WORLD TRADE ORGANIZATION

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Dispute Settlement Body
24 April 2012

MINUTES OF MEETING

Held in the Centre William Rappard
on 24 April 2012

Chairman: Mr. Shahid Bashir (Pakistan)

Prior to the adoption of the Agenda, the Chairman welcomed the new Director of the Council and TNC Division, Mr. Victor do Prado, and wished him every success in his new responsibilities.

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.113)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.113)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.88)

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.51)

(e) China – Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products: Status report by China (WT/DS363/17/Add.15)

(f) 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.4)

(g) United States – Definitive anti-dumping and countervailing duties on certain products from China: Status report by the United States (WT/DS379/12/Add.3)

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

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 eight sub-items under Agenda item 1 be considered separately.

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.113)

2. The Chairman drew attention to document WT/DS176/11/Add.113, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

3. The representative of the United States said that his country had provided a status report in this dispute on 12 April 2012, in accordance with Article 21.6 of the DSU. Legislative proposals had been introduced in the current 112th US 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.

4. The representative of the European Union said that the EU wished to thank the United States for its most recent status report. The EU hoped that the US authorities would very soon take steps towards implementing the DSB's ruling and resolve this matter.

5. The representative of Cuba said that, for more than a decade, the US failure to comply with the DSB's recommendations and rulings in the Section 211 dispute had been discussed at regular DSB meetings: i.e. once a month. She recalled that in February 2002, Section 211 had been found to be inconsistent with the TRIPS Agreement and the Paris Convention. Since then, Section 211 continued to be in force despite the fact that it violated WTO rules, and was applied retroactively to the Havana Club trademark, preventing that trademark from being renewed by the company Cubaexport. This unjust and arbitrary measure was under review in the US courts where one could see to what extent the hostile and archaic anti-Cuban US policy was decisive in the rulings issued to date. This irrational policy prevailed over the most basic rules of international intellectual property law, including US precedent on the retroactive application of a law.

6. Under those circumstances, it was disgraceful to hear, time and again, the same status reports promising that "the US Administration will continue to work on a solution that would resolve this matter". Cuba wondered how and when this would happen: perhaps once the United States had definitively deprived the owner of a Cuban trademark in Cuba of a right held for more than 30 years. It was unacceptable for the United States to proceed in this way. The United States should be reminded, once again, that according to Article 21.6 of the DSU, status reports must refer to "progress" in the implementation of the DSB's recommendations and rulings. To submit the same report year after year not only showed a lack of respect, but also violated the rules of the WTO dispute settlement system. As a result of the illegal Section 211, the American company, Bacardi, continued to market a line of rum by misusing the Havana Club trademark. In other words, Bacardi was blatantly taking advantage of what was a well-known Cuban rum trademark.

7. As all knew, the US violations of the intellectual property rights of Cuban owners, on the basis of the illegal economic, financial and commercial blockade against Cuba, went beyond Section 211. However, even the DSB, under the current DSU provisions, was not able to ensure compliance by the United States with the recommendations and to put an end to this measure. The United States claimed to "comply strictly with intellectual property rules" and drew up lists of sanctions for countries that allegedly failed to comply with their obligations, including WTO Members. Thus, it was no wonder that the irresponsible and decadent behaviour of this "great power" was being rejected with increasing force in a number of forums, and on the international scene in general.

8. At the recent VI Summit of the Americas, certain Latin American representatives had repeatedly pointed out that the US policy on Cuba was "anchored in the Cold War" and "anachronistic". All 32 countries condemned the "criminal blockade of the United States against Cuba" which for some, like the President of Paraguay, was a practice that: "violated principles of international law which, in all of our multilateral and regional organizations, we are defending and trying to guarantee". Once again, Cuba wished to stress that the United States was just another WTO Member with equal rights and obligations. As long as the United States failed to comply with its WTO obligations in a number of disputes, it was in a state of illegality. This could not be disregarded in the framework of the WTO negotiations where the United States often took a hard line although it was not in compliance with its obligations and violated the same rules it was negotiating. Cuba wished to reaffirm its request that the United States repeal Section 211 as this was the only solution to this dispute. Cuba urged the United States to act rapidly and to stop delaying the adoption of the legislative measures necessary to comply with the DSB's decisions.

9. The representative of the Bolivarian Republic of Venezuela said that, once again, her country wished to point out that the most recent US status report contained the same information as the previous status reports submitted by the United States. The only changes made were the date and document symbol. In Venezuela's view, this amounted to "action without results". Venezuela noted that Section 211 remained in force despite having been found to be inconsistent with the TRIPS Agreement and the principles of national treatment and most-favoured-nation treatment. This undermined the dispute settlement system, which was considered to be one of the great achievements of the Uruguay Round. Venezuela was disappointed that, for the past ten years, the United States had failed to implement the Appellate Body's ruling. As it had done on numerous occasions, Venezuela called on the United States to end its policy of economic, commercial and financial blockade against Cuba and reminded the United States of its obligation to comply with the DSB's recommendations.

10. The representative of Zimbabwe said that his country thanked the United States for its status report. Zimbabwe supported the statements made by Cuba and Venezuela and, once again, urged the United States to comply with the DSB's rulings and recommendations in the Section 2011 dispute.

11. 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. 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.

12. The representative of Uruguay said that his country thanked the United States for its status report. Uruguay shared the systemic concerns expressed by previous speakers and, once again, called on the parties to this dispute to intensify their efforts to end this dispute by complying with the DSB's recommendations of more than ten years ago.

13. The representative of China said that her country thanked the United States for its status report and statement made at the present meeting. The prolonged situation of non-compliance was highly incompatible with the principle of prompt and effective implementation required under the DSU provisions, in particular when the interests of a developing-country Member were affected. Thus, China urged the United States to implement the DSB's rulings and recommendations without further delay.

