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Dispute Settlement Body
17 December 2012

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 17 DECEMBER 2012

Chairman: Mr. Shahid Bashir (Pakistan)

Prior to the adoption of the Agenda, the Chairman informed delegations that, on 14 December 2012, Mexico had requested, by letter, that sub-item (d) under item 5 of the proposed Agenda relating to Mexico's request for the establishment of a panel in the dispute: "Argentina – Measures Affecting the Importation of Goods" (DS446) be removed from the proposed Agenda. Therefore, he said that, in light of Mexico's request, sub-item (d) under item 5 was withdrawn from the proposed Agenda.

The Agenda was adopted as amended.

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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 eleven 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.121)

1.1. The Chairman drew attention to document WT/DS176/11/Add.121, 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.

1.2. The representative of the United States said that his country had provided a status report in this dispute on 6 December 2012, in accordance with Article 21.6 of the DSU. Legislative proposals 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.

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

1.4. The representative of Cuba said that, as her country had stated every month, the United States continued to violate the WTO rules due to its failure to repeal Section 211 which, in 2002, had been found to be inconsistent with the TRIPS Agreement and the Paris Convention. Once again, the US status report showed that the United States had still not taken any action to implement the DSB's recommendations and rulings in this dispute. There was no justification for the illegal conduct of the United States, which had the institutional capacity and economic resources necessary to comply with the DSB's decisions. The lack of political will and respect for the basic rules and principles of international law prevented the United States from compliance with its WTO obligations. On 18 December 2012, the WTO would be conducting the 11th trade policy review of the United States. In the US government report, circulated in document WT/TPR/G/275, the United States emphasized, *inter alia,* that: "For nearly two decades, the WTO dispute settlement system has proven valuable to Members as a unique venue for the discussion and adjudication of disputes with our trading partners." Furthermore: "To ensure the enforcement of WTO agreements, the United States has been one of the world's most frequent users of WTO dispute settlement procedures." Furthermore: "[t]he United States has obtained […] favourable rulings in virtually all sectors, including manufacturing, intellectual property, agriculture, and services. These cases cover a number of WTO Agreements – involving rules on trade in goods, trade in services, and intellectual property protection – and affect a wide range of sectors of the US economy". Thus, the United States greatly benefitted from the WTO dispute settlement system, especially from its rulings in the area of intellectual property. In Cuba's view, the statements made by the United States in this dispute were inconsistent with the US continued lack of compliance regarding Section 211 and its failure to take any effective action to comply with the DSB's recommendations and rulings for more than a decade.

1.5. Cuba recalled that the DSB had found Section 211 to be inconsistent with certain WTO rules. In spite of that, Section 211 had been used against the legitimate owner of the Havana Club trademark in the United States, the Cuban company CUBAEXPORT, which constituted the legal basis for the fraudulent use of this trademark by the Bacardi company. Cuba noted that, in 1976, CUBAEXPORT had obtained ownership of this trademark without any opposition, in accordance with the procedures laid down by the US Patent and Trademark Office (USPTO). The registration had been renewed without any hindrance in 1986 and 1996, under a general licence permitting payment of the renewal fee, until Section 211 was adopted. Subsequently, CUBAEXPORT had been denied the licence permitting payment of the renewal fee and, despite the lengthy judicial proceedings that had been held before various bodies for six years, the company had been denied a right that it had held for 30 years. Cuba, therefore, wondered how the United States could call itself an exemplary defender of intellectual property rights while at the same time it prevented the legitimate owner of a trademark from registering that trademark on its territory by not allowing the owner to meet the simple administrative requirement of paying the established renewal fee. Cuba questioned whether the United States provided any real guarantees of intellectual property rights in its territory given that Section 211, which was found to be inconsistent with the TRIPS Agreement, remained in force and was applied to a Cuban trademark owner. Cuba would continue to defend all its sovereign prerogatives and to call upon the United States to honour its legal obligations as a WTO Member and as a member of the international community. Cuba thus urged the United States to comply with the DSB's recommendations and rulings and to repeal Section 211, since this was the only way to resolve this dispute.

1.6. 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.

1.7. 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 to this matter. Bolivia, therefore, reiterated its systemic concern about the US non-compliance with the DSB's recommendations and rulings. Bolivia was also concerned about the lack of political will on the part of the United States to resolve this dispute. This situation of non-compliance undermined the credibility of the multilateral trading system and caused harm to 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.

1.8. 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. In Ecuador's view, more than eight years of non-compliance with the DSB's recommendations and rulings in this dispute demonstrated that the WTO dispute settlement system had a major shortcoming.

1.9. The representative of the Bolivarian Republic of Venezuela said that her country supported Cuba's statement made at the present meeting. Venezuela thanked the United States for its status report but regretted, once again, that it 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". 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 and the most-favoured-nation treatment, and the Paris Convention. Venezuela could no longer accept the continued US non-compliance with the DSB's rulings in this dispute. This undermined the dispute settlement system, which was considered to be one of the main achievements of the Uruguay Round. Venezuela requested that the United States provide status reports containing more detailed and transparent information regarding the steps taken by the United States towards repealing Section 211, which was inconsistent with WTO rules. As it had done on numerous occasions, Venezuela urged the United States to end its policy of economic, commercial and financial blockade against Cuba and to comply with the DSB's recommendations.

1.10. The representative of Argentina said that his country thanked the United States for its status report and the statement made at the present meeting. 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, not only the commercial interests of those countries were affected, but also the credibility of the multilateral trading system was being undermined. Argentina supported the statements made by Cuba and other delegations at the present meeting and urged the parties to the dispute, in particular the United States, to take all the necessary measures to find a solution to this matter so as to remove this item from the DSB's Agenda.

1.11. The representative of India said that his country thanked the United States for its status report and statement made at the present meeting. As it had stated on earlier occasions, India remained concerned about the continuous non-compliance in this dispute. India urged the United States to report full compliance without any further delay.

1.12. The representative of Nicaragua said that her country, once again, supported Cuba's concerns in this dispute on Section 211 regarding the rights of Cuban owners of the Havana Club Rum trademark. Nicaragua noted that the US status report was identical to previous reports submitted by the United States over the past ten years and contained no information on progress in the implementation of the DSB's recommendations. Nicaragua urged the United States to reconsider the unilateral economic policies against Cuba, which adversely affected the Cuban people. Nicaragua was concerned that the US failure to comply with its obligations undermined the credibility of the DSB and the multilateral trading system and could set a negative precedent for other Members, in particular developing countries. Nicaragua hoped that, in 2013, the United States would amend its legislation and bring it into conformity with the DSB's rulings and recommendations.

1.13. The representative of China said that her country thanked the United States for its status report and the statement made at the present meeting. China noted that the United States had, once again, reported lack of compliance. The prolonged situation of non-compliance 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.

1.14. The representative of the Dominican Republic said that his country thanked the United States for its status report. The Dominican Republic was pleased that legislative proposals that would implement the DSB's recommendations and rulings had been introduced in the current Congress. This long-standing dispute must be resolved in order to preserve the credibility of the WTO. In that regard, the Dominican Republic urged the United States to promptly resolve this matter.

1.15. The representative of Mexico said that his country supported the statements made by previous speakers under this Agenda item. Mexico urged the United States to step up its efforts so as to fully comply with the DSB's recommendations and rulings.

1.16. The representative of South Africa said that her country noted the statement made by Cuba at the present meeting as well as the US status report which contained the same information as the previous report. South Africa, once again, joined others in expressing its concern that no concrete progress had been made in the implementation of the DSB's recommendations on this matter. South Africa believed that Members should promptly implement and comply with the DSB's recommendations and rulings so as to safeguard the legitimacy and integrity of the multilateral trading system. In addition to the systemic concerns, South Africa was concerned that, in this dispute, non-compliance perpetuated a negative and severe impact on the economic interests of a developing-country Member. South Africa, therefore, urged the United States to bring its legislation into compliance with the DSB's ruling.

1.17. The representative of Viet Nam said that her country thanked the United States for its status report. Viet Nam called upon the United States to fully implement the DSB's recommendations in order to ensure the credibility of the dispute settlement system.

1.18. 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 ruling and recommendations in this dispute concerning Section 211. This was so in spite of the numerous calls in the DSB for the United States to honour its obligations. This was an act of violation of WTO rules. Zimbabwe, therefore, supported the statements made by Cuba as well as by other delegations and strongly urged the United States to comply with the DSB's recommendations and rulings.

1.19. The representative of Chile said that his country continued to have systemic concerns about the non-compliance in this dispute. Such non-compliance negatively affected the WTO.

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.121)

1.21. The Chairman drew attention to document WT/DS184/15/Add.121, 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 6 December 2012, 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 its statement and most recent status report. However, Japan was disappointed and took note of the fact that the content of the report had not changed from the previous ones. 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.96)

1.25. The Chairman drew attention to document WT/DS160/24/Add.96, 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 6 December, 2012, 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.59)

1.29. The Chairman drew attention to document WT/DS291/37/Add.59, 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, once again, 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. 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.

1.31. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. As the United States had explained at past meetings of the DSB, the United States continued to have serious concerns regarding EU measures affecting the approval of biotech products. The EU's failure to reach timely decisions on biotech products of the United States and other Members resulted in substantial restrictions on international trade. One source of delay resulted from repeated failures of the EU regulatory committee responsible for biotech products to take action on biotech products that had received positive safety assessments from the European Food Safety Authority (EFSA). EU regulatory committees typically held meetings on a monthly basis. The United States noted with concern, however, that the EU's biotech regulatory committee had not met since September 2012. Moreover, no meetings appeared to be scheduled through the end of the year. When the EU's biotech committee did not meet for an entire calendar quarter, no action could be taken during that time on any of the dozens of pending biotech product applications. The United States urged the EU to schedule a meeting of the biotech regulatory committee in January 2013. Further, the United States urged the EU to prepare the appropriate regulatory measures for products – including soybean and corn products – that had received positive EFSA assessments in 2012, and to present these measures to the committee in January 2013.

1.32. 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.12)

1.33. The Chairman drew attention to document WT/DS382/10/Add.12, 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] 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.

1.34. The representative of the United States said that his country had provided a status report in this dispute on 6 December 2012. 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.

1.35. 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 reaching a solution to this dispute.

