards effectively repealing Section 211. As it had done on numerous occasions, Venezuela urged the United States to put an end to its policy of economic, commercial and financial blockade against Cuba and to comply with the DSB's recommendations.

1.15. The representative of Ecuador said that his country supported the statement made by Cuba. Ecuador stressed, once again, that Article 21 of the DSU specifically referred to prompt compliance with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Ecuador hoped that the United States would step up its efforts in order to promptly comply with the DSB's recommendations and rulings by repealing Section 211.

1.16. The representative of the Plurinational State of Bolivia said that, over the past ten years, the United States had continued to submit the same status report which did not contain any information on progress towards finding a solution in this dispute. Bolivia, therefore, reiterated its systemic concern about the US non-compliance with the DSB's recommendations and rulings. This situation of non-compliance undermined the credibility of the dispute settlement system and negatively affected the interests of a developing-country Member. Once again, 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.

1.17. The representative of Zimbabwe said that her country thanked the United States for its status report. However, Zimbabwe regretted that the United States continued to disregard the DSB's rulings and recommendations in this dispute concerning Section 211. Zimbabwe supported the statements made by Cuba and other delegations and strongly urged the United States to comply with the DSB's recommendations and rulings.

1.18. The representative of South Africa said that her country thanked the United States for its status report which contained the same information as the previous status reports submitted by the United States. South Africa, once again, joined the previous speakers in expressing its concern that no concrete progress had been made in the implementation of the DSB's recommendations and rulings with regard to Section 211. South Africa had systemic concerns about the long delay in the implementation of the DSB's recommendations and rulings in this dispute. South Africa was concerned that, in this dispute, non-compliance with the DSB's rulings perpetuated a negative economic impact on the interests of a developing-country Member. South Africa, therefore, urged the United States to bring its legislation into compliance with the DSB's ruling.

1.19. The representative of Mexico said that his country welcomed the US status report. As Mexico had already pointed out on previous occasions, Article 21.1 of the DSU stipulated that "[p]rompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members". Mexico, once again, urged the parties to the dispute to take the necessary steps to comply with the DSB's recommendations and rulings to the benefit of all Members.

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

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.122)

1.21. The Chairman drew attention to document WT/DS184/15/Add.122, 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.

1.22. The representative of the United States said that his country had provided a status report in this dispute on 17 January 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.

1.23. The representative of Japan said that his country thanked the United States for, and took note of, its statement and its status report. Japan, once again, called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

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

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.97)

1.25. The Chairman drew attention to document WT/DS160/24/Add.97, 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.

1.26. The representative of the United States said that his country had provided a status report in this dispute on 17 January 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.

1.27. 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 on its wish to resolve this case as soon as possible.

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

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.60)

1.29. The Chairman drew attention to document WT/DS291/37/Add.60, 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.

1.30. The representative of the European Union said that the EU wished to express its hope that it would continue on the constructive path of dialogue with the United States. 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 backlog 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.

1.31. The representative of the United States said that his country thanked the EU for its status report and for its statement made at the present meeting. The United States said that it continued to have serious concerns regarding EU measures affecting the approval of biotech products. As the

[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.

United States had noted at the December 2012 DSB meeting, delays in approvals for biotech products frequently resulted from the failure of EU regulatory officials to take action on biotech products that had received positive safety assessments from the European Food Safety Authority (EFSA). For example, EFSA had published positive opinions for a new biotech soy event and a new corn event in October and November 2012, respectively. The next steps in the EU's process were the preparation of appropriate regulatory measures based on the safety assessment, and the presentation of these measures to a regulatory committee. The regulatory committee, however, had not met since September 2012, and no meeting was held in January 2013. Accordingly, the consideration of those products had been delayed. The United States urged the EU to prepare the appropriate regulatory measures for all products that had received positive EFSA assessments, and to present those measures to the regulatory committee in February 2013. Unless the EU took steps to address delays in its biotech approval system, a backlog of over 70 applications for new or renewed approval would continue to grow. There would also continue to be a growing number of products that were approved by and produced in other Members, but they were still awaiting approval in the EU system.

1.32. The representative of the European Union said that the EU's position had always been very clear. Following the EFSA opinion, the EU operated on the basis of the three-month delay for the submission to the Standing/regulatory Committee. When there had been specific issues, usually related to the scientific assessment, the EU had taken the responsibility, as risk manager, to acquire all the necessary information before taking a final decision.

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

E. United States – Anti-dumping administrative reviews and other measures related to imports of certain orange juice from Brazil: Status report by the United States (WT/DS382/10/Add.13)

1.34. The Chairman drew attention to document WT/DS382/10/Add.13, 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 administrative reviews and other measures related to imports of certain orange juice from Brazil.

1.35. The representative of the United States said that his country had provided a status report in this dispute on 17 January 2013. Pursuant to the sequencing agreement between Brazil and the United States[5], the United States was ready to engage with Brazil should it have any further questions regarding this matter.

1.36. The representative of Brazil said that his country thanked the United States for its status report. Brazil was following closely the implementation of the final rule published by the US Department of Commerce, which had modified the calculation of dumping margins in reviews. Brazil would consult with the United States with a view to achieving a solution to this dispute.

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

F. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.9)

1.38. The Chairman drew attention to document WT/DS371/15/Add.9, 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.

1.39. 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 18 January 2013. As noted in that report, Thailand had completed the final outstanding steps in its implementation process. Thailand was also continuing to engage in discussions with the Philippines on any concerns the Philippines may have regarding the technical aspects of its implementation measures and, in that

[5] WT/DS382/11.

context, had recently published additional guidelines on the operation of Thailand's VAT rules. Thailand looked forward to continuing discussions on those matters, as well as on other matters that had not been subject to the DSB's recommendations and rulings that the Philippines considered relevant to the final resolution of this dispute.

1.40. The representative of the Philippines said that his country thanked Thailand for its status report and its statement made at the present meeting. In its status report, as well as in its statement made at the present meeting, Thailand had reiterated its assertion that it had "completed the final outstanding step in the implementation process". Regrettably, as it had noted at the December 2012 DSB meeting, the Philippines did not consider that Thailand had achieved full compliance. At the last DSB meeting, the Philippines had discussed a ruling by the Thai Customs Board of Appeals that raised numerous concerns under the Customs Valuation Agreement and the GATT 1994. At the present meeting, the Philippines noted Thailand's reference to additional guidance from its Revenue Department concerning amended VAT rules, which the Philippines similarly believed raised questions of WTO-consistency. In bilateral meetings, the Philippines had also raised additional matters concerning other Thai measures that, in its view, involved further WTO-inconsistencies belying Thailand's assertions of full compliance. Despite numerous entreaties over the many months that had passed since the expiry of the reasonable periods of time in this dispute, the Philippines had not received satisfactory responses, and its concerns remained. In its status report and in its statement made at the present meeting, Thailand referred to its readiness to continue discussions at the appropriate level. The Philippines welcomed this statement. As it had said numerous times, the Philippines would prefer to resolve this dispute by means other than continued litigation. However, discussions could not go on forever, solutions had to be found, and decisions had to be taken. The time to do that was now. Without further progress in the coming month, the Philippines would be forced to return to formal dispute settlement.

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

G. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.8)

1.42. The Chairman drew attention to document WT/DS404/11/Add.8, 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.

1.43. The representative of the United States said that his country had provided a status report in this dispute on 17 January 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. On 28 June 2012, the US Trade Representative had requested, pursuant to Section 129 of the Uruguay Round Agreements Act, that the Department of Commerce take action necessary to implement the DSB's recommendations and rulings in this dispute. The United States would continue to consult with interested parties as it worked to address the recommendations and rulings of the DSB.

1.44. The representative of Viet Nam said that his country thanked the United States for its status report and statement made at the present meeting. Viet Nam expected the United States to fully comply with the reasonable period of time as had been agreed by the parties and in line with the DSU provisions. Viet Nam reserved its rights to pursue any further legal proceeding under the DSU in order to protect its legitimate interests.