14. The representative of Angola said that her country thanked the United States for its status report. Once again, Angola regretted that no concrete progress had been made in the implementation of the DSB's decision and the Appellate Body's findings of February 2002, that Section 211 was inconsistent with WTO rules and principles. The delay in the implementation of the DSB's recommendations affected the efficient functioning of the multilateral trading system and set a negative precedent for other cases. Angola hoped that concrete actions would be undertaken to resolve this matter, which would send a positive signal of respect for WTO rules.

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

16. The representative of Nicaragua said that her country thanked the United States for its status report in this dispute. Nicaragua noted that the status report did not contain any new information and was the same like the previous status reports submitted by the United States. This showed the lack of will on the part of the United States to comply with the DSB's recommendations and rulings. Nicaragua supported Cuba's statement, had confidence in the multilateral trading system and wished to strengthen that system. However, the non-compliance with the DSB's recommendations and

rulings undermined the credibility of the system and affected Cuba's economic and commercial interests. Nicaragua, once again, urged the United States to comply with the DSB's recommendations.

17. The representative of the Dominican Republic said that her country thanked the United States for its status report on Section 211, which had been found to be inconsistent with Article 42 of the TRIPS Agreement. The Dominican Republic, once again, urged the United States to speed up its internal procedures in order to comply with the DSB's recommendations. The long period of time that had passed with no implementation undermined the credibility of the WTO and its decisions.

18. 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.113)

19. The Chairman drew attention to document WT/DS184/15/Add.113, 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.

20. The representative of the United States said that his country had provided a status report in this dispute on 12 April 2012, in accordance with Article 21.6 of the DSU. As of November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. With respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

21. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan took note of the US report that the United States had taken certain measures to implement part of the DSB's recommendations in November 2002. Japan hoped that the United States would soon be in a position to report to the DSB on more tangible progress with respect to the implementation of the remaining part of the DSB's recommendations. Full and prompt implementation of the DSB's recommendations and rulings was "essential to the effective functioning of the WTO and the maintenance of a proper balance of the rights and obligations of Members".[1] Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

22. 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.88)

23. The Chairman drew attention to document WT/DS160/24/Add.88, 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.

24. The representative of the United States said that his country had provided a status report in this dispute on 12 April 2012, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the EU, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

[1] Article 3.3 of the DSU.

25. The representative of the European Union said that the EU noted and thanked the United States for its status report. As it had stated many times in the past, the EU remained keen to resolve this dispute.

26. 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.51)

27. The Chairman drew attention to document WT/DS291/37/Add.51, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning its measures affecting the approval and marketing of biotech products.

28. The representative of the European Union said that the EU hoped that it could continue on the constructive path of dialogue with the United States. Two technical meetings had taken place in 2011 and in March 2012. The meetings had offered a good opportunity to discuss directly issues of concern for both sides and to follow up closely on developments in the biotech field. In 2012, the Commission had already authorized three more GMOs[2] and had renewed the authorization of a fourth one.[3] Two of those decisions[4] had been adopted only six months after the relevant EFSA opinions had been published. Furthermore, on 15 February 2012, EFSA had issued its opinion on the safety of a GM soybean for food and feed uses. This would be submitted for a vote on 2 May 2012.[5] Regarding the concerns expressed by the United States on the backlog of approvals, the EU once again recalled that its 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. The functioning of the GMO regime should not be rigidly assessed purely quantitatively and in the abstract, in terms of the number of authorizations per year, since this was dependent on various product and case-specific elements and in particular on the quality of applications and on the time needed by applicants to answer requests from EFSA on additional scientific information.

29. 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. As the United States had explained at past meetings of the DSB, the United States said that it continued to have substantial concerns regarding EU measures affecting the approval of biotech products. The EU measures, including delays in approvals, had resulted in substantial restrictions on the importation of US agricultural products. The affected products included US corn, corn gluten feed, and distillers dried grain from the current US growing season. The United States would also recall the DSB findings that EU member State bans on the corn variety Mon810 were inconsistent with the EU's obligations under the SPS Agreement.[6] In that regard, the United States noted its concern that in March 2012, France had renewed its member State ban affecting that corn variety. The ban had been adopted despite the fact that Mon810 had been cultivated for 17 years around the world, and had long been approved in the EU. The United States urged the EU to fix the ongoing problems with its measures affecting the approval of biotech products.

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

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[2] A5547-127 soybean, 356043 soybean, MON87701 soybean.
[3] 40-3-2 soybean.
[4] Authorization decision for 356043 and MON87701 soybeans.
[5] MON87701×MON 89788.
[6] Panel Report, "European Communities – Measures Affecting the Approval and Marketing of Biotech Products", WT/DS291/R, adopted 21 November 2006, paras. 8.24, 8.28.

(e) China – Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products: Status report by China (WT/DS363/17/Add.15)

31. The Chairman drew attention to document WT/DS363/17/Add.15, which contained the status report by China on progress in the implementation of the DSB's recommendations in the case concerning China's measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products.

32. The representative of China said that her country had provided a status report in this dispute on 12 April 2012, in accordance with Article 21.6 of the DSU. China had made tremendous efforts to implement the DSB's rulings and recommendations, and had completed amendments to most measures at issue. Through those steps, China had ensured full implementation of the DSB's recommendations and rulings, except those concerning film for theatrical release. With regard to the measures concerning film for theatrical release, China had been discussing with the United States and had recently reached an agreement towards resolving this matter. The agreement would be signed and notified to the DSB soon.