1.36. 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.8)

1.37. The Chairman drew attention to document WT/DS371/15/Add.8, which contained the status report by Thailand on progress in the implementation of the DSB's recommendations in the case concerning Thailand's customs and fiscal measures on cigarettes from the Philippines.

1.38. The representative of Thailand said that her country wished to refer Members to its most recent status report in this dispute, which had been circulated on 7 December 2012. As noted in that report, Thailand's Customs Board of Appeals had recently issued its ruling with respect to an appeal of the customs valuation of the entries that had been subject to the Philippines' claim under Article X:3 of the GATT 1994 before the Panel. This completed all of the outstanding actions for implementation in this dispute. Nevertheless, Thailand was continuing to address technical aspects of its implementation measures in consultation with the Philippines, including, for example, preparing additional guidelines on the implementation of Thailand's new VAT rules for cigarettes. Thailand was also continuing its discussions with the Philippines on other issues of concern to the Philippines in an effort to reach a solution to this dispute. Thailand looked forward to the continuation of those discussions.

1.39. The representative of the Philippines said that his country thanked Thailand for its status report and the statement made at the present meeting. In its status report, as well as in its statement made at the present meeting, Thailand referred to the recent ruling of the Board of Appeals (BOA) regarding 210 entries from a period in 2002. The Philippines recalled that the importer had introduced an appeal against Custom's assessment of these entries and that the appeal had been pending with the BOA since 2003. The extraordinarily long delay taken by the BOA in deciding on this appeal had been at issue in the original proceedings in this dispute and had led to the Panel's finding that Thailand had violated both Article X:3(a) and X:3(b) of the GATT 1994. The BOA's ruling had finally been issued on 16 November 2012, after pending for ten years before this administrative tribunal. To the Philippines' surprise and disappointment, the ruling raised many more questions than answers, and the Philippines had considerable doubts about the WTO-consistency of this ruling, in particular with the Customs Valuation Agreement. The Philippines' concerns about the BOA's ruling were additional to other concerns that it had in respect of Thailand's compliance with the DSB's recommendations and rulings in this dispute. Thailand acknowledged in its status report and in its statement made at the present meeting that there were still a number of issues under discussion, which the parties had tried to resolve at the bilateral level. Thus, the Philippines did not understand Thailand's reference to a "final outstanding step in the implementation process" as an assertion that it had achieved compliance, since that was simply not the case. The Philippines had made every effort to resolve this dispute by means other than a return to litigation. While the bilateral process had yielded results in respect of some issues, the Philippines was reaching a point where it must acknowledge that the bilateral process may have run its course. Thus, the Philippines was currently evaluating its next steps and reserved all its rights under the DSU provisions.

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

[5] WT/DS382/11.

G. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.7)

1.41. The Chairman drew attention to document WT/DS404/11/Add.7, 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.

1.42. The representative of the United States said that his country had provided a status report in this dispute on 6 December 2012, 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.

1.43. The representative of Viet Nam said that her country thanked the United States for its status report. Viet Nam noted that the reasonable period of time for implementation in this dispute had already expired. Viet Nam urged the United States to fully and promptly implement the DSB's recommendations and ruling. Viet Nam reserved its right to pursue any further legal proceeding under the DSU in order to protect the legitimate benefits of Viet Nam enterprises that had been affected by the WTO-inconsistent measures.

1.44. 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.2 – WT/DS403/15/Add.2)

1.45. The Chairman drew attention to document WT/DS396/15/Add.2 – WT/DS403/15/Add.2 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.

1.46. The representative of the Philippines said that his country wished to provide Members with further updates on implementation of the DSB's rulings and recommendations with respect to the DS396 and DS403 cases. Since the circulation of the third status report on 7 December 2012, the Philippine Congress had substantially advanced the consolidation and reconciliation of various legislative proposals. More specifically, the Philippine Congress had ratified, on 11 December 2012, the Bicameral Conference Committee Report which had abolished the raw materials distinction and had now adopted a system that would render the Philippines' excise tax system for distilled spirits WTO-compatible. The next step would be the President's enactment of the Committee Report into law, which represented the last step in the Philippines' legislative process. In that respect, the Philippines expected to complete the legislative process before the expiry of the reasonable period of time on 8 March 2013. The United States and the EU had been constructive partners toward full implementation of the DSB's rulings, and the Philippines hoped to continue that constructive engagement up until the time the Committee Report would be enacted into law. This would complete the legislative process and the implementation in this dispute.

1.47. The representative of the European Union said that the EU thanked the Philippines for its status report and its statement made at the present meeting. As stated in the DSB meeting upon the adoption of the Panel and Appellate Body Reports, the EU was pleased with the relevant findings in this case. In light of those clear findings, the EU had previously stated that it would trust that the Philippines would promptly take the necessary steps to remedy this long-standing discrimination and re-establish WTO compatibility. During the past months, the EU had been closely following the Philippines' internal discussion on reform of its current tax legislation for spirits. The latest draft Bill, which modified the tax rates for distilled spirits, appeared to have introduced new positive elements, but still required clarification with regard to the taxable basis and, in that regard, was under close scrutiny. During the current stage of the reform process, the EU, once again, urged the Philippines to ensure that any legislation on taxation of spirits remove,

de jure and *de facto*, the violation of the national treatment principle and hence the discrimination of imported spirits, in line with the Philippines' international commitments.

1.48. 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 understood that the Philippine Congress had approved a new tax system on distilled spirits. As the United States understood it, the new tax system would no longer base the rate of taxation on the raw material used to produce a distilled spirit. The United States was pleased to learn about this development. The United States appreciated the work by the Philippine government to pass this reform. The United States was continuing to review the new system, and noted that some of its effects would not be clear until it came into operation in 2013. The United States was hopeful that the new system would result in full implementation of the recommendations and rulings in this dispute.

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

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

1.50. The Chairman drew attention to document WT/DS394/19 – WT/DS395/18 – WT/DS398/17 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.

1.51. The representative of China said that her country had provided a status report in these disputes on 6 December 2012, in accordance with Article 21.6 of the DSU. The notices regarding the 2013 Tariff Implementation Program and 2013 Catalogue of Goods subject to Export Licensing Administration were being drafted and expected to be promulgated by the end of 2012. The measures would ensure the implementation of the DSB's recommendations and rulings in these disputes.

1.52. 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 continued to significantly distort the market and had created competitive advantages to the Chinese manufacturing industry to the detriment of foreign competitors. In light of the clear findings of the Panel and the Appellate Body, the EU trusted that China would fully implement the DSB's recommendations and rulings by the end of the reasonable period of time to remedy this long-standing discrimination and to establish the WTO-compatibility. The EU looked forward to seeing the implementing measures published. In that regard, the EU would continue to closely monitor the situation.

1.53. The representative of the United States said that his country thanked China for its status report and statement made at the present meeting. As the United States had explained in previous DSB meetings, China's full implementation of the DSB's recommendations and rulings with respect to China's trade-distorting export restraints were of major importance to the United States and other Members. On the one hand, the United States welcomed China's statement that it intended to implement those recommendations and rulings. On the other hand, the United States was concerned that China's status report provided no meaningful information on what steps China was taking, or intended to take, to comply with its WTO obligations. The United States further noted that the reasonable period of time would expire at the end of December 2012. The United States looked forward to action by China within that time-frame to comply with the DSB's recommendations and rulings.

1.54. The representative of Mexico said that his country thanked China for its status report. Mexico would ensure that the DSB's recommendations were implemented within the period of time agreed upon by the parties.

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

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

1.56. The Chairman drew attention to document WT/DS406/11 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.

1.57. The representative of the United States said that his country had provided a status report in this dispute on 6 December 2012, 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.

1.58. The representative of Indonesia said that her country welcomed the US status report. Indonesia believed that the United States would comply with the DSB's recommendations. Therefore, Indonesia looked forward to seeing further progress in this dispute.

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

K. European Union – Anti-dumping measures on certain footwear from China: Status report by the European Union (WT/DS405/9)

1.60. The Chairman drew attention to document WT/DS405/9 which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning the EU's anti-dumping measures on certain footwear from China.

1.61. The representative of the European Union said that the EU had completed the implementation of the DSB's recommendations and rulings in the "EU - Footwear" dispute before the expiry of the reasonable period of time, which had been agreed between the EU and China. The DSB's recommendations and rulings in this dispute concerned the provision of the EU Basic Anti-Dumping Regulation that had previously been disputed in DS397 ("EU - Fasteners" dispute). As the EU had already explained in the context of the implementation of DS397, the provision of the EU Basic Anti-Dumping Regulation that had been found to be "as such" incompatible with the Anti-Dumping Agreement was amended in a manner that fully respected the EU's WTO obligations. The amendment had entered into force at the beginning of September 2012. That amendment ensured the full implementation of the DSB's recommendations and rulings in this dispute.

1.62. The representative of China said that her country thanked the EU for its status report and the statement made at the present meeting. As the DSB's recommendations and rulings in this dispute were almost the same as in DS397 ("EC - Fasteners" dispute), China wished to refer to its statements made at the DSB meetings on 28 September and 23 October 2012. China did not agree that the EU had fully implemented the DSB's recommendations and rulings in this dispute. China believed that actions spoke louder than words. China would continue to monitor the implementation of this dispute until it could confirm that the EU was in full compliance with the DSB's rulings and recommendations. China and the EU had concluded a sequencing agreement in this dispute on 25 October 2012. China looked forward to discussing its concerns with the EU in the future.

1.63. The DSB took note of the statements.

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 on implementation in this dispute.

2.3. The representative of Japan said that the CDSOA Annual Report for Fiscal Year 2012[6], issued on 27 November 2012 by US Customs and Border Protection, 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.

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

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

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

2.7. The representative of the United States said that, as his country had explained at previous DSB meetings, the President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that Members had acknowledged during previous DSB meetings that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007.

2.8. The DSB took note of the statements.

3 UNITED STATES – COUNTERVAILING AND ANTI-DUMPING MEASURES ON CERTAIN PRODUCTS FROM CHINA

A. Request for the establishment of a panel by China (WT/DS449/2)

3.1. The Chairman recalled that the DSB had considered this matter at its meeting on 30 November 2012 and had agreed to revert to it. He drew attention to the communication from China contained in document WT/DS449/2, and invited the representative of China to speak.