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

H. Philippines – Taxes on distilled spirits: Status report by the Philippines (WT/DS396/15/Add.3 – WT/DS403/15/Add.3)

1.46. The Chairman drew attention to document WT/DS396/15/Add.3 – WT/DS403/15/Add.3 which contained the status report by the Philippines on progress in the implementation of the DSB's recommendations in the case concerning the Philippines taxes on distilled spirits.

1.47. The representative of the Philippines said that his country wished to refer Members to its status report with respect to the DS396 and DS403 disputes which had been circulated on 7 January 2013. Since the circulation of the first status report on 12 October 2012, and two subsequent reports, Republic Act No. 10351, entitled "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products", had been passed by the Philippine Congress on 11 December 2012 and had been approved by the President on 19 December 2012. The corresponding Implementing Rules and Regulations had also been promulgated by the Bureau of Internal Revenue (BIR Revenue Regulation 17-2012) on 28 December 2012. This operationalized the application of an *ad valorem* tax rate of 15% of the NRP per proof and a specific tax of PHLP 20.00 per proof litre, which had taken effect on 1 January 2013. The new tax system adopted a uniform tax that applied equally to all distilled spirits, and thus eliminated the system of taxation found to be discriminatory by the Panel and the Appellate Body, both in law and in fact. The adoption of this new tax system also completed the Philippines' implementation of the Panel's and the Appellate Body's findings and recommendations in this dispute. The Philippines thanked the United States and the EU for being constructive partners throughout the dispute settlement process. The coordination and open communication had enabled the parties to meaningfully engage the various stakeholders and to implement a WTO-compatible excise tax regime for distilled spirits.

1.48. The representative of the European Union said that the EU was pleased that the President of the Philippines had approved Act 10351 reforming the Philippines' tax regime for alcohol. The EU was encouraged by the fact that the Act removed discrimination against imported spirits. In that regard, the EU trusted that the implementing rules and regulations that the Government of the Philippines had recently published were equally consistent with the national-treatment principle enshrined in Act 10351. The EU was analysing those implementing rules with a view to obtaining reassurances that WTO compatibility was fully re-established by the end of the reasonable period of time. In that respect, the EU may need to seek clarifications on the practical functioning of the new rules and regulations. Finally, the EU thanked the Philippines for the transparency it was demonstrating during the course of the implementation and hoped that it could continue to discuss with the Philippines in the same transparent manner.

1.49. The representative of the United States said that his country thanked the Philippines for its status report and its statement made at the present meeting. The United States was pleased at the efficient work by the Philippines in undertaking this reform, and appreciated the Philippines' commitment to taking steps to implement the DSB's recommendations and rulings in this dispute. The new tax system eliminated the use of raw material type as a basis for applying different tax rates to distilled spirits, which was an excellent step forward. This had been the means by which the original Philippines measures had provided less favourable treatment to imported distilled spirits. Because the new tax system had only been in place for a few weeks, the United States was continuing to closely watch its implementation. However, the United States was hopeful that it would result in full implementation of the DSB's recommendations and rulings.

1.50. The DSB took note of the statements.

I. China – Measures related to the exportation of various raw materials: Status report by China (WT/DS394/19/Add.1 – WT/DS395/18/Add.1 – WT/DS398/17/Add.1)

1.51. The Chairman drew attention to document WT/DS394/19/Add.1 – WT/DS395/18/Add.1 – WT/DS398/17/Add.1 which contained the status report by China on progress in the implementation of the DSB's recommendations in the case concerning China's measures related to the exportation of various raw materials.

1.52. The representative of China said that her country had provided a status report in these disputes on 17 January 2013, in accordance with Article 21.6 of the DSU. Consistent with its past practice and its position, China attached great importance to the implementation of the DSB's

recommendations and rulings. The measures concerning raw materials were closely related to a Member's sovereignty to its natural resources, the protection of the environment and the sustainable development of the economy. Therefore, this matter was highly sensitive and must be addressed carefully, in particular if a Member's right to regulate the export of raw materials were to be limited. Furthermore, the matter should be conducted in a manner consistent with the purposes, principles and disciplines of the WTO basic rules. As it had stated at the 22 February 2012 DSB meeting, China deeply regretted that the Panel and the Appellate Body had concluded that the exceptions under Article XX of the GATT 1994 could not be used by China to defend its export duties obligation under China's Accession Protocol, and had significant systemic concerns over the issue. This finding related to a Member's fundamental right under WTO Agreements and some of its interpretation had an impact not only on China but also on other WTO Members. Even so, China still respected the ruling in these disputes and would do its best to implement the DSB's recommendations and rulings before the end of the reasonable period of time. On 28 December 2012, the General Administration of Customs of China had promulgated the 2013 Tariff Implementation Program. On 31 December 2012, the Ministry of Commerce of China and the General Administration of Customs of China had jointly promulgated the 2013 Catalogue of Goods Subject to Export Licensing Administration. According to the notices, the application of export duties and export quotas to certain raw materials, which were found to be inconsistent with the WTO rules by the Panel and the Appellate Body in these disputes, had been removed. Both notices had taken effect on 1 January 2013. Through those measures, China had fully implemented the DSB's recommendations and rulings in these disputes.

1.53. The representative of the European Union said that the EU thanked China for its status report and its statement made at the present meeting. The EU recalled that the Chinese export restrictions at issue had significantly distorted the market and had created competitive advantages for the Chinese manufacturing industry to the detriment of foreign competitors. The EU, therefore, welcomed the implementing measures taken by China and hoped that they would put an end to the long-standing discrimination, establishing WTO-compatibility. The EU noted, however, that an export licensing requirement was in place for all products previously subjected to an export quota. The EU trusted that this system would not be applied in a manner that created obstacles for exports. Therefore, the EU would continue to closely monitor the situation and the development of exports, and more particularly the impact of the newly introduced licensing requirements. The EU would welcome further cooperation with China in that respect. In conclusion, the EU wished to emphasize that it remained concerned about the fact that China continued to use identical restrictions on numerous other products, which had not been subject to this dispute.

1.54. The representative of Mexico said that his country thanked China for its status report regarding China's compliance with the DSB's rulings and recommendations in this dispute. Mexico acknowledged that, in December 2012, China had established the 2013 Tariff Implementation Program (Zongshugonggao 2012 No. 63) and the 2013 Catalogue of Goods Subject to Export Licensing Administration (Gonggao 2012 No. 97) as measures taken to comply with the DSB's recommendations and rulings in this dispute. It was Mexico's understanding that, under the 2013 Tariff Implementation Program, the raw materials bauxite, coke, fluorspar, magnesium, manganese, silicon metal and zinc were not among the products subject to export tariffs. Mexico hoped that the current situation with respect to the raw materials at issue would remain as it was and that China would not adopt any new measures in the future to change that situation. Mexico also understood that, under the 2013 Catalogue of Goods Subject to Export Licensing Administration, the raw materials bauxite, coke, fluorspar, silicon carbide and zinc were not among the products subject to export quotas. Mexico hoped that the current situation would remain as it was and would not change in the future. However, under that Catalogue, China had made some of the raw materials at issue subject to export licensing. Mexico was concerned that the new export licences may have a restrictive or limiting effect on exports, that they may not be issued automatically or may be based on discretionary criteria, or that they may be administered in a non-uniform, biased or unreasonable manner. Mexico would, therefore, pay close attention to the administration and operation of those new export licences. Mexico hoped that China would give sympathetic consideration to any questions that might arise regarding the application of export licences to the raw materials at issue and to have a prompt exchange of views with China should those questions arise. Mexico thanked China for the flexibility it had shown in signing, on 17 January 2013, a sequencing agreement establishing the agreed procedures under Articles 21 and 22 of the DSU. That agreement was a practical approach designed to prevent any future disagreement that might arise between China and Mexico in the course of the next stages of this dispute.