33. 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 noted at the March meeting of the DSB, the United States and China had reached agreement on a Memorandum of Understanding regarding films for theatrical release. The United States said that it looked forward to the formal signing of the MOU soon. In response to China's statements in its status report, and again at the present meeting, regarding products other than films for theatrical release, the United States noted that it would continue to review China's measures relating to reading materials, audiovisual home entertainment products, and sound recordings to assess whether the steps taken by China in fact implement the DSB rulings and recommendations. At the present time, the United States was not in a position to conclude that China had fully implemented the recommendations and rulings in this dispute as China had claimed for all areas other than for films for theatrical release. The United States would continue to review the steps that China had taken in those areas.

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

(f) 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.4)

35. The Chairman drew attention to document WT/DS382/10/Add.4, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping administrative reviews and other measures related to imports of certain orange juice from Brazil.

36. The representative of the United States said that his country had provided a status report in this dispute on 12 April 2012. The United States said that it would like to highlight important developments covered in the status report, as well as to inform the DSB of additional developments that had occurred after 12 April. On 14 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. The modification applied to all products from all Members, including the products of Brazil covered in this dispute. On 3 April 2012, Brazil and the United States had entered into an agreement regarding procedures under Articles 21 and 22 of the DSU. The agreement, which had been circulated to Members in document WT/DS382/11, was designed to facilitate a final resolution of this dispute. In the prior month, the US International Trade Commission (ITC) had made a determination to revoke the anti-dumping duty order in its five-year "sunset" review of the order on orange juice from Brazil. On 13 April 2012, the ITC had published in the US Federal Register its formal determination in the sunset review. In

accordance with the ITC determination, on 20 April 2012, the US Department of Commerce had issued a notice revoking the anti-dumping duty order on the products covered in this dispute. The revocation of the order was effective as of 9 March 2011. As a result of the revocation, imports of orange juice from Brazil entered on or after 9 March 2011 were not subject to anti-dumping duties. All anti-dumping duty cash deposits on entries on or after that date would be refunded.

37. The representative of Brazil said that his country thanked the United States for its status report. As had been mentioned, Brazil and the United States had concluded an "Agreement Regarding Procedures under Articles 21 and 22 of the DSU" with respect to the "Orange Juice" dispute. As Members were aware, the United States had recently published a final rule modifying its methodology regarding the calculation of dumping margins and assessment rates in anti-dumping reviews, according to which "zeroing" would no longer be used in these calculations after 16 April 2012. This new rule represented an important shift in the US attitude and Brazil certainly welcomed it, recognizing also the work that had been carried out by the US Administration in eliminating an illegal practice that had lasted for decades. The new rule, however, did not address all the findings in the "Orange Juice" dispute. It did not encompass the recalculation, without "zeroing", of assessment rates applying to past entries that remained unliquidated at the end of the reasonable period of time. Brazil understood that in order to fully comply with the DSB's recommendations and rulings in the "Orange Juice" dispute, the United States was not only required to abandon the use of "zeroing" in the future, but must also stop collecting anti-dumping duties that had been calculated with the use of that illegal methodology. For those reasons, Brazil had concluded a "sequencing" agreement with the United States, which preserved Brazil's rights concerning future legal steps in this dispute. This agreement reflected a spirit of compromise on Brazil's side. While Brazil acknowledged the efforts made by the United States to abandon "zeroing" in future reviews, Brazil would closely monitor the implementation of the final rule in the next months. Before the end of 2012, Brazil and the United States would consult with a view to achieving a solution to the "Orange Juice" dispute.

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

(g) United States – Definitive anti-dumping and countervailing duties on certain products from China: Status report by the United States (WT/DS379/12/Add.3)

39. The Chairman drew attention to document WT/DS379/12/Add.3, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US definitive anti-dumping and countervailing duties on certain products from China.

40. The representative of the United States said that his country had provided a status report in this dispute on 12 April 2012, in accordance with Article 21.6 of the DSU. On 6 April 2012, the US Department of Commerce ("Commerce") had issued to interested parties a preliminary determination with respect to certain issues in the countervailing duty investigation of certain new pneumatic off-the-road tyres. On 9 April 2012, Commerce had issued to interested parties a preliminary determination with respect to certain issues in the countervailing duty investigation of laminated woven sacks. Commerce had provided an opportunity for interested parties to provide comments on those preliminary determinations and to provide rebuttal comments on any comments that had been submitted by other interested parties. The United States said that it would continue to work on solutions to implement the DSB's recommendations and rulings.

41. The representative of China said that her country thanked the United States for its status report and statement made at the present meeting. However, as the reasonable period of time in this dispute would expire on 25 April, China was very disappointed that the United States had not yet implemented the DSB's rulings and recommendations. As the world's largest economy and trading Member, and the prime support of the establishment of multilateral trading rules, the United States

should take seriously its responsibility towards the multilateral trading system. However, it seemed that, while the United States was pressing other Members to abide by the rules, it did not treat the DSB's recommendations and rulings with due respect. China was concerned that the delayed implementation of the DSB's recommendations and rulings would provide a bad example for other Members, it would open the door to protectionism, and would undermine confidence of other Members in the dispute settlement system. Thus, China urged the United States to expedite its work and fully implement the DSB's rulings and recommendations in good faith and without any further delay. China reserved its right to take further action regarding this matter, in accordance with the DSU provisions.

42. The representative of the United States said that, in response to China's comments, the United States was aware that the reasonable period of time to which China and the United States had agreed would conclude on 25 April. The United States was working to bring the relevant measures into conformity with the recommendations and rulings of the DSB as quickly as possible. The United States had discussed this matter with China bilaterally and stood ready to continue that discussion in order to proceed forward cooperatively toward a final resolution of this dispute. The United States further stated that, as China was well aware, the United States had explained to China the work that remained for Commerce to do in the implementation process, and had laid out for China a schedule for completing that work. Finally, in response to China's comments that the US status report showed a lack of "due respect" for the DSB's recommendations and rulings, China's assertion was not well-founded. China had presented its own status report earlier during the present meeting, and the United States was sure that China considered that it took its WTO responsibilities seriously. Similarly, the United States took its responsibilities in relation to this dispute seriously.