3.2. The representative of China said that her country regretted that it was necessary to request, for the second time, the establishment of a panel in this dispute. As had been explained at the 30 November 2012 DSB meeting, the United States had launched over 30 countervailing duty investigations against Chinese products since 2006, affecting more than US$7.3 billion in total. The Government of China and Chinese exporters had consistently maintained that those investigations were unlawful because the US countervailing duty laws did not apply to countries that the United States designated as non-market economies. Those views had been confirmed by the decision of the US Court of Appeals for the Federal Circuit in the Georgetown Steel case and the Federal Circuit's decision of December 2011 in the GPX case. However, in March 2012, the United States had enacted a new law, namely "An Act to Apply the Countervailing Duty Provisions of the Tariff Act of 1930 to Non-Market Economy Countries, and for Other Purposes"

[6] http://www.cbp.gov/linkhandler/cgov/trade/priority_trade/add_cvd/cont_dump/cdsoa_fy12/fy12_annual_reports/section1.ctt/section1.pdf

("P.L.112-99"), which provided the US Department of Commerce ("USDOC") with statutory authority to apply countervailing duties to imports from non-market economy countries. Furthermore, the law stated that this authority applied retroactively to 2006, when USDOC had first began applying countervailing duties to Chinese products in contravention of existing US law. In contrast, the legal authority to identify and avoid double remedies did not apply retroactively to 2006, and it only applied to "investigations and reviews initiated … on or after the date of the enactment of this Act", i.e. on or after 13 March 2012.

3.3. China would not repeat its claims, which were set out in the request for the establishment of a panel (WT/DS449/2), but would only highlight two elements. First, the United States was not administering its trade remedy laws "in a uniform, impartial and reasonable manner", and some provisions of the US law had been enforced prior to their official publication. The P.L.112-99 was inconsistent with Article X of the GATT 1994. Moreover, the absence of legal authority to identify and avoid double remedies in respect of investigations or reviews initiated between 20 November 2006 and 13 March 2012, prevented the US authorities from ensuring that the imposition of countervailing duties and anti-dumping duties was consistent with the SCM Agreement, the Anti-Dumping Agreement, and Article VI of the GATT 1994. China respectfully requested that the DSB establish a panel, with standard terms of reference as set forth in Article 7.1 of the DSU, to examine this matter.

3.4. The representative of the United States said that his country was disappointed that China had chosen to pursue its request for a panel in this matter. As the United States had noted at the prior DSB meeting, the US legislative measure at issue in this dispute was fully consistent with WTO obligations. In addition, each one of the specific proceedings at issue in this dispute had been conducted in a manner consistent with the WTO Agreement. The United States said that it and all other WTO Members, are within their rights under the WTO Agreement to levy countervailing duties to offset injurious subsidies bestowed by another Member on the manufacture, production, or export of goods. The United States understood that the DSB would establish a panel at the present meeting in response to China's request, and the United States intended to defend fully its rights to maintain the measures addressed in China's request.

3.5. 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.

3.6. The representatives of Australia, Canada, the European Union, Japan, Viet Nam and Turkey reserved their third-party rights to participate in the Panel's proceedings.

4 AUSTRALIA – CERTAIN MEASURES CONCERNING TRADEMARKS, GEOGRAPHICAL INDICATIONS AND OTHER PLAIN PACKAGING REQUIREMENTS APPLICABLE TO TOBACCO PRODUCTS AND PACKAGING

A. Request for the establishment of a panel by the Dominican Republic (WT/DS441/15)

4.1. The Chairman drew attention to the communication from the Dominican Republic contained in document WT/DS441/15, and invited the representative of the Dominican Republic to speak.

4.2. The representative of the Dominican Republic said that, as from 1 December 2012, all tobacco products in Australia must be sold in plain packaging, in addition to meeting other strict requirements. Australia had imposed these requirements through the Tobacco Plain Packaging Act of 2011 and its implementing regulations. On 27 September 2012, the Dominican Republic had held consultations with Australia on the plain packaging measures, but the consultations had, unfortunately, failed to settle this dispute. Therefore, pursuant to Article 6.2 of the DSU, the Dominican Republic was requesting that the DSB establish a panel to examine Australia's plain packaging measures in light of Australia's WTO obligations. The Dominican Republic stressed that it shared Australia's objective of seeking to protect human health. However, the Dominican Republic was not convinced that the plain packaging measures were an effective way of reducing the consumption of tobacco products or of any other harmful product. Rather, the plain packaging measures seemed to violate Australia's obligations under both the TRIPS Agreement and the TBT Agreement. The plain packaging measures were a dramatic form of regulatory meddling with the appearance of products that could be legally sold in Australia, which literally eliminated all design features from tobacco, cigarette and individual cigar packaging. These design features included

trademarks and geographical indications that Members had agreed to protect under the TRIPS Agreement and that served a valuable purpose for both producers and consumers of differentiating products that legitimately competed on the Australian market.

4.3. With regard to the TBT Agreement, the plain packaging measures restricted international trade by eliminating competitive opportunities for tobacco products, which were forced to appear on the market in virtually identical retail packaging. The WTO system guaranteed that measures restricting core intellectual property rights and international trade would only be allowed insofar as they were effective in achieving a legitimate objective. Australia's plain packaging measures did not fulfil that requirement. They eviscerated the very purpose of trademarks and geographical indications and ruined competitive opportunities for tobacco products. There was no credible evidence that they would reduce tobacco prevalence. In fact, evidence showed that the plain packaging measures would undermine Australia's goal of reducing tobacco prevalence. By commoditizing the tobacco product market, the measures would trigger price competition, which would lead to lower prices and greater consumption. Furthermore, requiring those products to be sold in similar plain packaging would facilitate illicit trade.

4.4. The Dominican Republic had requested that, instead of introducing the plain packaging measures, Australia should use tobacco control measures that would be truly effective in reducing tobacco consumption and would also be in line with its WTO obligations. Unfortunately, Australia had gone ahead with the introduction of its plain packaging measures. The Dominican Republic was convinced that this dispute had potential repercussions for products other than tobacco that were considered prejudicial to health, such as alcoholic beverages and processed foods and drinks. Many governments wished to control the consumption of these products and could equally argue that consumption would be reduced if the design features, including intellectual property, were removed from their retail packaging. Such major interference with intellectual property, coupled with restrictions on international trade, could not be based on speculations about consumer behaviour, but must be rooted in solid scientific evidence.

4.5. In conclusion, the Dominican Republic wished to highlight the detrimental effect of the Australian measures on small and vulnerable developing economies, which relied on the production and exportation of tobacco and tobacco products as part of their development strategy. Tobacco had been an intrinsic part of the Dominican Republic's local culture and heritage for centuries. Over the past few years, the Dominican Republic's tobacco sector had become a development success story. Due to the significant investments by its producers, the Dominican Republic had gone from being a mere exporter of tobacco leaves to one of the world's high-end manufacturers of processed tobacco products, especially cigars. In fact, the Dominican Republic was, at the present time, the world's leading exporter of cigars. The Dominican Republic was proud of those achievements and also aware of the importance of this development to its people's employment and income. The Dominican Republic was concerned that plain packaging would destroy the cornerstone of its economy and, at the same time, it would fail to achieve Australia's health objectives. In light of this, the Dominican Republic was requesting that the DSB establish a panel to examine the consistency of the plain packaging requirements with Australia's WTO obligations.

4.6. The representative of Australia said that his country was pleased to report that, since the previous DSB meeting, Australia's world first tobacco plain packaging legislation had come into force across the country. This meant that, in Australia, all tobacco products were now required to be sold in standardized, plain packaging. Speaking on the eve of the measure's entry into force on 1 December 2012, Australia's Minister for Health had stated that: "[t]his is a really important measure for the health of our young people and our community. We know that 80% of people start smoking before the age of 18, and 99% of people start smoking before they turn 26. If we can prevent young people taking up smoking, we're doing all of ourselves a favour." Australia was a world leader in effective tobacco control strategies. Since at least the early 1970s, the Australian Government, in conjunction with the Governments of the Australian States and Territories, had implemented progressively more comprehensive and stringent tobacco control regulation. That approach was consistent with trends in countries around the world and with international steps to combat the global health epidemic posed by tobacco smoking through the World Health Organization (WHO) Framework Convention on Tobacco Control. All WTO Members had to confront the global tobacco epidemic. According to the WHO, tobacco killed nearly six million people a year and was the only legal product that killed up to half of those who used it as intended. The most recent Australian Health Survey reported that while the number of smokers in Australia continued to decline, 2.8 million, or 16.3%, of Australians aged 18 years and over continued to smoke daily.

Smoking was one of the leading preventable causes of death in Australia. It resulted in the death of approximately 15,000 Australians every year and cost the Australian society and economy billions of dollars. That was why the Australian Government had decided to introduce tobacco plain packaging as part of a balanced package of tobacco control measures that would contribute to the reduction of smoking rates in Australia.

4.7. Tobacco plain packaging was a sound, well-considered measure designed to achieve a legitimate objective, the protection of public health. As a matter of key systemic importance, the WTO Agreements recognized the fundamental right of Members to implement measures necessary for the achievement of that objective. The tobacco plain packaging measure was endorsed by leading Australian and international public health experts as well as the WHO, and was supported by extensive research reports and studies. In developing and implementing the measure, Australia had undertaken an extensive domestic and international consultation process and had provided a substantial amount of information to WTO Members in relevant WTO fora. Australia had also provided comprehensive responses to the Dominican Republic's questions about the measure during consultations held on 27 September 2012. Australia recognized that the Dominican Republic also confronted a significant public health challenge resulting from tobacco use with recent studies showing there were more than 2,200 deaths from tobacco use in the Dominican Republic each year. WHO estimated that global deaths from tobacco use would rise from 3 million in 1990 to 8.4 million in 2020 and 10 million in 2030, with 70% of those deaths occurring in developing countries. In Latin America and the central Caribbean region, tobacco-related deaths were expected to triple from 3.3% of total deaths in 1990 to 9.4% in 2020, a clear indicator of the increasing proportion of tobacco related diseases which would be borne by countries such as the Dominican Republic.