1.55. The representative of the United States said that his country thanked China for its status report and its statement made at the present meeting. As it had explained at previous DSB meetings, China's full implementation of the DSB's recommendations and rulings with respect to China's trade-distorting export restraints was of major importance to the United States and other Members. The recommendations and rulings that had been adopted by the DSB in this dispute were significant for a number of reasons. They affirmed a clear and unequivocal commitment to eliminate export duties that China had made to all WTO Members when it had acceded to the WTO. And they made clear that measures sought to be justified under Articles XX(b) and XX(g) must be legitimately aimed at protecting health and the environment or conserving natural resources – not measures aimed at providing economic advantages to domestic users of raw materials. As such, the United States was encouraged that China appeared to have eliminated the export duties and export quotas on the products at issue in this dispute as of 1 January 2013. The United States welcomed this action as a significant positive step towards compliance with China's WTO obligations. China's action also represented an important achievement for the creation of a level playing field for US industry, and for supply chains throughout the global marketplace.

1.56. The United States was also pleased that it was able to reach an understanding with China on procedures to be followed under Articles 21 and 22 of the DSU for purposes of this dispute. That document had been circulated to WTO Members as WT/DS394/20. At the same time, however, the United States was concerned that China continued to impose a licensing requirement on the export of products at issue in this dispute, which could potentially act as an export restriction. The United States had already discussed this issue with China, and appreciated the information that China had provided to date. However, the United States would be engaging further with China to understand the purpose of its licensing requirements and to receive detailed information about the operation of these requirements in practice. The United States considered it critical to ensure that the significant findings in this dispute, and the steps China had taken to implement them, were not otherwise undermined. To that end, the United States would continue to monitor actions that operated to restrict exports of raw materials at issue in this dispute. The United States would also urge China to eliminate its export restraints on the rare earths, tungsten, and molybdenum products that were subject to the second raw materials dispute the United States had initiated earlier that year. Given the important systemic issues that had been raised in this dispute, the United States hoped that China would rethink its continued widespread use of export restraints, thereby building upon the positive actions it had taken in this dispute.

1.57. The representative of China said that her country wished to respond briefly to some of the concerns expressed by the complainants about China's full implementation. With respect to the export licensing requirements and administration, China noted that, in its Report, the Appellate Body had found that the Panel had erred, in relation to Article 6.2 of the DSU, in making findings regarding claims allegedly identified in Section III of the complaints' panel requests, and had declared moot and of no legal effect the Panel's findings concerning, among others, export licensing requirements. Therefore, the export licensing requirements and administration were out of the scope of the DSB's recommendations and rulings. However, in order to help other Members understand China's full implementation, China wished to share further information. According to Article 10 of the 2013 Catalogue of Goods subject to Export Licensing Administration, when exporting coke, bauxite, silicon carbide, fluorspar or manganese, the exporter could claim the export license by providing a contract, without any requirement of submitting any approval document. Therefore, there was no trade restriction at all. Finally, she noted that the sequencing agreements between China and the complainants in these disputes had been concluded on the regular basis, without any implication as to whether or not there was full compliance.

1.58. The representative of the United States said that his country thanked China for its intervention. As it had mentioned in its initial statement in this matter, the United States did note some of the positive steps that had been taken and that the additional information provided was appreciated. However, the United States wished to make one quick comment: the United States did not agree with the assessment of China that the issue of export licensing was a moot one. The United States continued to have concerns about some of the materials at issue that appeared to be subject to the import licenses and looked forward to continuing to engage with China on these issues.

1.59. The representative of the European Union said that the EU wished to confirm that it had concluded a sequencing agreement in this dispute as a matter of regular DSB business. The conclusion of the sequencing agreement was therefore not linked to any substantive view on the

Chinese measures. The question whether Sequencing Agreements were necessary in the first place was a controversial issue which the EU did not wish to discuss at the present meeting.

1.60. The representative of China said that it was clear that the Appellate Body had declared moot and of no legal effect the Panel's findings concerning export licensing requirements. China wished to discuss the concerns raised by the United States. However, that did not mean that the issues were within the scope of the DSB's recommendations and rulings in these disputes.

1.61. The DSB took note of the statements.

J. United States – Measures affecting the production and sale of clove cigarettes: Status report by the United States (WT/DS406/11/Add.1)

1.62. The Chairman drew attention to document WT/DS406/11/Add.1 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.

1.63. The representative of the United States said that his country had provided a status report in this dispute on 17 January 2013, in accordance with Article 21.6 of the DSU. As noted in the status report, US authorities were conferring with interested parties and working to implement the recommendations and rulings of the DSB in a manner that was appropriate from the perspective of the public health.

1.64. The representative of Indonesia said that his country thanked the United States for its status report. Indonesia highly respected the sovereignty of the United States to form and enact its laws and regulations, in particular, the Family Smoking Prevention and Tobacco Control Act. However, in accordance with the Appellate Body's decision in this dispute, Indonesia strongly believed that the United States would make an effort and take positive actions to adopt its law and regulations in a non-discriminatory manner, as stipulated in the WTO agreements. In addition, Indonesia believed that the United States would conduct a fair and just trade. 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 also abide by the principles and stipulations regulated in the WTO Agreements, in particular, the TBT Agreement and the GATT 1994. Indonesia urged the United States to report on more concrete progress on implementation in this dispute at the next DSB regular meeting.

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

2 UNITED STATES – CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

A. Statements by the European Union and Japan

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

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

2.3. The representative of Japan said that the official US Customs and Border Protection website[6] clearly showed that the CDSOA continued to be operational. Japan, once again, urged the United States to stop the illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute. Pursuant to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report in this dispute.

[6] http://www.cbp.gov/linkhandler/cgov/trade/priorlty_trade/add_cvd/cont_dump/

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 it had stated in previous meetings, Brazil was of the view that the United States was under an 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 keeping this issue on the DSB's Agenda. India supported their views and shared their concerns.

2.6. The representative of Thailand said that her country thanked Japan and the EU for continuing to inscribe this item on the DSB's Agenda. Thailand supported the statements made by other delegations and urged the United States to cease the disbursements and fully implement the DSB's rulings and recommendations on this matter.

2.7. The representative of Canada said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. Canada referred to its statements made under this Agenda item at previous DSB meetings. Canada's position on this matter remained the same.

2.8. The representative of the United States said that his country thanked Members for their statements made under this Agenda item. With respect to comments regarding further status reports, as it had already explained at previous DSB meetings, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. In particular, the President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. The United States, therefore, did not understand the purpose for which the EU and Japan had inscribed this item on the Agenda of the present meeting and failed to see what purpose would be served by further submission of status reports repeating again the progress that the United States had made in the implementation of the DSB's recommendations and rulings in these disputes.

2.9. The DSB took note of the statements.

3 ARGENTINA – MEASURES AFFECTING THE IMPORTATION OF GOODS

A. Request for the establishment of a panel by the European Union (WT/DS438/11)

B. Request for the establishment of a panel by the United States (WT/DS444/10)

C. Request for the establishment of a panel by Japan (WT/DS445/10)

3.1. The Chairman proposed that the three sub-items under this Agenda item be taken up together since they pertained to the same matter. He recalled that the DSB had considered these matters at its meeting on 17 December 2012 and had agreed to revert to them. He drew attention to the communication from the European Union contained in document WT/DS438/11 and invited the representative of the European Union to speak.

3.2. The representative of the European Union said that the EU requested the establishment of a panel to rule on the WTO consistency of Argentina's long-standing import restrictions. The EU did so at the same time and with regard to the same measures as the United States and Japan. For the description of the measures, the EU referred to the previous DSB meeting. As it had stated previously, over the past years, the EU had tried to find a positive solution over the matter, both at multilateral and bilateral levels, to no avail. The EU requested the establishment of a panel to re-establish WTO compatibility and so that Argentina would meet its international obligations. In so doing, the EU sought recourse to a panel with a view to achieving a positive solution to this dispute, and trusted that the current situation faced by economic operators was not worsened in the course of the panel proceeding. In view of the panel requests by the United States and Japan in DS444 and DS445, the EU requested that a single panel be established under Article 9.1 of the DSU.

3.3. The Chairman drew attention to the communication from the United States contained in document WT/DS444/10 and invited the representative of the United States to speak.