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

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

44. The Chairman drew attention to document WT/DS371/15, 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.

45. The representative of Thailand said that her country was pleased to provide an update on its progress in implementing the DSB's rulings and recommendations in this dispute. As Members were aware, Thailand had already circulated a written status report pursuant to Article 21.6 of the DSU. Therefore, it would not wish to repeat in detail everything that had been stated in that written report. Thailand wished to note that the implementation process in this dispute involved three separate departments of the Thai government: Customs, Excise and Revenue and, with respect to many of the findings, required inter-agency coordination. These Departments had been working together on this task since the circulation of the Appellate Body Report. It was worth noting that their efforts had been disrupted for about a month due to the severe flooding in Bangkok that had shut many of the government offices towards the end of 2011. The overall goal of the Thai government in the implementation process was to simplify and make more transparent the regulatory regime governing the importation and sale of cigarettes in Thailand. Thailand expected that revised regulations would reduce the administrative burdens on both importers and domestic manufacturers of cigarettes and would be welcomed by importers. Thai authorities in Bangkok expected that implementation would be completed with respect to each of the DSB's rulings and recommendations by the end of the reasonable period of time previously notified to the DSB.

46. The representative of the Philippines said that her country thanked Thailand for its first status report regarding the implementation of the DSB's rulings and recommendations in this dispute. His authorities had carefully reviewed the status report and thanked Thailand for meeting with the

Philippines prior to the present meeting to discuss the report and for clarification of certain issues sought by the Philippines. The Philippines looked forward to receiving in due course further clarifications from Thailand. The Philippines was closely monitoring Thailand's efforts to put in place the necessary implementation measures and hoped that the DSB's rulings and recommendations would be fully implemented by the end of the reasonable period of time.

47. 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

48. 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.

49. The representative of the European Union said that the EU wished to inform the DSB that the authorized level of retaliation against the United States would amount to US$3,241,000 from 1 May 2012. The regulation had been published on 12 April 2012 and would soon be notified to the DSB. As it had done many times before, the EU requested the United States to 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, once again, 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.

50. The representative of Japan said that the CDSOA remained operational as the distribution process continued.[7] Japan urged the United States to stop the illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report pertaining to dispute.

51. The representative of India said that his country thanked the EU and Japan for bringing this issue before the DSB again. India renewed its systemic concerns about the continued non-compliance by Members and the growing lack of credibility in confidence of the dispute settlement system. India urged the United States to report full compliance without any further delay.

52. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. As expressed at previous meetings, Brazil was of the view that the United States was under obligation to submit status reports in this dispute until such time as 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.

53. The representative of Canada said that his country thanked the EU and Japan for having, once again, placed this item on the DSB's Agenda. Canada shared the views expressed by the EU and Japan, that the Byrd Amendment would remain subject to the DSB's monitoring and surveillance until the United States ceased to apply it.

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

54. The representative of Thailand said that her country thanked the EU and Japan for continuing to bring this matter before the DSB. Thailand urged the United States to provide status reports on this dispute and to bring this measure into compliance without further delay.

55. The representative of the United States said that, as it had already explained at some previous DSB meetings, the US President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled that Members, including the EU and Japan, had acknowledged during previous DSB meetings that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, which was some four-and-a-half years ago. The United States, therefore, did not understand the purpose for which the EU and Japan had inscribed this item on the Agenda of the present meeting. With respect to comments regarding further status reports in this matter, the United States failed to see what purpose would be served by further submission of status reports in this dispute, or any other, repeating again that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Finally, with respect to the measures announced by the EU, the United States would be carefully reviewing those measures. The United States recalled that the DSB had only authorized the suspension of concessions as provided in the Award of the Arbitrator.

56. The DSB took note of the statements.

3. United States – Measures affecting the cross border supply of gambling and betting services

(a) Statement by Antigua and Barbuda regarding the implementation of the recommendations and rulings adopted by the DSB

57. The Chairman said that this item was on the Agenda of the present meeting at the request of Antigua and Barbuda. He said that he had been informed that, under this Agenda item, Dominica would make a statement on behalf of Antigua and Barbuda. He then invited the representative of Dominica to speak.

58. The representative of Dominica, speaking on behalf of Antigua and Barbuda, said that, in November 2004, a WTO Panel had issued its decision in the DS285 dispute. In its decision, the Panel had determined that US laws prohibiting the provision of cross-border gambling and betting services by service providers located in Antigua and Barbuda to consumers in the United States were in violation of the GATS. That ruling had been upheld by the Appellate Body in February 2005. In April 2006, to the collective surprise of Members, the United States had declared itself to be in compliance with the DSB's recommendations and rulings, despite having done nothing in the interim, other than adopting yet another law further criminalizing the cross-border supply of gambling and betting services. In March 2007, a Panel established under Article 21.5 of the DSU to assess the status of compliance had issued its report, making it clear that the United States had not complied with the DSB's findings, and in fact demonstrating that considerable remote gambling was permitted within the United States. With no attempt being made by the United States to come into compliance following the report of the Article 21.5 Panel, in December 2007 a Panel of arbitrators had held that Antigua and Barbuda was entitled to resort to cross retaliation under Article 22 of the DSU in order to encourage the United States to comply with its obligations under international law.