4.8. Australia also acknowledged the tobacco control steps that had been taken by the Dominican Republic such as the introduction of smoke-free environments in educational facilities, including universities, and mandatory health warnings on tobacco packaging. Australia was, therefore, surprized at the Dominican Republic's decision to challenge Australia's measure. The tobacco plain packaging legislation did not undermine the protection afforded to trademarks and geographical indications as required under the TRIPS Agreement. Nor was the measure more trade restrictive than necessary to fulfil its legitimate public health objective. The tobacco plain packaging measure was origin neutral on its face and even-handed in its application. It was clearly non-discriminatory. It applied to all tobacco products, regardless of type or origin, and as such represented best practice in tobacco control. As a result, Australia did not understand the basis of the Dominican Republic's claim that the measure treated imported tobacco products less favourably than like domestic products. Australia's tobacco plain packaging measure was a world first and was the next logical step in Australia's long history of tobacco control efforts. In adopting the measure, Australia had acted consistently with its WTO obligations. For those reasons, Australia was disappointed that the Dominican Republic had requested the DSB to establish a panel in relation to tobacco plain packaging and could not agree to that request.

4.9. The representative of Honduras said that her country had been following this dispute on Australia's plain packaging measures with interest. As Members knew, Honduras was also challenging those measures. Honduras' request for the establishment of a panel had been considered for the first time at the previous DSB meeting. Australia's measures were also being challenged by Ukraine and a panel had been established on 28 September 2012. As it had indicated on a number of occasions, Honduras supported the adoption of measures for tobacco control so as to protect human health, as long as those measures were consistent with WTO rules. However, Honduras believed that Australia's measures undermined the main function of a trademark and seriously affected geographical indications for tobacco products, thus failing to comply with the TRIPS Agreement. The measures also violated the provisions of the TBT Agreement since it was trade restrictive. Honduras would continue to support the efforts of other Members and believed that Australia's plain packaging measures were inconsistent with WTO rules.

4.10. The representative of New Zealand said that her country did not wish repeating its previous statements on this matter. Nor did New Zealand wished to pre-empt discussions of issues which may be examined during the Panel's proceedings. At the present meeting, New Zealand wished to simply reiterate its full confidence in both the public policy rationale underlying Australia's tobacco plain packaging measures and in the manner in which Australia had designed and implemented those measures with due respect for its international obligations. New Zealand shared Australia's

disappointment that the Dominican Republic had moved to request the establishment of a panel in this dispute. New Zealand would continue to take an active interest in this dispute and in any other disputes brought with regard to Australia's plain packaging measures.

4.11. The representative of Uruguay said that his country had participated in the consultations on this matter since it believed that it could not stand by while Members' fundamental sovereign rights to protect public health was being questioned, and in particular their right to fight the most serious pandemic facing humanity. In this case, a Member was acting in accordance with the standards and recommendations established under the WHO protocols to control tobacco consumption. As stated in the Preamble to the Marrakesh Agreement, the WTO aimed to promote the sustainable development of its Members. Accordingly, WTO rules could not be interpreted in a way that limited or prevented Members from taking measures they deemed necessary to control a pandemic that was a major deterrent to development, because of high economic costs, a diversion of resources from productive sectors, and the loss of valuable human resources critical to development. Uruguay believed that no WTO provision could be interpreted as Members' renunciation of their sovereign rights and obligations to protect the health and lives of its citizens. On the contrary, those rights were clearly recognized and laid down, *inter alia*, in the Marrakesh Agreement, the GATT 1994, the TBT, the SPS and the TRIPS Agreements. He noted that Members had agreed to the following in the Doha Ministerial Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) adopted at the Fourth WTO Ministerial Conference in 2001: "… 4. We agree that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health … In this connection, we reaffirm the right of WTO Members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose." In this regard, Uruguay affirmed its conviction that Members had the requisite rights and flexibilities under the rules in force to take all measures they may deem necessary to protect their populations' public health, in accordance with the mentioned provisions. Uruguay considered the control of tobacco consumption as a top international health priority, as evidenced by the WHO Framework Convention on Tobacco Control (FCTC) and its 176 participating members. Uruguay emphasized its interpretation that in this context, the plain packaging adopted by Australia was a legitimate health measure consistent with the WTO rules. Uruguay regretted that the complainants in these proceedings had chosen to proceed with this dispute, thus giving the false impression that Members were not legally entitled to impose necessary measures to protect the public health of their populations against a lethal product that killed their inhabitants to an alarming and unacceptable extent. In Uruguay's view, there was no issue more politically sensitive than that of defending a Member's sovereign right to protect the health and lives of its population.

4.12. The representative of Norway said that, as it had previously stressed, public health and tobacco control were issues of particular interest to Norway. In Norway's view, it was within the right of each WTO Member to adopt measures which were necessary to protect public health, as long as the measures chosen were consistent with WTO Agreements. Plain packaging of tobacco products was a recommended measure under the Framework Convention on Tobacco Control. It was Norway's firm view that the Framework Convention and the relevant WTO Agreements were mutually supportive and that it was possible to implement measures intended to regulate the packaging of tobacco products in line with both sets of binding obligations. Therefore, Norway supported Australia's right to introduce these type of measures in line with its WTO obligations, and in order to fulfil its obligations under the Framework Convention so as to protect public health.

4.13. The representative of Ukraine said that, as Members were aware, his country had itself conducted consultations on Australia's measures imposing plain packaging and other trade-restrictive requirements on tobacco products and their packaging. But regretfully, Ukraine did not receive an adequate response from Australia regarding Ukraine's clearly expressed concerns that had eventually led to the establishment of a panel. Ukraine shared the Dominican Republic's concerns about the inconsistency of the measures with Australia's obligations under the TRIPS Agreement, the TBT Agreement and the GATT 1994. In particular, Ukraine considered that the plain packaging measures were inconsistent with the TRIPS Agreement and the Paris Convention because the measures failed to give effect to the trademark holder's legitimate intellectual property rights and violated such rights as protected under those international treaties. Ukraine also considered that the measures violated relevant provisions of the TBT Agreement, since Australia had not complied with its obligation to ensure that the measures were not designed,

adopted or applied as unnecessary obstacles to trade. Ukraine was of the view that the plain packaging measures were more trade restrictive than necessary to achieve the stated health objectives and lacked credible evidential basis. Therefore, Ukraine supported the Dominican Republic's decision to request the establishment of a panel to examine this matter.

4.14. The representative of Trinidad and Tobago said that his country had paid particular attention to this issue, which involved Australia's tobacco plain packaging legislation. Under the circumstances, and having taken into consideration its interests in tobacco exports, especially in the Caribbean region, Trinidad and Tobago would reserve its third-party right to participate in the Panel's proceedings.

4.15. The representative of Cuba said that his country shared the Dominican Republic's concerns about Australia's plain packaging measures for tobacco products. With regard to public health, Cuba recognized Members' right to protect the health of their population. This had been a priority in Cuba for more than 50 years with clear and good results. However, Cuba had repeatedly expressed, in the relevant WTO bodies, its concern about the impact that this type of measure could have on tobacco-producing developing countries. Cuba considered that the measures could be inconsistent with some provisions of the TBT Agreement and the TRIPS Agreement. Therefore, several Members had initiated legitimate proceedings before the DSB. As had been stated on other occasions, plain packaging undermined the value of trademarks and geographical indications, the reputation of which had been built over many years and, in some cases, centuries. This could also result in an increase in the illegal trade of tobacco products because all trademarks would adopt an image which was identical, thus making it difficult to differentiate between a counterfeit product and an original product. The implementation of the measure would also increase the trading costs and marketing costs and would adversely affect the exports of tobacco products and undermine the WTO's objective to increase the participation of developing countries in world trade. For several reasons, Cuba considered that the measure excessively restricted trade and that there was no sufficient scientific evidence that the measure was designed to achieve a public health objective. Finally, Cuba called on Members to start thinking about whether the implementation of such measures would create a precedent for the adoption of plain packaging in many other products that also had a negative impact on public health.

4.16. The representative of Zimbabwe said that her country supported the Dominican Republic in its request for the establishment of a panel on the grounds that the measures by Australia, in as much as they were aimed at reducing tobacco-related deaths, were inconsistent with Australia's obligations and the provisions of the TRIPS Agreement and the TBT Agreement. Australia's violation of the WTO rules nullified and impaired the benefits accruing to other Members and would adversely affect the economies of tobacco-producing countries, such as Zimbabwe. Apart from being inconsistent with WTO rules, Australia's measures would have a negative impact on the livelihoods of millions of people in tobacco-growing countries.

4.17. The representative of Nicaragua said that her country supported the Dominican Republic's concerns about plain packaging of tobacco and tobacco products. Nicaragua recognized Australia's right to adopt measures in order to protect public health, provided that such measures were consistent with WTO rules and other commitments made under international treaties. Nonetheless, Nicaragua considered that Australia's measures were inconsistent with some of the obligations under the WTO Agreements. As a tobacco and cigar producer, Australia's measures would impair Nicaragua's economic interests given that the tobacco production sector generated significant direct and indirect employment, investment and foreign exchange. These were critical for the development of the areas where those goods were produced, as well as the country's development.

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

5 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)

5.1. The Chairman proposed that the three sub-items be taken up together since they pertained to the same matter. 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.

5.2. 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. The EU had attempted to find a positive solution to the matter on various occasions over the past years, both at the multilateral and the bilateral level but to no avail. With a view to pursuing its stated policy objectives of elimination of trade balance deficits and import substitution, Argentina applied WTO-inconsistent measures, which affected both trade and investment flows into the country, to the disadvantage of other WTO Members. In particular, the EU challenged three types of measures. Non-automatic import licenses, which subjected the importation of goods under nearly 600 tariff lines into Argentina by means of the so-called Certificados de Importación or CIs. The conditions for granting CIs were not stated in Argentine legal instruments, nor were they published or otherwise made available to Members and operators. As of 1 February 2012[7], Argentina had also required importers to submit a Declaración Jurada Anticipada de Importación (DJAI) for all imports of goods into Argentina. The conditions for approval of DJAIs were not stated in Argentine legal instruments, nor were they published or otherwise made available to other Members or traders. This measure restricted or prohibited trade in a non-transparent manner, was inconsistent with Argentina's obligations under the GATT 1994 and the Import Licensing Agreement. Moreover, Argentina required economic operators to undertake certain actions including exporting a certain value of goods from Argentina related to the value of imports; limit the volume of imports; and/or incorporate local content into domestically produced goods. These requirements were not stipulated in any published law or regulation. To satisfy those requirements, economic operators normally either submitted a statement or concluded an agreement with the Argentine government setting out the actions they would take. The EU requested the establishment of a panel so as to re-establish WTO compatibility and so that Argentina could meet its international commitments. 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's proceeding.