3.4. The representative of the United States said that, on 21 August 2012, his country had requested consultations with Argentina regarding Argentina's broad use of non-automatic licensing measures – both product-specific licensing measures and a licensing measure applicable to all goods. Argentina used these measures, together with requirements to undertake trade balancing or similar commitments, to restrict the importation of goods. After attempts to resolve US concerns through dialogue with Argentina, the United States had requested that the DSB establish a dispute settlement panel at the December 2012 DSB meeting. As had been explained in that request for the establishment of a panel, and as had been discussed at the December 2012 meeting, Argentina's licensing measures were non-transparent and discretionary and served to restrict imports from the United States and other Members, in breach of various provisions of the GATT 1994 and the Import Licensing Agreement. Accordingly, at the present meeting, the United States requested, for a second time, that the DSB establish a panel to examine the matter set out in the US panel request, with standard terms of reference. As the panel requests of the EU and Japan related to the same matter, the United States requested, pursuant to Article 9.1 of the DSU, that a single panel be established to examine these complaints.

3.5. The Chairman drew attention to the communication from Japan contained in document WT/DS445/10 and invited the representative of Japan to speak.

3.6. The representative of Japan said that his country would not repeat its position and claims in this dispute at the present meeting, which were explained in detail in Japan's panel request and in its statement made at the 17 December 2012 DSB meeting. In summary, this case concerned three types of Argentina's import restrictive measures. First, Argentina required an importer, prior to the importation of goods, to submit Argentine authorities an affidavit with certain information, or so-called DJAI. Second, Argentina subjected the importation of certain goods into Argentina to a non-automatic import license requirement by requiring Certificados de Importación ("CI") as a condition for the importation of goods. Third, separately and/or in combination with the measures just mentioned, Argentina required economic operators to undertake certain actions with a view to pursuing Argentina's stated policy objectives of elimination of trade balance deficits and import substitution. Japan considered that Argentina's measures at issue were inconsistent with several of Argentina's obligations under the GATT 1994 and the Import Licencing Agreement. This had clearly been explained in Japan's panel request which had first been considered at the 17 December 2012 DSB meeting. Following that meeting, Japan once again requested, at the present meeting, that the DSB establish a panel to examine the matter set forth in the panel request, with standard terms of reference in accordance with Article 7.1 of the DSU. Japan further requested that, pursuant to Article 9.1 of the DSU, a single panel be established to examine the complaints of Japan, the United States and the EU.

3.7. The representative of Argentina said that his country was disappointed with the decision of the EU, the United States and Japan to request, for the second time, that the DSB establish a panel to examine this matter. Argentina was pleased to note that the clarifications provided during the consultation stage had prompted the complainants not to proceed with several of their claims. However, Argentina had hoped to fully settle this dispute without proceeding to the panel stage. Argentina had addressed the concerns expressed by the complainants during the consultations, which had first been held in July and then in September 2012. Argentina had explained the contested regulations in detail, it had provided the clarifications required and had responded to the questions. Moreover, following the consultations with the EU, Argentina's authorities had ordered the repeal of automatic import licences (LAPIs), as requested by the EU. Argentina also drew attention to its decision to repeal all non-automatic import licences (LNAs) as of Friday, 25 January 2012, under Resolution No. 11/2013 of the Ministry of the Economy and Public Finance. The Argentine authorities had decided to repeal the 17 non-automatic licences, considering that the objectives set when they had been created had been met. That decision was being notified to the Committee on Import Licensing. Argentina believed that the measure offered a positive solution to the dispute in respect of the complaint with regard to non-automatic import licences. Argentina reiterated that exports to Argentina from those Members who had requested the establishment of a panel had significantly increased. This fact could easily be verified, and the facts themselves quelled any fear that Argentina's measures at issue might restrict imports. He noted that Argentina's role in sustaining global aggregate demand during the severe economic crisis was positive. Argentina believed that the requests for the establishment of a panel by the EU, Japan and the United States were unfounded. However, Argentina was aware that a panel would be established at the present meeting, pursuant to Article 6.1 of the DSU, and stood ready to demonstrate that its measures were consistent with WTO rules. Argentina was ready to meet

with the complainants in order to work towards a mutually satisfactory settlement so as to avoid further dispute settlement proceedings.

3.8. The representative of the United States said that his country understood that Argentina had only very recently issued a resolution that purported to repeal the product-specific non-automatic import license requirement, which was one of the measures that were the subject of this panel request. The United States appreciated the additional information provided by Argentina at the present meeting and looked forward to examining this information closely.

3.9. The representative of Japan said that his country had taken note of Argentina's statement and would appreciate further information and clarification from Argentina. However, Argentina's statement about its revocation of the non-automatic import licence requirement would not affect the panel's terms of reference which was defined in Japan's panel request. Pursuant to Articles 6.2 and 7.1 of the DSU, upon request by Japan, the panel should be established by the DSB at the present meeting with standard terms of reference.

3.10. The representative of the European Union said that the EU agreed with the points made by the co-complainants; i.e. the United States and Japan.

3.11. The representative of Argentina said that, with regard to the statement concerning the terms of reference referred to by Japan and supported by the EU, Argentina believed that in view of the repeals of non-automatic import licences on Friday, 25 January 2013, a positive solution had been found to the claims regarding those measures. According to the jurisprudence of the Appellate Body and panels, Argentina maintained that the panel to be established at the present meeting should not rule on measures that were not in force at the time of the establishment of the panel. Argentina was open to the possibility of the DSB authorizing the Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute, as stipulated in Article 7.3 of the DSU. Should the panel have standard terms of reference, according to Article 7.1 of the DSU, Argentina would raise the issue before the panel.

3.12. The representative of the United States said that his country wished to clarify that the United States associated itself with the comments made by the EU and Japan with respect to standard terms of reference. With respect to the purported repeal of the measure, the United States appreciated the information provided but was not in a position to share Argentina's assessment. While appreciating the information, the United States was not in a position to deviate from the standard terms of reference.

3.13. The DSB took note of the statements and agreed to establish a single panel pursuant to Article 9.1 of the DSU, with standard terms of reference to examine the complaint by the European Union contained in document WT/DS438/11, the complaint by the United States contained in document WT/DS444/10 and the complaint by Japan contained in document WT/DS445/10.

3.14. The representatives of Australia, Canada, China, Ecuador, the European Union, Guatemala, India, Japan, Korea, Norway, Saudi Arabia, Switzerland, Chinese Taipei, Thailand, Turkey and the United States reserved their third-party rights to participate in the Panel's proceedings.

4 UNITED STATES – MEASURES AFFECTING THE IMPORTATION OF ANIMALS, MEAT AND OTHER ANIMAL PRODUCTS FROM ARGENTINA

A. Request for the establishment of a panel by Argentina (WT/DS447/2)

4.1. The Chairman recalled that the DSB considered this matter at its meeting on 17 December 2012 and had agreed to revert to it. He drew attention to the communication from Argentina contained in document WT/DS447/2, and invited the representative of Argentina to speak.

4.2. The representative of Argentina said that, on 30 August 2012, his country had requested consultations with the United States with regard to certain US measures affecting the importation of animals, meat and other animal products from Argentina. As Argentina had already explained at the DSB meeting on 17 December 2012, the application of the US measures in question had

stopped fresh, chilled or frozen bovine meat from Argentina from entering the US market for more than 11 years. He noted that fresh meat was an emblematic export for Argentina and its high quality was recognized throughout the world. Moreover, the United States had not recognized Patagonia as a foot-and-mouth disease (FMD) free zone, as Argentina had requested, despite the fact that the World Organisation for Animal Health had recognized this area as an FMD free zone without vaccination since 2002. The United States had repeatedly acted with undue delay in processing the relevant requests from Argentina. Furthermore, Argentina suffered from discrimination, as the United States had recognized FMD free zones and had approved the importation of fresh bovine meat exported from Members with a similar sanitary status. Argentina believed that the contested measures were inconsistent with, *inter alia*, the fundamental provisions of the SPS Agreement and Articles I and XI of the GATT 1994. Given the amount of time that had passed since Argentina had made the relevant requests for sanitary approval, Argentina had to once again request that the DSB establish a panel, with standard terms of reference, to examine this matter under the WTO rules, as stipulated in its panel request. Argentina remained open to discussing solutions that would ensure access to the US market for its exports of fresh meat and other animal products.