59. However, at the present time, the United States was not in compliance with that ruling of eight years ago, and had not made any effort to do so. During those years in which the United States had been out of compliance with the GATS, Antigua and Barbuda had heard the US President and other senior officials of the US Administration insist that other nations must observe their obligations under the WTO Agreements. Antigua and Barbuda had heard how other Members, accused of being

in violation of their commitments under the WTO agreements, must comply with their obligations to be considered within the fellowship of responsible nations. In the meantime, in open violation of international law, the United States continued to criminally prosecute Antiguan-based remote gaming service providers for providing services to consumers in the United States. US Authorities had, without due process and in violation of international law, seized millions of dollars from Antigua and Barbuda's remote gaming service providers.

60. WTO Members may recall that the US defence in the gambling dispute was that it had prohibited all remote gaming in the United States, and that remote gaming was so pervasive that it was incapable of regulation and had to be prohibited. While the Panel and the Appellate Body had been less direct in addressing this issue as Antigua and Barbuda believed they should have been, both of those Bodies nevertheless had held that the United States had failed to prove that such was the case, in other words, it had failed to prove that it prohibited all remote gaming to protect the public morals. Antigua and Barbuda had, throughout the course of the dispute, asserted that US law had not done what the US authorities had alleged it did, and that while all cross-border gaming services from other countries to consumers in the United States were prohibited, there were many opportunities for domestic remote gaming services. Antigua and Barbuda, therefore, maintained that it was simply incorrect to say that all remote gaming was prohibited in the United States.

61. Members would be aware that, in December 2011, in a decision that had surprised everyone, the US Department of Justice had formally admitted that Antigua and Barbuda had, in fact, been right all along, that remote gaming *per se* was not prohibited in the United States, and that states and other operators within the country had been free to offer those services within the confines of the loosely defined web of domestic law, which many were now doing. This decision did not apply to Antigua and Barbuda's operators. Lest its significance be lost on anyone, with that announcement by the US Department of Justice, the entire defence of the United States in the gaming case had now gone away. During this long period of non-compliance, Antigua and Barbuda had not been sitting idly by. To the contrary, Antigua and Barbuda had expended considerable effort in attempts to negotiate a settlement with the US authorities. While Antigua and Barbuda had offered plenty of ideas, compromises and suggestions, it had nothing to show for its efforts. Let there be no doubt, contrary to some reports in the media over the years, Antigua and Barbuda had never been inflexible; had never insisted upon full market access; and had never rejected a compromise plan presented by the United States. The reality was that the United States had never presented a plan, had never worked toward a compromise, and had never conceded that Antigua and Barbuda was entitled to anything at all. In fact, sadly, Antigua and Barbuda had spent the last seven or eight years negotiating with itself.

62. Some might ask why was it that Antigua and Barbuda had not taken advantage of the authorization it had received under Article 22 of the DSU some years ago. Those Members who, like Antigua and Barbuda, had small, delicate economies that were overly dependent upon commerce with larger, stronger trading partners probably would not need an answer to that question. It was no surprise to Antigua and Barbuda that, as soon as that ruling had been obtained in December 2007, there had been numerous public pronouncements from sources in the United States that any attempt by Antigua and Barbuda to take advantage of the suspension of concessions authorized by the DSB would make Antigua and Barbuda an international pariah. To Antigua and Barbuda, the implications had been clear. At that point, particularly in light of the concession of the US department of Justice of December 2011, Antigua and Barbuda believed that fair consideration was long due in this case. There had never been a reason for the United States to fail to comply with its obligations, or at the very least, to engage with Antigua and Barbuda in a fair and constructive manner to settle this dispute. There certainly was no reason for that now. Antigua and Barbuda could no longer negotiate with itself. It was time for the United States to do what it asked of others, observe its international obligations in good faith and with due consideration for the rights and legal status of a fellow WTO Member, Antigua and Barbuda. Earlier this week, Antigua and Barbuda had formally notified the US Trade Representative of its desire to seek the good offices of the Director-General under the DSU provisions to join with it in seeking a mediated solution to this dispute. Antigua and Barbuda

remained hopeful that the United States would accept its invitation and move forward with alacrity to come into compliance with its obligations under international law. In accordance with Article 21.6 of the DSU, Antigua and Barbuda wished to formally request that this matter remain under the surveillance of the DSB and that the United States provide monthly status reports.

63. The representative of St. Lucia, speaking also on behalf of the remaining member States of the Organisation of Eastern Caribbean States (OECS): Grenada, Dominica, St Kitts & Nevis, St. Lucia, and St. Vincent & the Grenadines, said that his country wished to be associated with the statement made by Dominica, on behalf of Antigua and Barbuda, a fellow OECS member and a party to the OECS Economic Union. St Lucia said that it was important to premise statements on first principles and foundational propositions established as the basis on which other related facts were founded. It was fair to say that without first principles any system of thought or for that matter WTO law could collapse. The WTO Membership of all members of the OECS was not incidental. It reflected their belief that the preservation of their trade and economic interests would be best served and safeguarded through the rules-based multilateral trading system. It was for that very reason that most trading countries subjected themselves to the process of accession to the WTO. Many Members were attracted to the multilateral system because the system of binding rules and obligations was complemented by a robust system of redress. It was this function contained in the DSU provisions which provided legitimacy to a system of multilateral rules. Without the dispute settlement system, multilateral rules would be reduced to a loosely held network of international norms and best practices at the mercy of the sovereign prerogative of Members. In other words, without a dispute settlement system respected by all, the entire multilateral system would be put at risk. The system of rules to which Members had committed themselves must be upheld. It was that which took countries out of the state of nature in international trade and placed them into a community of states where rights were tethered to obligations and where all Members respected their commitments. The rules ought not to be seen as contrived instruments through which the mighty could find redress or enforce their will on others, while those of modest means and size were left foundering without a claim.