5.3. 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.

5.4. The representative of the United States said that his country understood that Argentina made broad use of non-automatic import licensing measures to restrict imports. These measures included product-specific licensing measures, and licensing measures applicable to all goods. The United States further understood that Argentina imposed requirements on importers to undertake trade balancing or similar commitments as a condition for importation. The WTO Agreement, however, generally obligated Members not to impose restrictions on the importation of goods from other Members. Accordingly, the United States was concerned that Argentina's measures appeared to be in breach of core WTO obligations involving trade in goods. For several years, the United States had attempted to resolve its concerns through dialogue with Argentina. Since 2008, the United States, along with other WTO Members, had raised concerns with Argentina in various fora.

5.5. After efforts had failed to achieve any meaningful results, on 21 August 2012, the United States had requested consultations with Argentina regarding these matters. Consultations had been held on 20 and 21 September 2012. Unfortunately those efforts had also failed to resolve the dispute. Accordingly, the United States was proceeding to request that the DSB

[7] The DJAI system was established on 5 January 2012 and the requirement was made effective as of 1 February 2012.

establish a dispute settlement panel. As set out in the US request for establishment of a panel, Argentina's measures were non-transparent and discretionary and served to restrict imports from the United States and other Members, in apparent breach of various provisions of the GATT 1994 and the Import Licensing Agreement. As was evidenced by similar requests that had been placed on the Agenda by the European Union and Japan, those measures had broadly impacted world trade and had raised serious concerns about Argentina's compliance with its WTO obligations.

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

5.7. The representative of Japan said that his country had requested the establishment of a panel on 6 December 2012. As explained in the panel request, this case concerned three types of Argentina's import restrictive measures. First, Argentina required an importer, prior to the importation of goods, to submit to Argentine authorities an affidavit with certain information, or so-called DJAI. However, the conditions for approval of DJAIs were not stated in Argentine legal instruments, nor were they published or otherwise made available to other Members or traders. 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. However, the conditions for granting CIs were not stated in Argentine legal instruments, nor were they published or otherwise made available to other Members or traders. 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. Those requirements were not stipulated in any published laws or regulations. To satisfy those requirements, economic operators normally either submitted a statement or concluded an agreement with Argentina setting out the actions they would take. Argentina enforced these commitments by withholding permission to import, *inter alia*, by withholding the issuance of DJAI or CI approvals.

5.8. The systemic risk triggered by such measures, as those in this panel request, was also of great concern. Those measures unjustifiably protected the domestic industries and harmed foreign competitors. In the current difficult economic environment, Japan was particularly concerned about the proliferation of such measures throughout the world. Japan considered that the Argentine measures at issue were inconsistent with various Argentine obligations under the GATT 1994 and the Import Licensing Agreement, as clearly explained in Japan's panel request. Japan had requested consultations on 21 August 2012 and had engaged in consultations in good faith with Argentina on 20 and 21 September 2012 with a view to reaching a mutually satisfactory solution. While the consultations had been conducted under a cooperative atmosphere and had provided useful opportunities for the parties to better understand their respective positions on this matter, the parties were unable to resolve the problem. Japan, therefore, requested, pursuant to Article 6 of the DSU, that a panel be established to examine the matter as set out in its panel request with standard terms of reference in accordance with Article 7.1 of the DSU.

5.9. The representative of Argentina said that his country was disappointed with the decision of the EU, the United States and Japan to request the establishment of a panel in this dispute. During the consultations that had been held earlier that year, first in July with the EU and then in September with the United States, Japan and Mexico, Argentina had had the opportunity to explain the disputed regulations in detail, provide the clarifications required and address each of the questions asked by the complainants. Argentina was pleased that the clarifications provided during the consultation had led the complainants not to proceed with several of their complaints. Argentina also welcomed the fact that Mexico had withdrawn its request from the Agenda of the present meeting. However, Argentina regretted that the complainants had chosen to proceed with some other complaints. Argentina had hoped to fully settle this dispute during the consultation phase, and believed that the complaints that formed the basis of the complainants' requests were unfounded. Both the Declaración Jurada de Importación (DJAI) and the non-automatic licences required by Argentina were consistent with WTO rules. The DJAI was a system of pre-import information aimed at preventing customs risk, in accordance with the SAFE initiative promoted by the World Customs Organization, which had been put into practice relatively recently, on 1 February 2012. Contrary to what the requesting Members suggested, the DJAI was not trade restrictive. It was a trade-facilitating measure that allowed importers to conduct all customs formalities as a whole, using an electronic single-window system. Non-automatic licences deserved a more in-depth explanation. Argentina had required non-automatic import licences for a number

of products since 1999. As had been explained in other WTO forums, import statistics clearly showed that the use of these licences had not restricted trade.

5.10. Argentina underlined the fact that bilateral trade had significantly grown between Argentina and each of the Members that had requested the establishment of a panel. This fact could easily be verified and quelled any fear that Argentina's measures in question might restrict imports. In fact, the figures that Argentina was referring to showed that from 2003 to 2011 Argentine imports from the EU, Japan and the United States had increased between three and fourfold. All in all, in the period since the crisis in 2008, which was the period that was repeatedly referred to, Argentine imports of all origins had grown by 29%. A country that had increased its total imports by 435% between 2003 and 2011 and had also increased its imports from their highest level prior to the international crisis to a much greater extent than the countries that were requesting the establishment of a panel could not be called a trade-restricting country. On the contrary, Argentina believed that the numbers spoke for themselves and clearly showed the positive role played by Argentina in a joint effort with other emerging countries to sustain global aggregate demand. Few Members could demonstrate such a substantial contribution commensurate with their abilities. Finally, the complaints had also included alleged requirements for economic operators and suggested a link to the workings of the DJAI system or to the approval of non-automatic licences. Those allegations had no basis in reality. They were founded on statements concerning genuine trade policy objectives aimed at achieving a healthy and sustainable trade balance and promote industrial development, filling in the gaps in the production matrix of a developing country like Argentina. Those objectives were shared by various Members, including all of the complainants. However, such general trade policy objectives were not measures that could be questioned by the WTO, nor did they constitute violations of WTO regulations *per se*. In light of the aforementioned considerations, Argentina was not in a position to accept the requests for the establishment of a panel put forward by the EU, Japan and the United States. Argentina was willing to meet with the requesting Members to negotiate a mutually satisfactory settlement and avoid the formal initiation of a dispute.

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

6 EUROPEAN UNION AND A MEMBER STATE – CERTAIN MEASURES CONCERNING THE IMPORTATION OF BIODIESELS

A. Request for the establishment of a panel by Argentina (WT/DS443/5)

6.1. The Chairman drew attention to the communication from Argentina contained in document WT/DS443/5, and invited the representative of Argentina to speak.

6.2. The representative of Argentina said that, on 17 August 2012, his country had requested consultations with the EU and Spain regarding a measure that affected the importation of biodiesels from third countries. The challenged measure was Spain's Ministerial Order IET/822/2012 governing the allocation of biodiesel production volumes for computing compliance with mandatory renewable energy targets. The Ministerial Order, which was the national implementation of the EU Regulatory Framework for energy for renewable sources, stated that biodiesel from outside the Community could not be computed for the purposes of compliance with mandatory biofuel targets, which resulted in discrimination between a product of European origin and that of other origins. The call for applications for biodiesel production volumes provided for in the Ministerial Order had been cancelled for the time being by Ministerial Order 2199 of 9 October 2012. However, the basic measure that had been challenged by Argentina had not been revoked or cancelled, it remained in force and had a negative impact on Argentine biodiesel producers. Argentina considered that the limited scope of the amendment to Ministerial Order 822 meant that the discrimination caused by the measure remained in place, as did the inconsistency of the measure in the trade-related investment area. As a result, a restriction appeared to have been imposed on trade in biodiesel that was inconsistent with WTO rules. In Argentina's view, the Spanish measure was inconsistent with Article III of the GATT 1994, and with Article 2 of the TRIMs Agreement. This inconsistency appeared to have nullified or impaired the advantages accruing to Argentina under the covered agreements. In 2011, Argentina had exported approximately 1.9 billion dollars-worth of biodiesel to the EU, its main export market. The consultations between Argentina and the EU had taken place on 4 and 5 October 2012, in Brussels. Unfortunately, these consultations had not resolved this dispute. Consequently,

Argentina had to request the DSB to establish a panel, with standard terms of reference, to examine this matter.

6.3. The representative of the European Union said that the EU was surprised by Argentina's request for a panel in this dispute and considered the request to be inapposite. Argentina was taking issue with a measure that was under revision and was not even in effect. The challenged Ministerial Order was only operational to the extent that the procedure foreseen therein was activated and completed. However, the procedure foreseen in that Order had not only not been activated and completed, but had formally been cancelled. The relevant government act had been published in the Spanish Official Journal on 16 October 2012. As a result, Argentina's challenge was entirely without object. The EU was concerned that Argentina's panel request was hardly consistent with the spirit of the DSU provisions. Argentina had chosen to disregard the steps that had been taken within the EU in relation to the measures that it challenged. Argentina had chosen to resort to further action instead of a discussion, in the context of consultations, following the cancellation of the procedure foreseen in the Ministerial Order. For those reasons, the EU opposed the establishment of a panel at the present meeting.