4.3. The representative of the United States said that US measures with respect to the importation of animals, meat and other animal products from Argentina were fully compliant with the obligations of the United States under the WTO Agreements. Furthermore, US regulatory authorities were, at the present time, engaged in the process of evaluating sanitary issues related to Argentina's products that were the subject of this request. Unfortunately, despite these developments, it appeared that Argentina had chosen to prioritize litigation over cooperation in moving forward the regulatory process. The United States was disappointed that Argentina had taken this action and had chosen to request the establishment of a panel for a second time. The United States understood that a panel would likely be established at the present meeting and it was ready to defend its measure in these proceedings.

4.4. 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.

4.5. The representatives of Australia, China, the European Union, India and Korea reserved their third-party rights to participate in the Panel's proceedings.

5 UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM

A. Request for the establishment of a panel by Viet Nam (WT/DS429/Rev.1)

5.1. The Chairman drew attention to the communication from Viet Nam contained in document WT/DS429/2/Rev.1, and invited the representative of Viet Nam to speak.

5.2. The representative of Viet Nam said that, on 17 December 2012, his country had submitted a request for the establishment of a panel in the dispute with the United States regarding certain anti-dumping measures imposed by the United States on frozen shrimp from Viet Nam (DS429). A request for consultations on this matter had been circulated on 27 February 2012 and consultations had been held between the parties on 28 March 2012 in Geneva. In addition, at the request of the United States, at least two additional meetings had been held between Viet Nam and the United States subsequent to the March 2012 consultations. Viet Nam and the United States had engaged in high-level discussions for more than nine months. Unfortunately, neither the formal consultations required under the DSU nor subsequent communications between Viet Nam and the United States had resulted in a mutually satisfactory resolution of the dispute. Consequently, Viet Nam had no choice but to request the establishment of a panel, pursuant to Article 6 of the DSU and Article XXIII of the GATT 1994.

5.3. Most of the substantive issues contained in the panel request were those that had been decided in Viet Nam's favour in DS404, with respect to anti-dumping reviews finalized before the date of the establishment of a panel in that dispute. Notwithstanding the US failure to appeal the results of DS404 and its agreement to implement the Panel's recommendations, no later than 2 July 2012, the United States still had not implemented the findings and conclusions of DS404 and had never requested an extension of the reasonable period of time for implementation. Indeed, the United States had not even implemented the internal process, a proceeding under

Section 129 of the Uruguay Round Agreements Act (URAA), which was required for implementation in DS404. Since eliminating the violations, arising out of the actions that had been taken by the United States in reviews decided after the Panel in DS404 had been established, would require reliance on results in the reviews subject to DS404 consistent with the Panel Report in DS404, Viet Nam was requesting the panel, that would examine this dispute (DS429), to treat the reviews subject to DS404 in the same manner as if the United States had implemented DS404.

5.4. To implement in the DS404 dispute, the United States would only be required to revise the rate for the so-called country-wide entity, which was based on facts available by applying a single "all other" rate consistent with Article 9.4 of the Anti-Dumping Agreement. While the rates of the individually investigated exporters in the reviews subject to DS404 had been calculated using the practice of "zeroing", the rates of the individually investigated exporters were zero or *de minimis*. As such, no recalculation of those rates would be necessary. The fact that the United States had then calculated its separate rate (an all other rate applicable to known exporters that had demonstrated independence from government control) without reference to the zero or *de minimis* rates of the individually investigated exporters, had also been found to be inconsistent with US WTO obligations by the Panel in DS404. However, this inconsistency no longer required a recalculation, since the United States authorities had already been instructed by the US Court of International Trade to apply the weighted average to the so-called separate rate respondents and the United States had applied a weighted-average rate of zero or *de minimis* to the separate rate respondents. As a result, the only remaining aspect of implementation of DS404 was to eliminate the rate applicable to the country-wide entity and to apply a single all other rate to all exporters not individually investigated in the reviews subject to DS404 of zero or *de minimis*.

5.5. The issues in this dispute were virtually identical to those in DS404. Specifically, recalculation of the rates in subsequent reviews without the application of the US zeroing methodology, application of the resulting weighted-average margin of the individually investigated exporters to the separate rate companies and the elimination of application of the country-wide rate based on adverse facts available to unknown entities and/or entities that had not demonstrated independence from government control and applying a single rate to all non-individually investigated exporters based on the weighted-average rate of the individually investigated exporters. In Viet Nam's view, neither Viet Nam nor the WTO should be put in a situation where their resources were being wasted by continued litigation of issues that had already been decided and could be easily implemented. However, what distinguished this dispute from DS404 was that this dispute presented a different factual scenario, which demonstrated that the panel should find that the continuation of the anti-dumping duty measures on shrimp from Viet Nam was inconsistent with the US WTO obligations under Articles 11.1, 11.2, and 11.3 of the Anti-Dumping Agreement. There were two key factual differences. First, the sunset review determination was now final. The United States had failed to implement Article 11.3 of the Anti-Dumping Agreement in a WTO-consistent manner by conducting the sunset review based on erroneous margins of dumping (i.e. margins that had been generated by applying the zeroing methodology) and erroneous assumptions that even a small decline in exports indicated that dumping would recur if the anti-dumping measures were revoked. The second factual difference was that the US authorities had continued to apply anti-dumping measures to individually investigated respondents, which had repeatedly demonstrated the absence of dumping by receiving zero or *de minimis* margins each time they had been individually investigated.

5.6. In essence, three findings and conclusions were required with respect to Article 11 of the Anti-Dumping Agreement and none of them was complex. First, were individually investigated exporters that demonstrated the absence of dumping throughout the course of a proceeding, while continuing to ship substantial volumes of subject merchandise, entitled to a termination of the anti-dumping duty order? Second, could a review under Article 11.3 of the Anti-Dumping Agreement be deemed WTO-consistent when that review relied on margins of dumping which were determined in a WTO-inconsistent manner? Third, in a retrospective system in which there was no ceiling on the amount of the duties that could be assessed retroactively, could a finding that dumping was likely to recur be based primarily on a small decline in the volume of imports of subject merchandise after the imposition of the anti-dumping measures? Viet Nam noted that it had been able to find only a single circumstance since the WTO's agreements had entered into force, in which the US authorities had found, under Article 11.3 of the Anti-Dumping Agreement, that dumping was unlikely to continue or recur if the anti-dumping measures were revoked. Recently, the US authorities had also repealed the regulation which had permitted revocation of anti-dumping measures as to individually investigated respondents, which demonstrated the

absence of dumping through zero or *de minimis* margins in consecutive reviews. Viet Nam did not believe that Articles 11.1, 11.2 and 11.3 were meaningless verbiage in the Anti-Dumping Agreement. Rather, Viet Nam believed that those provisions imposed meaningful and enforceable obligations on authorities. Viet Nam was pursuing this dispute to ensure that one of its most important export products was not potentially blocked from the US market by being likely under the anti-dumping duty order in perpetuity because the United States ignored those obligations. Finally, Viet Nam noted that, in its view, the Panel in DS429 should proceed according to the time-table provided for in Article 12.8 of the DSU, due to the fact that most of the complicated issues had already been fully addressed in prior panels and/or Appellate Body reports.

5.7. The representative of the United States said that his country was disappointed that Viet Nam had chosen to move forward with a request for panel establishment at the present meeting. The United States had been encouraged by its ongoing dialogue with Viet Nam over the past months, a dialogue that had been aimed at reaching a mutually agreed solution to this dispute as well as DS404. The United States continued to hope that such a solution was possible, and remained prepared to work together with Viet Nam toward that end. Accordingly, the United States urged Viet Nam to reconsider its decision to pursue a panel in this dispute, and was not in a position to agree to the establishment of a panel at that time. In conclusion, the United States wished to make a few remarks about DS404, as that dispute had been referenced repeatedly in Viet Nam's statement. The DSB's findings and recommendations in that dispute had raised novel and complex issues that Members must take time to address properly. As with DS429, the United States had also been discussing implementation issues related to this dispute bilaterally with Viet Nam and looked forward to continuing its dialogue with the aim or resolving this dispute.