64. While the facts of this dispute did not warrant repeating, the results of the action that had been taken by Antigua and Barbuda were clear: the United States had been found to be in violation of its obligations. The Panel's finding had been upheld by the Appellate Body. Furthermore, successive compliance panels had found that the measure which had resulted in the finding, adverse to the US interest, remained in place. Members would recognize that Antigua and Barbuda's economy relied on international trade. Hence, Antigua and Barbuda could not seek redress through the suspension of concessions. That would serve only to deliver another crippling blow to the private sector and would place another burden on the peoples of the small island state. If the first principle of the WTO was the establishment of a rules-based trading system, which ensured equality before the law, it was surprising that one of the main architects of this system, a Member who relied heavily on the dispute settlement mechansim for trade enforcement, could defy the rules that unified Members. The painful defiance was aimed, by that one nation, squarely against one of the smallest members of the WTO. In conclusion, OECS members urged that the WTO rules, which remained the fundamental underpinning of its very existence, be observed, lest further damage to a system already reeling from successive failures to live up to its promise.

65. The representative of the United States said that, as all Members were aware, this dispute involved the regulation of cross-border gambling. The United States said that many Members, including the United States, view gambling as a significant issue of public morals and public order, involving the protection of children and other vulnerable individuals. Most WTO Members tightly regulated any gambling allowed within their borders. Accordingly, most Members did not include any market access commitment for gambling in their schedules under the General Agreement on Trade in Services (GATS). This had been the US understanding of its own GATS schedule. Indeed, no Member had ever raised the possibility that the US GATS schedule covered cross-border gambling – until Antigua and Barbuda ("Antigua") initiated this dispute approximately ten years after the US schedule had been negotiated. The Panel and the Appellate Body ultimately found that the US

schedule must be construed as including a market access commitment for cross-border gambling. However, the Panel found that any commitment was unintentional, and the Appellate Body found the US schedule to be ambiguous in that regard.

66. As previously explained to the DSB, the United States accepted the results of the dispute settlement process. As the United States had previously notified the DSB and the Council for Trade in Services, the United States was responding to these findings by invoking the established, multilateral procedures for modification of a Member's GATS schedule of concessions. In particular, in May 2007, the United States had initiated the modification procedure, provided 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 entered into discussions with those Members notifying that their interests could be affected by the modification to the US schedule. The United States had offered compensatory adjustments, under which the United States would replace the gambling-related commitment with other commitments of equal or greater value. With the sole exception of discussions with Antigua, those discussions had been successful. In particular, by early 2008, out of the entire Membership of the WTO, only Antigua maintained an objection to the modification of the US schedule.

67. Since that time, the United States had entered into negotiations with Antigua, with the goal of obtaining Antigua's agreement to the modification of the US GATS schedule. In that regard, the statement read by Dominica at the present meeting on behalf of Antigua simply did not reflect history or reality. The United States devoted substantial resources to these settlement discussions and had met repeatedly with Antigua at all levels of government, from the ministerial level to the technical level. The United States had offered real and substantial benefits, based on specific requests that had been made by Antigua, that would make important contributions to the further development of the Antiguan economy. At times, the parties had seemed on the verge of an agreement, and the United States continued to believe that an agreement remained within their grasp. With respect to Antigua's suggestion that this matter be referred to mediation or good offices, the United States said that it would consider this matter. Its initial reaction, however, was that in light of the fact that the United States and Antigua had previously come very close to a resolution of this matter, a serious effort to re-engage in negotiations would be more productive than referring the matter to a third party. In closing, the United States noted that it remained ready for further engagement with Antigua on a resolution of Antigua's objections to completion of the GATS Article XXI process. The United States believed that that process was the proper forum for further discussion of this matter.

68. The representative of Jamaica said that his country wished to be associated with its fellow CARICOM members, Dominica and St. Lucia. Jamaica noted that the WTO was seeking to be the champion of a rules-based multilateral trading system and Jamaica was proud of the record of the WTO dispute settlement process. At the same time, Jamaica was mindful that small, developing states continued to face challenges in fully benefitting from the dispute settlement process. Therefore, having followed the developments in this dispute, Jamaica urged both parties to continue to exercise all necessary measures to come to an early and a mutually satisfactory solution to this issue.

69. The DSB took note of the statements.

4. United States – Measures affecting the production and sale of clove cigarettes

(a) Report of the Appellate Body (WT/DS406/AB/R) and Report of the Panel (WT/DS406/R)

70. The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS406/8 transmitting the Appellate Body Report on: "United States – Measures Affecting the Production and Sale of Clove Cigarettes", which had been circulated on 4 April 2012 in document WT/DS406/AB/R. He reminded delegations that the Appellate Body Report and the Panel Report pertaining to this dispute had been circulated as unrestricted documents. As Members were

aware, Article 17.14 of the DSU required that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report."

71. The representative of Indonesia said that his country thanked the Panel, the Appellate Body and the Secretariat for their hard work in this dispute. In the context of the DSB's work, it was important to ensure that all Members had an opportunity to have their voice heard. Indonesia was grateful for the opportunity to raise its concerns about this dispute. At the present meeting, Indonesia was requesting that the DSB adopt the Reports pertaining to this dispute. With the adoption of the Reports, Indonesia looked forward to working with the United States to implement the Panel and the Appellate Body's recommendations. Indonesia hoped that the implementation could be completed in an expeditious manner, in accordance with the WTO laws and regulations.