6.4. The representative of Argentina said that in response to the statement made by the EU, his country wished to clarify a number of issues. The EU had pointed out that the measure in question was not in force and thus Argentina's request was pointless. He then referred to a few paragraphs contained in Ministerial Order 2199 of 9 October 2012 which, according to the EU, allegedly cancelled Ministerial Order 822, the measure that had been challenged by Argentina. The preamble to Ministerial Order 2199 read as follows: "The purpose of the said Ministerial Order IET/822/2012 … is to promote the biofuels industry for transport purposes …"; "Once the quota allocation process provided for in the second additional provision of Ministerial Order IET/822/2012 has been completed … only the biodiesel that is under quotas shall be eligible for the purpose of compliance with the mandatory biofuel objectives. Thus, the application of the Order could have a negative impact on the prices of automotive fuels at a time, such as now, when they are at a historical peak. In view of these circumstances … it has been deemed necessary to cancel the said call for requests." However, that did not cancel Ministerial Order 822, which remained fully in force and already had a negative impact on Argentina's producers and exporters. The data for biodiesel exports to Spain was sufficiently illustrative of the negative impact Spain's legislation had on Argentina. During May 2012, the first complete month in which the challenged measure had been fully in force, 48,174 tonnes were exported, approximately one half of the previous month's exports. From January 2012 to October 2012, there was a reduction of 67,639 tonnes. Similarly from the last month prior to the entry into force of the Order (March 2012) to October 2012, which was the last month on which there was consolidated information, there was a decline in exports of 72,116.2 tonnes. The decrease in biodiesel exports to Spain was also accompanied by contractual disruptions and a chilling effect which would have an even more negative impact in the future.

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

7 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)

7.1. The Chairman drew attention to the communication from Argentina contained in document WT/DS447/2, and invited the representative of Argentina to speak.

7.2. The representative of Argentina said that, on 30 August 2012, his country had requested consultations with the United States in relation to certain US measures affecting the importation of animals, meat and other animal products from Argentina. The application of those provisions had essentially stopped fresh, chilled or frozen bovine meat from Argentina from entering the US market for more than 11 years. Fresh meat was Argentina's emblematic exports and its high quality was recognized throughout the world. Argentina noted that the World Organisation for Animal Health (OIE) had recognized South Patagonia as a zone free of foot-and-mouth disease (FMD) without vaccination in 2002, and had extended this recognition to the Rio Negro in 2007. The rest of Argentina had been recognized as an FMD-free zone with vaccination by the OIE since 2007. Moreover, there had been no outbreaks of this disease in Argentina since 2006. Paradoxically, sanitary conditions in Argentina were, at present, better than they had been

in 1997, when the United States, an internationally recognized FMD-free zone, had authorized imports of Argentine fresh meat. Currently, part of Argentina was recognized as an FMD-free zone without vaccination. 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.

7.3. The measures that Argentina challenged, without going into detail, as they appeared in the request for the establishment of a panel were: (i) the prohibition on imports of fresh (chilled or frozen) bovine meat from Argentina; (ii) the lack of recognition of the region of Argentine territory located south of parallel 42° S (South Patagonia) as an FMD-free zone, extended to the Rio Negro (Patagonia North B); and (iii) the undue delays in the sanitary approval procedures for both imports of fresh meat and the recognition of the FMD-free zone comprising South Patagonia and Patagonia North B. In Argentina's view, the challenged measures were inconsistent with, *inter alia*, the fundamental provisions of the SPS Agreement and Articles I and XI of the GATT 1994. Argentina and the United States had held consultations on 18 and 19 October 2012 in Geneva, but unfortunately the exchanges between the parties did not settle the dispute. Given the length of time that had passed since Argentina made the relevant requests for sanitary approval, Argentina had to request that the DSB establish a panel, with standard terms of reference, to examine this matter under the WTO rules.

7.4. The representative of the United States said that his country was disappointed that Argentina had requested the establishment of a panel on this matter. 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. Moreover, US regulatory authorities were currently engaged in the process of evaluating sanitary issues related to Argentina's products. Unfortunately, it appeared that Argentina had chosen for its own reasons to prioritize litigation over cooperation in moving forward the regulatory process. For those reasons, the United States was not in a position to agree to the establishment of a panel.

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

8 UNITED STATES – MEASURES AFFECTING THE IMPORTATION OF FRESH LEMONS

A. Request for the establishment of a panel by Argentina (WT/DS448/2)

8.1. The Chairman drew attention to the communication from Argentina contained in document WT/DS448/2, and invited the representative of Argentina to speak.

8.2. The representative of Argentina said that, for 11 years, the United States had maintained a ban on imports of citrus fruits, which covered fresh lemons from the North-West region of Argentina. For a brief period of time (June 2000 to September 2001), this product had access to the US market, until that access was annulled by a court ruling. Seven years had elapsed since Argentina had requested authorization for renewed access to the US market. To date, the US authorities had not, however, completed the import approval procedures for fresh lemons. The measures at issue affected a high-quality Argentine product that was already being exported to more than 50 countries, including those with the most stringent phytosanitary standards. Argentina considered that the continuation of the ban and of the application of the general import prohibition to fresh lemons from the North-West region of Argentina lacked scientific justification and constituted an import prohibition. As far as certain pests were concerned, Argentina also contested the fact that the import approval it had requested appeared to be contingent upon requirements that also lacked scientific justification. Furthermore, Argentina believed that there was discrimination between fresh lemons from the North-West region of Argentina and those from other WTO Members or originating in the United States. In Argentina's view, the US measures appeared to be inconsistent with Articles I, III, X and XI of the GATT 1994, as well as with several provisions of the SPS Agreement. They nullified and impaired the benefits accruing to Argentina under the mentioned Agreements. In order to avoid a dispute, on 3 September 2012, Argentina had requested consultations with the United States concerning certain US measures affecting the importation of fresh lemons from the North-West region of Argentina. Consultations between Argentina and the United States had been held in Geneva on 17 and 18 October 2012. Unfortunately, the consultations had failed to resolve the dispute. Given that it had been

impossible to reach an agreement, Argentina respectfully requested the DSB to establish a panel with standard terms of reference to examine this matter.

8.3. The representative of the United States said that his country was disappointed that Argentina had requested the establishment of a panel on this matter. US measures with respect to the importation of fresh lemons from Argentina were fully compliant with the obligations of the United States under the WTO Agreements. Moreover, US regulatory authorities were at present engaged in the process of evaluating phytosanitary issues related to Argentine lemons. Unfortunately, once again it appeared that Argentina had chosen for its own reasons to prioritize litigation over cooperation in moving forward the regulatory process. The United States also took note, with significant concern, that Argentina's consultation request in this matter, as well as in the matter under the prior Agenda item, had followed shortly after the United States and other Members had requested consultations with regard to Argentina's far-reaching import licensing measures. For those reasons, the United States was not in a position to agree to the establishment of a panel.

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

9 REPORT ON THE PROGRESS OF THE DIGITAL DS REGISTRY INITIATIVE

9.1. The Chairman said that, under this Agenda item, as requested by Argentina, Australia, Canada, Chile, Colombia, Costa Rica, Guatemala, Hong Kong, Japan, Korea, Lesotho (on behalf of the African Group), Mexico, New Zealand, Norway, Thailand, Turkey and the United States, he wished to invite the representative of the Secretariat, Ms Valerie Hughes, Director of the Legal Affairs Division, to report to Members on progress in the Digital DS Registry initiative.

9.2. The Director of the Legal Affairs Division, Ms Valerie Hughes, made the following statement:

"The Secretariat is pleased to provide a report to the DSB on the Digital Dispute Settlement Registry initiative, as requested by the delegations referred to by the Chair. As I reported at the DSB meeting last June, the project has three elements: (i) development of a central *electronic storage facility* for all dispute settlement records; (ii) design of a *research facility* for Members and the Secretariat to search for dispute settlement information; and (iii) creation of a *secure electronic registry* for filing and serving dispute settlement documents on line. This report will cover progress made in all three areas since our last report in June and will report on anticipated activity for the coming months.

1. Central Electronic Storage Facility

The Digital Dispute Settlement Registry (DDSR) will serve as a secure electronic facility for the storage of all panel and Appellate Body records. I noted in our last report that past records were being catalogued and scanned so that they can eventually be uploaded into the DDSR. This work is continuing. Thus far, over 242,000 pages have been scanned, which represent just over half of the unappealed panel records, close to one-third of the appealed panel records, and about two-thirds of the appellate records. The case files and the associated 'metadata', which are tags that identify documents and that will enable them to be searchable, will be uploaded into the system over time. We hope to begin uploading completed records as soon as the new application is functional. We intend to upload scanned documents even as we continue to scan other material so that we will have a complete, searchable archive of past disputes as soon as possible. This will permit fast access to documents without having to go through the laborious and costly process of consulting the physical archive. In future, we will not need to dedicate extensive resources and staff to such scanning efforts because future dispute settlement records will be entered into the storage facility automatically once served into the electronic registry. We will, however, occasionally need to convert documents to a standard format, such as pdf, if there is a possibility that their current format could become obsolete.

2. Research Facility

The application will permit Members and the public to search the digital record for publicly available information from past disputes. The application will contain the common searches currently available on the WTO website (such as disputes by Member, by Agreement, by Short Title, etc…). However, the new 'Advanced Search' capability will enable Members and the public to conduct more sophisticated searches more easily. Some examples are as follows:

- Search WTO disputes by keyword: for example, Members and the public will be able to search for all disputes on 'national treatment' and get results for disputes covering national treatment provisions in multiple agreements, whereas today a Member would have to search separately under GATT Article III, GATS Article XVII, and Article 3 of TRIPS to get comprehensive information. Furthermore, it will be possible under the new application to search for concepts such as jurisdiction, burden of proof, and other cross-cutting issues that are not currently searchable.

- Better ability to track how particular products or services have been dealt with in dispute settlement: this information can eventually be related to information in the WTO I-TIP database.

- Limit searches to a particular type of proceeding: searches can be limited to the panel phase, appellate phase, Article 21.5 proceedings, etc.

- Search for information about panelists: for example, Members will be able to find a list of panelists who have served on panels addressing a particular provision or agreement.