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

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

A. Recourse to Article 22.7 of the DSU by Antigua and Barbuda (WT/DS285/25)

6.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Antigua and Barbuda. He drew attention to the communication from Antigua and Barbuda contained in document WT/DS285/25, and invited the representative of Antigua and Barbuda to speak.

6.2. The representative of Antigua and Barbuda said that, as indicated in the Agenda of the present meeting and in document WT/DS285/25, Antigua and Barbuda wished to request the DSB to authorize the suspension of concessions and other obligations to the United States, in conformity with the December 2007 decision of the Arbitrator contained in document WT/DS285/ARB. In its statement at the December 2012 DSB meeting, Antigua and Barbuda had explained why it had decided that it had no alternative at that point in time than to avail itself of the suspension of concessions. Antigua and Barbuda did not wish to repeat the details because it believed that Members recalled the statements and other presentations made by Antigua and Barbuda before the DSB over the years. But, particularly in light of the US remarks following Antigua and Barbuda's statement made at the December 2012 DSB meeting and developments since that time, Antigua and Barbuda felt that it needed to address a few issues directly. First, Antigua and Barbuda was surprised that the United States continued to put forth the argument that it had been either unaware that it had made a commitment in respect of gambling in its GATS schedule or that the commitment had been made by mistake. As Members knew, in their respective preparations of their schedules under the GATS, many Members had been able to recognize the gaming commitment and either exclude or modify it explicitly by reference in their schedules, as at least a dozen were so to do, or omit the commitment by exclusion of the entire applicable sector. All Members were, as it was said, singing from the same hymn sheet, W/120. The United States itself had excluded "sporting" from the applicable sector. The insistence upon "error", "mistake" or "unintentional" was disingenuous, untrue and Antigua and Barbuda hoped that the United States would drop this unhelpful red herring.

6.3. Second, in its statement made at the December 2012 DSB meeting, the United States had made reference to its need to strictly regulate remote gaming to protect the health and safety of its citizens. That was yet another false trail, as during the course of the proceedings the US

primary defence was that remote gaming was so pernicious and problematic that it was not capable of regulation. In fact, the United States had argued that it had prohibited all remote gaming because of the moral, health and safety problems associated with the activity. But Antigua and Barbuda had never argued that remote gaming should be unregulated. Antigua and Barbuda had been licencing and regulating the industry for almost two decades and fully understood and respected the need for regulation. Among Antigua and Barbuda's many unanswered proposals for settlement to the United States was a joint regulatory system where the United States could work closely with Antigua and Barbuda's regulators to ensure the efficacy of remote gaming regulation. Many Members effectively regulated remote gaming. As Antigua and Barbuda had established in the course of its proceedings, and as the United States had now admitted, US laws did not prohibit all remote gambling. As Members were aware, lawful domestic remote gaming had existed in the United States for decades and was increasing as each day passed. Antigua and Barbuda hoped that the United States would no longer continue to push forth the tired and thoroughly discredited justification for its decade-long non-compliance with the DSB's decision in this dispute.

6.4. Third, Antigua and Barbuda wished to make it clear that it had been patient, open and creative in its negotiating efforts with the United States. Antigua and Barbuda had been forthcoming and conciliatory, and fully understood what it meant to compromise. But in all the years of discussions with the United States, the United States had not once given Antigua and Barbuda a settlement proposal of its own. The United States had never once taken any of Antigua and Barbuda's many proposals and suggested changes, permutations or alternatives in what Antigua and Barbuda understood the spirit of good faith negotiations to be. In fairness, by and large neither had the United States rejected Antigua and Barbuda's proposals. The United States had simply failed to respond or do anything. In one instance, the United States had agreed to a key part of Antigua and Barbuda's settlement proposals, that the United States cease the criminal prosecution and jailing of Antigua and Barbuda citizens. However, after weeks of efforts and considerable expense, the United States had completely rejected the agreement Antigua and Barbuda thought it had made, incredibly issuing a criminal indictment against one of Antigua and Barbuda's operators almost simultaneously, as if to underscore their reversal. Antigua and Barbuda found itself negotiating against itself, and even its suggestion that the parties avail themselves of the services of the Director-General to mediate the dispute in hopes of breaking the deadlock had been refused. Despite their public pronouncements, Antigua and Barbuda assured Members that the United States had neither made nor explored a reasonable and fair settlement proposal in this case. Once again, Antigua and Barbuda called on the United States to discontinue its oft-repeated and untrue assertion that Antigua had failed to take up reasonable settlement offers presented to it.

6.5. Fourth, in response to its argument that Antigua and Barbuda was unfairly and improperly standing in the way of US efforts to cure its GATS violation by wiping away its gaming commitment under the GATS, Antigua and Barbuda wished to inform Members that the United States had offered Antigua and Barbuda nothing during their brief and languid discussions regarding the proposed removal of the gaming concession. Antigua and Barbuda continued to insist, particularly on behalf of small, narrow economies such as its own, that a major economy could not avoid the consequences of an adverse DSB ruling by withdrawing a commitment in a manner that ostensibly balanced global trade by accommodating other affected Members, but providing no benefit or compensation to the prevailing party in the underlying dispute. That would be an absurd result and international law did not fancy absurdity.

6.6. Fifth, and of considerable importance, Antigua and Barbuda was disturbed by the US statements and suggestions that Antigua and Barbuda's recourse to the suspension of concessions and other obligations awarded to it by the DSB would render Antigua and Barbuda a pirate and thief of intellectual property. Antigua and Barbuda had followed the WTO rules and procedures to the letter. It had litigated each and every issue, and had availed itself of the remedies and rights provided to it as a prevailing party in a WTO dispute under rules, as Members were aware, that were largely driven by the major economies during the process that had resulted in the Uruguay Round agreements. To accuse Antigua and Barbuda of somehow being an international outlier by doing what the rules provided it could do, while at the same time confiscating the money of its operators held in global accounts and subjecting its operators to prison terms under laws held inconsistent with the GATS beggared belief. Antigua and Barbuda considered the rhetoric and particularly inflammatory and clearly false accusations to be inappropriate, unhelpful and wrong, and called again on the United States to cease these very unfortunate references and acknowledge

that Antigua and Barbuda was doing precisely what it had earned the right to do under international agreements.

6.7. Sixth, Antigua and Barbuda wanted to assure Members that it was mindful of the uncertainties and minefields that lied before it in going down a path not yet travelled. Antigua and Barbuda was in the process of assessing its options, analysing the legal issues and developing a scheme for imposing the suspension of concessions and other obligations to be approved by the DSB should it, in the event, determine to do so. As had become the custom, before acting on the suspension of concessions and other obligations, Antigua and Barbuda would provide the Secretariat with reasonable details on what it would do and how it would do it. But while Antigua and Barbuda would be mindful and deliberate in that regard, it wanted Members, and the global trading community, to understand and focus on the reality of its circumstances. The United States had ruined Antigua and Barbuda's domestic remote gaming industry, causing thousands of job losses and nipping in the bud its prescient investment in remote gaming. At present, the United States was prosecuting and pursuing Antiguans for simply engaging in conduct that the United States had committed under the GATS to allow. By Antigua and Barbuda's estimates, the United States had seized over a billion dollars in customer deposits and other funds of Antigua and Barbuda's licenced operators without any kind of due process and in clear and unambiguous violation of international law. While Antigua and Barbuda would utilise the suspension of concessions and other obligations in a reasoned and responsible matter, it insisted that the focus should be on the United States, which could have avoided the circumstances in which they presently found themselves, by complying with the DSB's rulings or, as Antigua and Barbuda had hoped, by negotiating fairly with Antigua and Barbuda. This was not what Antigua and Barbuda wanted but, as an American musician had once said, "when you have nothing you have nothing to lose". At that point, Antigua and Barbuda had nothing. As its final entreaty to the United States, and at the risk of being repetitive, Antigua and Barbuda asked that the United States respect it as a WTO Member, entitled to the rights and benefits accruing to it under the applicable agreements, despite its very small size and to step away from the rhetoric and dissembling and work with Antigua and Barbuda fairly. While Antigua and Barbuda sought final authorization to suspend the concessions and other obligations to the United States in respect of intellectual property rights of US persons, it still stood ready and eager to find a fair solution to the dispute.