72. The representative of the United States said that his country wished to begin by thanking the members of the Appellate Body, the Panel and the Secretariat assisting them for their work on this dispute. This dispute involved a US public health measure designed to reduce smoking in the United States by removing from the market cigarettes that were uniquely appealing to young people. Ninety-five per cent of addicted smokers in the United States had started smoking before they were 26 years old. US public health regulators had recognized the tremendous benefit to the public health by preventing sweet and other unusually flavoured cigarettes, such as fruit, candy, and spice, from attracting new generations of smokers. The US ban on cigarettes with characterizing flavours other than tobacco or menthol had targeted a specific type of cigarette – cigarettes that were smoked by a small fraction of the population and predominantly by young people. The ban was not intended to completely remove from the market the cigarettes smoked regularly in the United States by tens of millions of addicted adults, that is, tobacco and menthol cigarettes. To be sure, the United States said that tobacco and menthol cigarettes are a serious public health problem and the target of multiple regulatory efforts. However, because of their extensive use by adults, these cigarettes posed different public health challenges from the flavours banned by the measure at issue in this dispute. The United States appreciated that the Panel had rejected Indonesia's claims under Articles 2.2, 2.5, 2.8, 2.9.3 and 12.3 of the TBT Agreement. Importantly, the Panel had found that the US measure was consistent with Article 2.2 of the TBT Agreement because it was not "more trade-restrictive than necessary" to fulfil the legitimate objective of reducing youth smoking in the United States. In particular, the Panel had found that the measure reflected the overwhelming view of the scientific community that banning clove cigarettes would be beneficial for the public health. A major reason was that the addition of cloves made the cigarette more attractive to young, inexperienced smokers. By banning clove and other "trainer" cigarettes from the market, the measure reduced the likelihood that young people would enter into a lifetime of nicotine addiction.

73. Notably, at the present meeting, the DSB was adopting these findings that a ban on clove cigarettes met the requirements of Article 2.2 of the TBT Agreement and was thus no more trade restrictive than necessary to fulfil a legitimate public health objective. Especially in light of these findings, which acknowledged that the US measure met a legitimate public health objective, the United States found it very hard to understand the Appellate Body's conclusion that the measure resulted in a breach of Article 2.1 of the TBT Agreement. The United States did appreciate the very important recognition in the Appellate Body Report that Members may draw legitimate regulatory distinctions between like products, even where there was a detriment to the competitive conditions for the group of like imported products compared to the group of like domestic products. However, several aspects of the Appellate Body's findings and analysis on Article 2.1 were problematic – most significantly the findings and analysis related to the regulatory distinction between clove and menthol cigarettes. In the course of the dispute, the United States had explained that from the perspective of public health regulation, there was a clear difference between a product, such as clove cigarettes, that was smoked in the United States experimentally by a small number of young people, but relatively

few adults, and a product such as menthol cigarettes, that was not only used by youth during initiation, but also smoked regularly by tens of millions of addicted adults. These very different situations raised different regulatory considerations, such as the burden on the US public health system of banning a product with tens of millions of addicted users. These differences thus warranted a different regulatory approach.

74. The Appellate Body had recognized that the Panel had failed to explain its reasons for rejecting the US regulatory approach. And in fact, due to the Panel's flawed analysis, the Panel had made no findings on the relevant factual issues. In these circumstances, the Appellate Body should have concluded by overturning the Panel's conclusion. Instead, however, the Appellate Body had engaged in its own analysis. And in doing so, the Appellate Body had rejected the US explanation for the regulatory distinction without citing to a single fact on the record that supported its apparent view that the public health basis had not been legitimate.[8] The Appellate Body had thus reached conclusions that had not been, as they should have been in any dispute, based on Panel findings or undisputed facts.

75. Instead, the Appellate Body had based its conclusion regarding this critical public health matter on speculation. In particular, the Appellate Body had stated that "it is not clear" that the potential risks associated with banning menthol cigarettes "would materialize … insofar as regular cigarettes would remain in the market".[9] Thus, on the most critical public health rationale for drawing a distinction between clove and menthol cigarettes, the Appellate Body did not point to any facts on the record to support its dismissal of that distinction. Indeed, all the Appellate Body could say was that "it is not clear" the risks would materialize. The United States did not think that this was an adequate basis for finding that a Member's public health measure breaches its WTO obligations. In essence, the Appellate Body was stating that it had a different approach than US regulators for weighing the potential risks and benefits from including additional types of cigarettes in the ban. In adopting this approach, the Appellate Body appeared to have placed itself in the position of the regulator. But that was not the function of a panel or the Appellate Body, and they were not well suited for that role.

76. To return to the passage previously cited, the Appellate Body said that "it is not clear" that the public health risks would arise "insofar as regular cigarettes would remain in the market", but what factual or scientific basis was there to say that smokers addicted to menthol cigarettes would readily switch to regular cigarettes? There was none in the Panel record and if the Appellate Body was wrong in that assumption, the consequences for public health would be severe. The United States said that "it is the role of public health authorities, not only in the United States but worldwide, to engage in the complex process of managing products that are harmful, addictive, and widely used". In doing so, public health authorities must consider the types of harms that may result from wide-reaching regulatory actions. Thus, the Appellate Body had erred in substituting its own judgment – instead of that of the regulator – with regard to whether additional regulations should be adopted in the face of potential harms.

77. As a result, the analysis applied in this dispute was insufficient to allow for the type of legitimate incremental regulation commonly applied to situations such as the one presented here. The result in this dispute should be of grave concern to any Member regulating for the benefit of public health as, without the benefit of analysis based in any factual findings, it was decided that a public health regulation must be applied to additional types of products, despite the potential harms of an extended ban.

[8] See Appellate Body Report, para. 225 (fifth through ninth sentences).
[9] See Appellate Body Report, para. 225.