3. Electronic Registry

The electronic registry will have a facility for parties to disputes to upload their submissions (and possibly some or all exhibits) directly into the system. As we reported previously, the main hallmarks of the new system will be: increased security of dispute settlement submissions; paperless service on other parties, third parties, and distribution to panel and Appellate Body Members of submissions and exhibits; and a comprehensive calendar of dispute settlement deadlines to assist Members and the Secretariat with workflow management. As Members are aware, the Secretariat has been consulting with a 'Working Group' of Members interested in providing comments and advice to the Secretariat in the development of the Digital DS Registry. Several Members have been participating actively in the Working Group. The Working Group has met regularly since its first meeting in October 2011. Since our last report to the DSB in June, the working group has met twice (once in July and once in October). The Working Group's input has been invaluable in assisting the Secretariat in ensuring that the ultimate design of the Digital DS Registry is one that satisfies Members' needs and the needs of the dispute settlement system more generally. In the most recent meetings, the Working Group has focused on two main aspects: (a) registering the filing of a notice of appeal in the new system, and (b) security of submissions.

a. With respect to the notice of appeal, it is envisaged that:

i. the notice of appeal now sent to the Appellate Body will be filed by Members through the system. Members will continue to notify the DSB Chair through the traditional method. Members will indicate in the system that they have notified the DSB Chair and will have the option of uploading that letter into the system;

ii. in order to enable the system to automate the functions of creating the appeal smoothly, it is proposed that every individual complaint receive its own DS number and record. Of course, some cases are combined pursuant to Article 9 of the DSU or by the Appellate Body. In those instances, the system will allow Members to indicate that the same filing is being made in multiple cases;

iii. the system will also allow for joint filings (such as consolidated exhibits by co-complainants).

b. With respect to security issues, Members have made clear their desire for strong security protection for dispute settlement documents. The WTO IT Security Officer researched various possibilities and discussed them with the Working Group. Members provided written and oral responses to questions from the IT Security Officer about their needs. Based on this input it is envisaged that:

   i. the system will require a 'second factor of authentication', such as a token or smart phone application, in addition to a standard user name and password. This second factor of authentication will generate a random password each time an individual logs in to the system. (It is similar to what some banking institutions issue to customers to enable them to log into their bank accounts remotely.) Using the second factor of authentication means that additional measures such as IP filtering and detection of concurrent sessions will not be necessary;

   ii. usernames will be composed of the person's name and the ISO code for the Member they represent. For example: the DSB Chair would log in under 'bashirs.pak'.

   iii. individual users will provide the system with e-mail addresses in order to receive notifications, with the result that the Secretariat will be able to verify whether an individual's e-mail address corresponds to that of the government of the Member before finalizing account creation;

   iv. the Secretariat agreed to conduct a thorough security audit prior to the system going 'live' and to provide the report of that audit to Members. WTO IT Security will also do regular reviews of the logs of system activity to check for anomalies.

During a recent meeting, the Working Group was informed by the Secretariat about its video conference with the World Bank's International Centre for the Settlement of Investment Disputes (ICSID) regarding ICSID's move toward electronic filing in investment arbitrations. More recently, the Secretariat provided a briefing on the system to visitors from the ASEAN Secretariat. The Secretariat was also contacted recently by the Caribbean Court of Justice for information on the Digital Registry project.

4. Anticipated Milestones

At this stage, we do not have a definite timeline for moving to a Digital Dispute Registry system. There are a few estimated dates that we can give you for the next milestones in the project.

- we expect delivery of a completed application towards the end of December or early 2013 for internal testing and adjustments as required;

- we expect to conduct internal testing into the second quarter of 2013 and identify whether changes are needed to the application;

- in the third quarter of 2013 we may be able to move to a test phase involving Members filing documents in actual disputes (although we will also maintain the current paper filing system as a safeguard). Some Members have already expressed interest in participating in this test phase and we welcome additional expressions of interest from Members who anticipate being engaged in disputes in that timeframe;

- training will be organised for interested Members at times to be determined;

- any required adjustments that come to light during the test phase will be implemented as resources permit;

- throughout the latter half of 2013, we will upload records from old cases into the central digital archive. Given the volume and complexity of the documents, this is expected to take some time;

- we estimate that cataloguing and scanning will be completed in about one year's time and the research facility could thereafter be made available to Members using the system.

5. Concluding Remarks

We have made very good progress thanks to the excellent contribution of Members. With Members' assistance and collaboration, we have worked to design a system that we believe will respond to the needs and priorities of Members. In addition, we trust that the application will benefit the Dispute Settlement Mechanism more generally, through achieving enhanced security of dispute settlement records and by promoting efficiency in filing submissions, registering and cataloguing documents, and conducting research. We look forward to continuing to work with the Working Group and any other interested Members in leveraging these technological advancements to ensure that the WTO dispute settlement system continues to serve all Members as efficiently as possible. Thank you for your time and attention. If Members are interested in a demonstration of the most recent version of the prototype of the system, reflecting features and design developed in the light of the input from the Working Group, the Secretariat would be pleased to provide a demonstration after the holidays. We would also be pleased to respond to Members' questions anytime. Finally, I would like to salute the Members of the Secretariat who have worked very hard on this project, including Marisa Goldstein, Rajesh Patavardhan, Emmanuel Casimir, Alan Yanovich, Elisabeth Upton, Chibole Wakoli, Inger Bauer, Esperanza Sesar, Alexandre Trofimov, and Jean Bonheur Di-Mawete Yanga."

9.3. The DSB took note of the report, and the Chairman invited delegations to take the floor to make statements if they so wished.

9.4. The representative of the United States said that his country thanked the Chair for requesting this report for a second time and thanked the Secretariat for providing it. The United States joined several other delegations in supporting a request that this information be brought to the DSB, similar to the report provided by the Secretariat during the 25 June 2012 DSB meeting. The United States considered that it was important that the Secretariat's report was presented to all Members at the present meeting for the purposes of transparency, inclusiveness, and participation by Members, including those that may not be able to participate in the informal working group meetings, for example, due to other commitments. The United States and others had been actively participating in a working group in which delegates and the Secretariat had been exchanging information and views on the process of developing the e-filing system, and the possible elements of such a system. The United States thanked the Secretariat for organizing these informal meetings, which the United States had found to be very valuable in deepening its understanding and clarifying its thinking on elements of such a system. The United States looked forward to future opportunities to discuss the issue both in the informal working group setting and in the DSB as work continued on this important initiative. The United States also supported the suggestion by a delegation made at the last DSB meeting to consider this item that the Secretariat circulate written materials to Members, such as summaries of the informal Working Group meetings or supplementary information. That may be of significant assistance to delegations in discussing the initiative with capital-based officials, which in turn would enhance the quality of the input from Members.

9.5. The representative of Saudi Arabia said that his country wished to express its appreciation for the Chairman's leadership and for the Secretariat's work and cooperation throughout the year. Regarding the Digital DS Registry initiative, Saudi Arabia thanked the Secretariat, especially the Legal Affairs Division, for its report on the progress and looked forward to the benefits of this new DS registry system. Saudi Arabia noted that future beneficiaries of the system may include WTO Members and their research centres, libraries, academic law schools and universities.

9.6. The representative of Japan said that his country welcomed the inscription of this item on the Agenda of the present meeting once again. Japan also appreciated the detailed report provided by the Secretariat on the Digital DS Registry initiative which appeared to be making steady progress. Japan agreed that the digitalized filing system would serve to promote a more secure, efficient, and eventually user-friendly dispute settlement system. Japan was generally supportive of the initiative. As it had stated at the previous DSB meeting on this matter, Japan considered inclusiveness and transparency were important elements in the course of the work on this initiative. However, the outcome of the initiative would affect all WTO Members and the day-to-day operation of the dispute settlement system. Japan wished to emphasize that any system of this kind must be flexible and user-friendly enough to accommodate the needs of individual Members. Furthermore, Japan was of the view that the initiative's development must be evolutionary and incremental so that any experience to be obtained in the actual use of the system could

continuously be taken into account and reflected in the system. Japan would continue to actively participate in discussions on this initiative.

9.7. The representative of China said that her country thanked the Secretariat for its detailed and comprehensive report on the Digital DS Registry initiative regarding three pillars and time-lines. China was pleased that steady progress had been made thus far. China believed that the digital system would improve the efficiency of submissions by the parties and third parties to a dispute, facilitate the management of documents, and reduce the human and financial costs of Members and the Secretariat. The system should operate securely, stably and reliably, without any change to the confidentiality of the submissions and the procedures as provided in the DSU provisions. China was also pleased that the Secretariat had already foreseen a test phase that would be implemented in the early stages of introducing the system and was willing to participate in that test phase. China was fully confident that, with the active participation of Members, this work would be carried out smoothly and would achieve the final goals which had been formulated at the outset by the Secretariat.

9.8. The representative of Argentina said that his country had participated in the Working Group and together with others had requested the inclusion of this item on the Agenda of the present meeting. Argentina believed that all Members would benefit from the Secretariat's report on progress in the Digital DS Registry initiative. Argentina thanked the Secretariat for its efforts to complete this new system which would be useful to all Members. Argentina hoped that the system would be operational in the near future and looked forward to the next stages of the DS initiative in 2013. In particular, Argentina looked forward to the test phase and to the training courses which would take place in 2013.

9.9. The representative of Hong Kong, China said that his delegation thanked the Secretariat for its informative reports and for organizing the informal meetings and for providing the materials. Hong Kong, China had been participating in the Working Group and appreciated the progress made thus far. Hong Kong, China had benefited from exchanging information with the Secretariat and other Members but noted that not all Members were represented in the informal meetings. Given that the digital system would involve new security considerations and a change in the filing procedures for all Members, Hong Kong, China welcomed the inclusion of this item on the Agenda of the present meeting as it brought greater transparency, inclusiveness and participation of Members. Hong Kong, China supported the system, noted the progress made thus far and believed that it could help Members save time and costs. Hong Kong, China looked forward to a secure, reliable and user-friendly system and trusted that the new system would be implemented in a manner that would meet the needs of all Members, in particular developing-country Members. Hong Kong, China looked forward to an e-filing system that would work to the benefit of all Members, achieve greater efficiency and meet the acceptability and usefulness of all Members. Hong Kong, China was pleased to continue participating in the Working Group process.

9.10. The representative of the European Union said that the EU thanked the Secretariat for its report and for its work in setting up the e-filing system, which would facilitate the filing of dispute settlement documents for all Members. The EU had taken note that there would be a test period which would be useful in identifying and fixing problems quickly.