6.8. Antigua and Barbuda and most importantly its citizens could no longer be placated by empty promises and dissembling. If the United States wanted to avoid the consequences of Antigua and Barbuda's resort to its rights under the DSU, Antigua and Barbuda would encourage it to act, and to act quickly. As a final point, the fact that Antigua and Barbuda was at that point of seeking the suspension of concessions or other obligations was very unfortunate and did not bode well for the multilateral trading system in general and the WTO in particular. Antigua and Barbuda's experience in endeavouring to protect and enforce its rights against a bigger economy with infinitely greater resources had not been satisfactory. Its inability to achieve a fair and proper resolution over a long period of time, together with the possibility that at the end of the day the United States may avoid any liability to Antigua and Barbuda by simply re-writing its trade obligations after the fact, left Antigua and Barbuda wondering if there was anything for small economies at the WTO, and if the WTO dispute resolution system may not be in serious need of overhaul. Accordingly, in conformity with the decision of the arbitrator in this dispute, and as had been outlined in document WT/DS285/25, Antigua and Barbuda requested the DSB to authorize the suspension of certain concessions and other obligations to the United States on the basis provided therein.

6.9. The representative of the United States said that his country was disappointed with Antigua and Barbuda's misplaced decision to abandon constructive settlement discussions and to pursue authorization to suspend concessions or other obligations under Article 22.7 of the DSU. This course would not achieve a positive outcome for the Antiguan economy or people and would make resolution of this long-standing matter more difficult. The United States fundamentally disagreed with Antigua's characterization of the status of this dispute and with US efforts to reach a solution. As recently as Friday, 25 January 2013, the United States had understood the two countries to be making progress on a settlement that would bring real benefits to Antigua. Throughout that process, the United States had urged Antigua to seek solutions that would benefit its broader economy. However, Antigua had stymied any progress toward finding common ground by insisting that the United States must not modify its schedule under the General Agreement on Trade in Services (GATS). As the United States had explained in the past, the United States had never intended gambling and betting services to be included in its schedule under the GATS. This had

been the US understanding of its own schedule. However, as a result of ambiguities in drafting, and despite the intent of the US negotiators, the Appellate Body had ultimately found that the US schedule must be construed as including a market access commitment for cross-border gambling. Although the United States found this outcome difficult to understand and highly unfortunate, the United States had accepted the results of the dispute settlement system. The United States had responded to this finding responsibly, and in a manner that involved substantial costs for the United States. As the United States had previously notified the DSB and the Council on Trade in Services, the United States had invoked the established, multilateral procedures for modification of its GATS schedule of concessions. In May 2007, the United States had initiated the modification procedure under Article XXI of the GATS so as to reflect the original US intention to exclude gambling from the scope of US commitments. Pursuant to the GATS procedures, the United States had reached agreement with all interested Members, except one, on a package of substantial compensatory adjustments to the US GATS schedule. Only one single Member, out of the entire WTO Membership, would not accept compensatory service concessions. That Member was Antigua. Instead of respecting the WTO process under Article XXI of the GATS, Antigua insisted that the United States must maintain its unintentional concession on gambling, and that the United States must change its domestic policies concerning public morals and public order so as to allow internet gambling.

6.10. Despite this unreasonable and unrealistic demand, the United States had gone to great efforts to meet Antigua's concerns. Over a course of years, the United States had devoted substantial resources to settlement discussions. The United States had met repeatedly with Antigua at all levels of government, from the ministerial to the technical level. Based on specific requests made by Antigua, the United States had offered real and substantial benefits that would make important contributions to the further development of the Antiguan economy. At times, it had appeared that Antigua had been on the verge of accepting those benefits and putting this dispute behind the Membership. At other times, however, as appeared to be the case at the present meeting, Antigua reverted to its unrealistic demands that the United States forego the modification of its schedule under the GATS. Moreover, Antigua, at the present meeting, was taking the additional step of seeking authorization to suspend concessions with respect to intellectual property rights. The United States viewed this step as fundamentally at odds with the current status of this matter. It was Antigua's actions in refusing to engage in the Article XXI process, and not the actions of the United States, that were preventing the final resolution of this matter. Moreover, if Antigua did proceed with a plan for its government to authorize the theft of intellectual property, it would only serve to hurt Antigua's own interests. Government-authorized piracy would undermine chances for a settlement that would provide real benefits to Antigua. It also would serve as a major impediment to foreign investment in the Antiguan economy, particularly in high-tech industries. In closing, the United States noted that Antigua had stated that it would not seek to implement a suspension at the present time and that it would provide details on its plans to the DSB at a later time. Accordingly, as Antigua had acknowledged in its statements to the DSB and in its request before the present DSB meeting, consistent with the terms of the December 2007 Decision by the Arbitrator, Antigua would provide, to the DSB, an explanation of how it proposed to apply any suspension and how it would ensure that the level of the proposed suspension did not exceed the level authorized by the DSB; that explanation must be provided prior to applying the suspension that was being authorized at the present meeting. As noted, however, implementing suspension of intellectual property rights was counter to Antigua's own interests, and Antigua should reconsider before taking this extraordinary and unprecedented step.

6.11. The representative of Dominica, speaking on behalf of the Organization of Eastern Caribbean States (the OECS), said that a well-functioning rules-based multilateral trading system that was fair, balanced and equitable and addressed the needs, concerns and interests of all its Members particularly the smallest, weakest and most vulnerable was critical for the long-term credibility and relevance of the WTO. Such a system was, in fact, most needed by the smallest and weakest Members who lacked the economic and political weight to advance and defend their interests in what would otherwise be the law of the jungle. For the member States of the OECS, the existence and maintenance of such a system was one of the key benefits or raison d'être for Membership in the WTO. A key element of a rules-based multilateral trading system was a fair, equitable and well-functioning dispute settlement system. The DSU and the DSB negotiated during the Uruguay Round and established in 1995 represented a major innovation in the global economic governance architecture meant to provide a more binding and judicious process for the settling of disputes among Members. It was not a perfect system as Members knew given that Members were

currently engaged in negotiations on its continued reform. Some Members, who had been impacted negatively by rulings and decisions of the dispute settlement system, would argue for more balance between the spirit and the letter of the law as it related to the sometimes competing yet complementary goals of trade and development. The rulings of the Panel and the Appellate Body in favour of Antigua and Barbuda in this case on measures affecting the cross border supply of gambling and betting services was a clear demonstration that the WTO and the multilateral trading system was closer to being a fair and equitable rules-based system. It had demonstrated that the smallest and the weakest could come away with a positive ruling to be followed by prompt and effective implementation of the rulings or mutually acceptable settlements of the disputes. The inability, thus far, for those rulings to be translated into implementation and/or for Antigua and Barbuda to obtain what for them would be an acceptable settlement of the case was, however, a mark against that notable achievement of the system which needed to be addressed in earnest. The member States of the OECS, therefore, called for a speedy resolution to this long outstanding dispute in line with the DSB's rulings and recommendations, in line with the fundamental principles, objectives and goals of the WTO and its Agreements and finally in line with the needs of a tiny and vulnerable developing country.

6.12. The DSB took note of the statements and, pursuant to the request by Antigua and Barbuda under Article 22.7 of the DSU contained in document WT/DS285/25, agreed to grant authorization to suspend the application to the United States of concessions or other obligations consistent with the Arbitrator's decision contained in document WT/DS285/ARB.

7 STATEMENT BY BRAZIL REGARDING REQUESTS FOR PRELIMINARY RULINGS

7.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Brazil and invited the representative of Brazil to speak.