78. Finally, the United States was disappointed with the Panel and Appellate Body's findings that the challenged measure's three month interval between publication and entry into force was not "reasonable" and thus was inconsistent with Article 2.12 of the TBT Agreement. First, the Appellate Body's treatment of paragraph 5.2 of the 2001 Doha Ministerial Decision undermined the Appellate Body's own, and correct, finding that paragraph 5.2 was not an authoritative interpretation for purposes of Article IX:2 of the WTO Agreement. The United States said that Article IX:2 provides the exclusive mechanism for authoritative interpretations, and the carefully delineated procedural conditions established by Members in Article IX:2 were important safeguards for Members. However, by treating paragraph 5.2 of the Doha Decision as a "subsequent agreement" that established the meaning of the covered agreements, the Appellate Body Report effectively eliminated the safeguards that Members included in Article IX:2 of the WTO Agreement. Furthermore, there appeared to be nothing in the Appellate Body's approach to limit such a "subsequent agreement" to one by the Ministerial Conference or the General Council. Second, in its analysis of Article 2.12, the Appellate Body found that all the complaining party needed to prove was that the interval period was less than six months, and that the burden of rebutting that element of the claim fell to the responding party. The Appellate Body's interpretation effectively reversed the burden of proof for Article 2.12 claims. But, as Members generally recognized, it must be the complaining party's burden to prove all the elements of its legal claim. This should include that the complaining Member's producers could not have adapted to the requirements within the interval period actually allotted and that a period of not less than six months would be effective to fulfil the legitimate objective of the challenged measure. The fact that Article 2.12 may have been designed "to provide a degree of certainty", the United States stated "does not alter this fundamental concept".

79. The representative of Norway said that her country thanked the Appellate Body, the Panel and the Secretariat for their work in this dispute, and welcomed the adoption of the Panel and Appellate Body Reports. Norway noted that the Appellate Body had clearly stated that regulatory concerns underlying a measure may be relevant to an analysis of the "likeness" criteria under Article III:4 of the GATT 1994 as well as under Article 2.1 of the TBT Agreement only to the extent that they had an impact on the competitive relationship between and among the products concerned. In Norway's view, this was an important clarification. Moreover, the Appellate Body had stressed that their conclusions in this case were not intended to prevent Members from implementing policies to fulfil legitimate objectives, in this case related to health and the prevention of youth smoking. However, such measures must be taken consistently with the WTO obligations, including principles such as the national treatment obligation and the most-favoured-nation treatment. In Norway's view, these parameters, as clarified by the Appellate Body, left sufficient space for Members to pursue objectives for the protection of human, animal or plant life or health, or other legitimate interests.

80. The DSB took note of the statements, and adopted the Appellate Body Report contained in WT/DS406/AB/R and the Panel Report contained in WT/DS406/R, as modified by the Appellate Body Report.

5. Proposed nomination for the indicative list of governmental and non-governmental panelists (WT/DSB/W/478)

81. The Chairman drew attention to document WT/DSB/W/478, which contained an additional name proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the name contained in document WT/DSB/W/478.

82. The DSB so agreed.

6. Appointment of Appellate Body members

(a) Statement by the Chairman

83. The Chairman, speaking under "Other Business", said that, as announced at the outset of the present meeting, he wished to make a statement regarding the 2012 selection process for the appointment of a new Appellate Body member and the process for the possible reappointment of one Appellate Body member. In that regard, he recalled that at its meeting on 22 February 2012, the DSB had agreed to the Chair's proposal to launch a selection process for the appointment of a new member of the Appellate Body for the position left by Mr. Shotaro Oshima, and that this new member be appointed for a four-year term beginning 1 June 2012. At the 22 February 2012 meeting, the DSB had also agreed to set a deadline of 30 March 2012 for Members' nominations of candidates. Following the agreed deadline, five candidates had been submitted by four Members, namely, Japan, Kenya, Korea and Thailand. The CVs of those candidates had been circulated as Job documents and had been made available electronically. Subsequently, Kenya had informed Members of its decision to withdraw its candidate. A communication to that effect had been circulated in document JOB/DSB/CV12/1/Rev.1. As a result, there were at present four candidates: two submitted by Japan, one by Korea and one by Thailand. Following the withdrawal of Kenya's candidate, H.E. Mr. Tom Mboya Okeyo of Kenya, the Chairman of the Council for Trade in Goods, who had initially recused himself from the selection process, would now participate in the work of the Selection Committee. In that regard, he recalled that, as had been agreed by the DSB and based on the procedures set forth in document WT/DSB/1, the Selection Committee was comprised of the Director General and the 2012 Chairs of the General Council, Goods Council, Services Council, TRIPS Council and the DSB.

84. As had been indicated in the Chairman's fax, dated 2 April 2012, the Selection Committee would interview the four candidates on 25 and 26 April. Subsequently, on 7 and 8 May, the Selection Committee would be available to meet delegations, upon request, in order to receive their views on the candidates. Interested delegations were invited to contact the Council and TNC Division to make an appointment. Alternatively, delegations could submit their comments in writing by no later than 30 April 2012. Any such comments should be addressed to the Chair of the DSB in care of the Council and TNC Division. As agreed by the DSB, the Selection Committee's recommendation would be issued by no later than 11 May 2012 so that the DSB could take a decision on this matter at its regular meeting on 24 May 2012. Finally, he recalled that, at the 22 February 2012 meeting, the DSB had agreed to ask the Chair of the DSB to carry out consultations on the possible reappointment of Ms Yuejiao Zhang for a second four-year term beginning on 1 June 2012. He recalled that the previous Chair had started the informal process of consultations and, in her statement made at the March DSB meeting, she had invited any interested delegations with views on this matter to contact the Chair of the DSB by no later than 12 April 2012. On the basis of the consultations undertaken by the previous Chair and the consultations that he had carried out after the March 2012 DSB meeting, he wished to report at the present meeting that no Member had expressed any reservations regarding the reappointment of Ms Zhang. In light of this, it was his understanding that, at its meeting on 24 May 2012, the DSB would agree to reappoint Ms Zhang for a second four-year term beginning on 1 June 2012.

85. The DSB took note of the statement.