9.11. The DSB took note of the statements made.

10 PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/495)

10.1. The Chairman drew attention to document WT/DSB/W/495, 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/495.

10.2. The DSB so agreed.

11 STATEMENT BY AUSTRALIA ON A SYSTEMIC ISSUE RELATING TO ARTICLE 3.7 OF DSU

11.1. The representative of Australia, speaking under "Other Business", said that his country was grateful for the opportunity to make a short statement. Australia wished to make it clear that it acknowledged that it was within the right of any Member to initiate a dispute in the WTO in order to preserve its rights and obligations under the covered agreements. Under the DSU provisions, the purpose of dispute settlement was to secure a positive solution to a dispute between Members. At the same time, it was important that a Member gave due regard to whether it genuinely needed to initiate or advance a dispute in the WTO, particularly in situations where there were real opportunities for the amicable resolution of an issue without the need to proceed further down the path of formal dispute settlement. Australia recalled that Article 3.10 of the DSU expressly enjoined that complaints should not be linked, while Article 3.7 expressly required that a Member exercise its judgement as to whether dispute settlement action would be fruitful. Australia was concerned about the apparent increase in disputes that seemed to be initiated in response to another Member exercising its right to seek redress through the dispute settlement system. Australia urged Members to be judicious and reasonable in their use of the dispute settlement system, so as to ensure that the integrity of the system was maintained.

11.2. The representative of Turkey said that his country thanked Australia for raising this issue under "Other Business". Turkey had serious concerns about the increased number of disputes in the last couple of months. Turkey was not sure about the reason for the increase in disputes but was concerned that this increase might have an adverse impact on bilateral and multilateral trade. Like Australia, Turkey recalled that the requirements under Article 3.7 of the DSU and the purpose of the dispute settlement mechanism were to secure a positive solution to the dispute. Turkey recalled that Members should resolve a dispute by using all available sources and tools in order to reach a mutually agreed solution. Resort to dispute settlement proceedings should be the last option. Turkey shared Australia's view that the dispute settlement mechanism should not be used for retaliatory purposes. Furthermore, and taking into account the increase in the number of disputes, Turkey underscored the importance of, and the need to, conclude the Doha Round negotiations. It was clear that the dispute settlement mechanism should not be considered by Members as a tool for making new rules by forcing the negotiators to fill in the gaps in the covered agreements. Turkey urged Members to sustain efforts to make their own rules through negotiations and believed that concluding the negotiations and clarifying the rules, especially on anti-dumping and subsidies, would improve the discipline and contribute to the decrease in the number of disputes in those areas.

11.3. The DSB took note of the statements.

12 STATEMENT BY ANTIGUA AND BARBUDA CONCERNING THE DISPUTE "UNITED STATES: MEASURES AFFECTING THE CROSS BORDER SUPPLY OF GAMBLING AND BETTING SERVICES"

12.1. The representative of Antigua and Barbuda, speaking under "Other Business", said that on Friday 7 December 2012, prior to the completion and circulation of the airgram convening the present meeting, his country had submitted to the Secretariat, for inscription on the Agenda of the present meeting, its request for the DSB's authorization to suspend the application of concessions or other obligations to the United States in accordance with Article 22.7 of the DSU in the long-standing dispute: "US – Measures Affecting the Cross Border Supply of Gambling and Betting Services" (DS285). Unfortunately, Antigua and Barbuda would not be requesting the DSB's authorization at the present meeting because the Secretariat, after consultation with the United States, had held that Antigua and Barbuda's request was not submitted in time, despite the fact that Antigua and Barbuda's communication had been forwarded to the WTO prior to the completion and circulation of the airgram for the present meeting. Antigua and Barbuda was a small, developing country, under particular economic stress in these difficult times. Antigua and Barbuda did not have the resources to maintain a mission in Geneva and the prosecution of this case and the pursuit of its rights under the WTO Agreements had been expensive, time-consuming and difficult. It was unfortunate that Antigua and Barbuda was, under all circumstances, unable to present its request for the DSB's authorization for suspension of concessions at the present meeting. Antigua and Barbuda would present its request before the DSB in January 2013. Notwithstanding that, Antigua and Barbuda wished to, at the present meeting, explain its position to Members and to set the record straight to the extent possible. Antigua and Barbuda had not

come to the decision to exercise its right to suspend concessions lightly. The first panel had ruled in Antigua and Barbuda's favour in 2004. The reasonable period of time to implement in this dispute had expired on 3 April 2006 and the Report of the Arbitrators under Article 22.6 of the DSU had been circulated exactly five years ago, in December 2007. In the meantime, what had once been a multi-billion dollar industry in Antigua and Barbuda, employing almost 5% of its population had now shrunk to virtually nothing. A number of its citizens had been criminally prosecuted, and a number were still under the spectre of arrest, prosecution and incarceration by the US authorities, for ostensibly violating the very laws that had been ruled to be in violation of US obligations under the GATS. At the same time, domestic remote gaming was growing apace in the United States. More and more states and other governmental entities in the United States were authorizing various types of remote gaming and two of the most senior-elected officials in the US Congress had proposed legislation under consideration at the present time that would provide a country-wide regulatory programme for remote gaming on poker in the United States. The only thing that all of these recent developments had in common, besides gambling, was that each and every one excluded the provision of these highly-in-demand services on a cross-border basis from other countries, including Antigua and Barbuda.

12.2. Over the years, since its last WTO proceedings in this matter, Antigua and Barbuda had not been sitting idly by. Nor had it been imposing unrealistic or unbending demands upon the United States. Antigua and Barbuda had been working hard to achieve a negotiated solution to this case and its efforts at compromise had been exhaustive. Antigua and Barbuda had tabled proposals after proposals to the United States, and had attended session after session, in pretty much every case involving its delegation travelling to Washington DC, in the hopes of finding some common ground. But to date, the United States had not presented one compromise offer of its own, and in particular the USTR had made, to Antigua and Barbuda's belief, no sincere effort to develop and prosecute a comprehensive solution that would end the dispute. As recently as last month, on yet another trip to the United States, Antigua and Barbuda was told to work on the US Congress, engage a lobbying firm and hope for the best. Antigua and Barbuda had been told, repeatedly, that USTR had no authority in these matters. In fairness, Antigua and Barbuda did not know exactly how the United States resolved other disputes it had been involved in. But Antigua and Barbuda believed that the USTR had a big role in making things happen in those disputes. It was, after all, within its clear statutory remit if one took the time to explore the applicable domestic law. However, the USTR apparently had no role in seeing an end to this dispute. Antigua and Barbuda had spent the past five years searching, at great expense and considerable effort for a small country, for the person or persons, the agency or agencies that had the authority and the will to work with Antigua and Barbuda to come to a reasonable, just and fair resolution of the dispute. Unfortunately, Antigua and Barbuda had not found that person or agency. In November this year, Antigua and Barbuda was told by the USTR that this was Antigua and Barbuda's problem. Thus, Antigua and Barbuda had no other option but to request the DSB's authorization to suspend concessions or other obligations in hopes that perhaps affected domestic interests in the United States might succeed where Antigua and Barbuda had failed. Perhaps an innocent US intellectual property rights holder may be able to convince the US government that continued protectionism for the benefit of domestic gaming interests was not sustainable. Maybe such an innocent third party would be able to find that person who would be willing to take ownership of this issue in the US Government and work with Antigua and Barbuda in good faith and in full consideration of the circumstances to bring this matter to a fair and fitting conclusion.

12.3. Finally, Antigua and Barbuda took note of the fact that the United States had taken the exceptional step of trying to come into compliance with the DSB's rulings and recommendations in this dispute by simply removing the offending commitment altogether. In that regard, the United States had come to agreement with other affected Members on adjustments sufficient to satisfy those Members. However, none of these things were within the reasonable scope of Antigua and Barbuda's assets and its economy to provide any benefit whatsoever. While this remained to be tested, Antigua and Barbuda did not think that the DSU was intended to work in the way suggested by the United States. Antigua and Barbuda did not think that a Member could avoid its obligations to another Member under the WTO Agreements by simply removing or modifying the part of the agreement that a measure offended, making bilateral arrangements with other Members and leaving the supposedly prevailing Member with no remedy at all. If such was the case, then the DSU would be particularly hollow for smaller Members who would rarely have the diversity and domestic assets to avail themselves of offered adjustment. Antigua and Barbuda looked forward to the next regular DSB meeting to be held in January 2013 where it hoped that the matter would be taken forward more forcibly.

12.4. The representative of the United States said that Antigua's statement at the present meeting fundamentally misrepresented the current status of this matter, and its positioning within the WTO system as a whole. Moreover, Antigua's sentiments only served to postpone the final resolution of this matter, to the detriment of Antigua's own interests. This dispute involved an area of services regulation – gambling and betting services – that the United States had never intended to be included in its schedule under the General Agreement on Trade in Services (GATS). Indeed most Members, like the United States, viewed gambling as a significant issue of public morals and public order, involving the protection of children and other vulnerable individuals. Accordingly, the United States said that most Members tightly regulate any gambling allowed within their borders and most Members had not included any market access commitment for gambling in their GATS schedules. That was the US understanding of its own GATS schedule. However, as a result of ambiguities in drafting, and despite the intent of 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 accepted the results of the dispute settlement process. 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, 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.

12.5. 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 future development of the Antiguan economy. At times, Antigua had been on the verge of accepting these 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 the US GATS schedule. Moreover, Antigua was, at the present meeting, stating that it intended to take the additional step of seeking authorization to suspend concessions with respect to intellectual property rights. The United States would view such a 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. In those circumstances, Antigua had no justification for taking any retaliatory actions against the United States. Moreover, if Antigua actually proceeded 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.

12.6. The DSB took note of the statements.

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

13.1. The Chairman, speaking under "Other Business", said that as he had 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. In that regard, he drew attention to the fact that the first four-year term of office of Mr. Ricardo Ramírez Hernández would expire at the end of June 2013. He said that Mr Ramirez was eligible for reappointment to a second and final term of office, pursuant to Article 17.2 of the DSU. The Chairman informed Members that he had recently been informed by Mr. Ramírez that he was interested and willing to

be reappointed for a second four-year term. In light of that, it was the Chair's intention to consult informally on this matter. He invited any delegation with views on this matter to contact him directly before the next regular DSB meeting scheduled for 28 January 2013. It was his intention to report back to delegations on the results of his consultations at that meeting.

13.2. The DSB took note of the statement.

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