7.2. The representative of Brazil said that his country had inscribed this item on the Agenda of the present meeting in order to draw attention to a systemic issue relating to requests for preliminary rulings in panel proceedings. Specifically, and taking into consideration the growing number of such requests, Brazil wished to express its concern about the lack of uniformity and transparency with which such requests had been dealt recently. Preliminary rulings were not mentioned textually in the DSU. However, it was understood that panels may accept such requests regarding procedural aspects by the flexibility with which they were afforded under Article 12 of the DSU. Parties to a dispute could also agree to include such possibility in their working procedures. The scope of such requests seemed to be, from recent practice, increasingly flexible. The absence of specific provisions on preliminary rulings allowed for a great margin of discretion in two important and inter-related aspects: the subject matter of the claims put forth and the timing of the requests. The first point that Brazil wished to raise was that an indiscriminate use of such procedures, without proper rules, could cause important systemic consequences that would have an impact on the dispute settlement proceedings. The over-arching effects could, among other things, hinder the expediency and efficiency of panel proceedings, make Appellate Body's review more difficult, sometimes moot, limit third-party rights and the multilateral review of the settlement of disputes and constituted a barrier for developing countries to access the dispute settlement system due to its increasing complexity. The second issue pertaining to preliminary rulings was with regard to the procedure itself. Brazil wished to draw attention to the fact that provisions on jurisdictional and procedural matters such as terms of reference of a panel, function of panels, formalities for their establishment and evidence-gathering issues, usually dealt with in the "preliminary" phase constituted nevertheless relevant provisions of the DSU. No matter the stage of the proceedings those issues were raised, there would be a controversy as to the application of a provision in a covered agreement, and their proper interpretation and application was the primary function of the panels, just as any other issue raised in a dispute. In that sense, preliminary rulings had the same effects as any other decisions made by the panel and should abide by the same rules and principles set forth in the DSU.

7.3. The aforementioned flexibility accorded to the panel and the parties to a dispute could not be used in a manner that contradicted any provision of the DSU or any of the covered agreements or that undermined the multilateral review of the procedures or third-party rights. More specifically, it was of the utmost importance that third parties were granted access to any submission requesting preliminary ruling and afforded an opportunity to comment on such requests. Denial of these fundamental rights may prevent a third party from meaningfully participating in the proceedings, especially in cases of preliminary rulings dealing with substantive matters. Brazil emphasized that

it was not against requests for preliminary rulings as such. What it was saying was that preliminary rulings must not constitute a means to procrastinate the proceedings or an opportunity for parties to advance arguments on substantive matters or subjects that could otherwise be presented in their substantive written submissions and discussed in the meetings. Moreover, there were occasions where procedural matters of fundamental relevance were decided in those initial steps of the panel proceedings. That was precisely why, in Brazil's view, requests for preliminary rulings should not be overused and must conform to the rules and principles of the WTO dispute settlement system.

7.4. The representative of Canada said that his country thanked Brazil for placing this item on the DSB's Agenda and for its statement made at the present meeting. Like Brazil, Canada had some concerns about the recent treatment of requests for preliminary rulings. Brazil was correct to remind Members that while requests for preliminary rulings were not explicitly foreseen in the DSU, they had emerged as a helpful mechanism through which panels could organize proceedings to contribute to the prompt and efficient settlement of disputes. The absence of a codified approach to these requests had, however, meant that the practice had been unpredictable, introducing an unfortunate degree of uncertainty into the system. While Canada appreciated that there would be occasions where it would be necessary for such requests to be dealt with rapidly, sometimes even prior to the finalization of working procedures and a timetable, in many cases a full consideration of all of the interests at stake could be more important than rapid resolution of the issues raised and request for a preliminary ruling. In that regard, it was important that the rights of third parties, codified in the DSU, not be neglected. In the haste to deal rapidly with requests for preliminary rulings, it could be tempting to dispense with those rights. However, preliminary rulings often dealt with precisely the kinds of systemic issues for which non-disputing Members were granted the option to participate as third parties in the first place. Canada recognized that there were communications between the parties to the dispute and the panel that should remain confidential. However, that would rarely be the case for requests for preliminary rulings. Such requests and all communications related to them should be immediately made available to third parties with an adequate opportunity to comment. To conclude, as requests for preliminary rulings became a more frequent feature of the dispute settlement system, it was important to ensure that there was greater consistency in the timing according to which they were addressed, that they followed an appropriate and consistent level of transparency and that third party rights be respected at all times.

7.5. The representative of the European Union said that the issue raised by Brazil was of systemic interest and thanked Brazil for inscribing it on the Agenda of the present meeting. The EU did not wish to comment further on the merits of the legal arguments put forward by Brazil. The EU had made its views known on this matter before the panel in DS353 (Large Civil Aircraft). Notwithstanding the legal situation, the EU did support, for policy reasons, the proposition that third parties have access to the information submitted by the parties in preliminary ruling proceedings. The EU supported the idea that third parties should have an opportunity to submit comments in relation to requests for preliminary rulings.

7.6. The representative of the United States said that his country thanked Brazil for drawing this issue to the attention of Members. If Members were interested, the United States would be willing to engage in discussions with others in order to consider the issues raised and possible responses. As a general matter, the United States would agree that third parties should receive any request for a preliminary ruling, as well as related submissions, if they were made prior to the first meeting of the panel with the parties. The United States considered that this was part of the right conferred under Article 10.3 of the DSU. The DSU, and Article 10.2 in particular, however, did not address the specific question of whether third parties should be given the opportunity to submit comments with respect to preliminary ruling requests when the panel decided to resolve a particular issue through a preliminary process in advance of the parties' first written submissions and in advance of the third party submissions. However, a panel that had decided to address an issue through a preliminary process may also decide to afford third parties such an opportunity to comment, and the United States considered that it would be in most cases helpful to do so, to enable the panel to benefit from the views of the third parties on the issues that were raised.

7.7. The representative of Australia said that his country thanked Brazil for inscribing this item on the Agenda of the present meeting. Australia welcomed the comments by Brazil, Canada, the EU and the United States and wished to register its views about third party rights and due process. Australia agreed that any flexibility accorded to the panel and the parties to a dispute could not be

used in a manner that contradicted the DSU or any of the covered agreements. Further, Australia considered that as Article 10.1 of the DSU required that the interests of the parties to a dispute and those of other Members be taken fully into account during the panel process, third parties should be given the opportunity to make submissions with respect to requests for preliminary rulings.

7.8. The representative of China said that her country thanked Brazil for inscribing this item on the Agenda of the present meeting and for its statement regarding requests for preliminary rulings. In general, China supported the idea that third parties should receive requests for preliminary rulings and any responses to such requests submitted prior to the first substantive meeting of a panel. China believed that it was preferable and valuable to provide third parties with the opportunity to comment, either in their written submissions or separately in advance of their written submissions, before a panel made a preliminary ruling. In the event that third parties were provided with the opportunity to comment on a request for a preliminary ruling, the parties to the dispute should have the opportunity to respond to third parties' comments. However, at this point, China was not sure whether the rules regarding preliminary rulings need to be clarified and wished to reserve its position on this matter.

7.9. The DSB took note of the statements.

8 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELLISTS (WT/DSB/W/497)

8.1. The Chairman drew attention to document WT/DSB/W/497, which contained additional names proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/497.

8.2. The DSB so agreed.

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

9.1. The Chairman, speaking under "Other Business", said that, as announced at the outset of the meeting, he wished to make a short statement under "Other Business" concerning the issue of possible reappointment of one Appellate Body member. He recalled that at the DSB meeting in December 2012, he had informed delegations that the first four-year term of office of Mr. Ricardo Ramírez would expire at the end of June 2013. At that meeting, he had announced that Mr. Ramírez, who was eligible for reappointment pursuant to Article 17.2 of the DSU, was interested and willing to be reappointed for a second four-year term. He had also stated that it was his intention to consult informally with interested delegations on this matter. To that effect, he invited Members with views on this issue to contact him directly. He said that the consultation process was ongoing and, once again, requested Members to contact him directly for consultations in order to proceed further.

9.2. The DSB took note of the statement.

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