WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/316
20 July 2012

(12-3984)

Dispute Settlement Body
24 May 2012

MINUTES OF MEETING

Held in the Centre William Rappard
on 24 May 2012

Chairman: Mr. Shahid Bashir (Pakistan)

Prior to the adoption of the Agenda, the Chairman informed delegations that on 22 May 2012 Antigua and Barbuda had requested by letter that item 5 of the proposed Agenda, entitled: "United States – Measures Affecting the Cross Border Supply of Gambling and Betting Services: Statement by Antigua and Barbuda regarding the implementation of the recommendations and rulings adopted by the DSB" be removed from the proposed Agenda. Therefore, he said that, in light of the request by Antigua and Barbuda, item 5 was withdrawn from the proposed Agenda.

The Agenda was adopted as amended.

Subjects discussed: Page

1. Appointment of Appellate Body members

1. The Chairman said that, as announced by fax sent to all delegations on 9 May 2012, under this Agenda item, he intended to propose that the DSB take certain decisions in relation to the appointment of Appellate Body members. However, first, he wished to briefly review the process that had led to this point. He recalled that at its meeting on 22 February 2012, the DSB had agreed to the Chair's proposal on this matter, which consisted of the following elements: (i) to agree to launch as from 22 February 2012 the selection process for appointment of a new member of the Appellate Body for the position held by Mr. Shotaro Oshima; (ii) to agree that the new member be appointed for a four year term beginning 1 June 2012 or as soon thereafter as possible; (iii) to agree to set a deadline of 30 March 2012 for Members' nominations of candidates for Mr. Oshima's position; (iv) to agree to establish a Selection Committee based on the procedures set forth in document WT/DSB/1, which would consist of the Director-General and the 2012 Chairpersons of the General Council, Goods Council, Services Council, TRIPS Council and the DSB, and would be chaired by the 2012 Chair of the DSB; (v) to request the Selection Committee to conduct interviews with candidates in April 2012, to hear Members' views in the first half of May 2012, and to make its recommendation to the DSB by 11 May 2012, if possible, so that the DSB could take a decision at its regular meeting on 24 May 2012; and (vi) to ask the DSB Chair to carry out consultations on the possible reappointment of Ms Yuejiao Zhang, who was eligible for reappointment for a second four-year term beginning on 1 June 2012, and who had expressed her interest and willingness to be reappointed.

2. The Chairman recalled that, by the agreed deadline of 30 March 2012 for Members' nominations, five candidates had been nominated by four Members, namely Japan, Kenya, Korea and Thailand. Subsequently, Kenya had informed Members of its decision to withdraw its candidate. As a result, there were four candidates: two submitted by Japan, one by Korea and one by Thailand. Curricula Vitae of the candidates had been circulated as Job documents to all Members. Subsequently, on 25 and 26 April 2012, the Selection Committee had conducted interviews with the four candidates. Then, on 7 and 8 May 2012, the Selection Committee had met individually with 27 delegations to hear their views on the candidates. The Selection Committee had also received the views of another three delegations in writing. To arrive at its final recommendation, the Selection Committee had carried out its work in accordance with the applicable DSU provisions and guidelines and rules set out in document WT/DSB/1. The Selection Committee's task had been very challenging given the outstanding calibre and impressive qualifications of the candidates. On behalf of the Selection Committee and the entire WTO Membership, he thanked the candidates who had participated in the process and to their respective Governments for having nominated them.

3. The Chairman then turned to the proposed decisions for action by the DSB. First, as had been communicated by fax to all delegations on 9 May 2012, he said that the Selection Committee had recommended that Mr. Seung Wha Chang of Korea be appointed as a member of the Appellate Body for four years beginning on 1 June 2012. He, therefore, proposed that the DSB take a decision to accept the Selection Committee's recommendation.

4. The DSB so agreed.

5. Second, based on the Chair's consultations with delegations and as had been announced at the April 2012 DSB meeting, the Chairman proposed that the DSB agree to reappoint Ms Yuejiao Zhang for a second four-year term beginning on 1 June 2012.

6. The DSB so agreed.

7. The Chairman said that, before giving the floor to delegations, on behalf of the Selection Committee and the entire WTO Membership, he once again thanked all the candidates and their respective Governments and congratulated Mr. Chang on his appointment and Ms Zhang on her reappointment. He also thanked the members of the Selection Committee for their hard work.

8. The representative of Korea said that his country thanked Members for the appointment of Mr. Seung Wha Chang as an Appellate Body member. In particular, Korea wished to extend its gratitude to the Chairman and to the other members of the Selection Committee for their hard work and recommendation. Korea also thanked the Secretariat for its assistance and Members for their support and encouragement during the selection process. Korea also commended Japan and Thailand for having put forward highly capable and top-notch individuals as candidates for the Appellate Body. Since the inception of the WTO in 1995, the WTO dispute settlement system had played a significant role in providing security and predictability to the multilateral trading system. In particular, the Appellate Body had been and would continue to be at the centre of this critically important mission as the impartial and effective guardian of the multilateral trading system. Korea, like other Members, was fully committed to further strengthening the dispute settlement mechanism and the rules-based multilateral trading system. Korea was certain that Mr. Chang recognized and appreciated all this.

9. As Members were aware, Mr. Chang had a long and distinguished career in law and international trade. He had served as a judge, an international arbitrator and a WTO panelist. Korea hoped and trusted that his proven expertise, impressive knowledge and balanced perspective would contribute significantly to the work of the Appellate Body as it proceeded to deal, in a timely and effective manner, with the increasingly complex disputes and various challenges in a rapidly changing global trading environment. Korea was confident that Mr. Chang would do his best to meet Members' expectations and live up to the faith that had been bestowed upon him. Korea welcomed the reappointment of Ms Yuejiao Zhang as a member of the Appellate Body, and believed that she would continue to make significant contributions to the Appellate Body's work. In conclusion, Korea wished to take this opportunity to honour Mr. Shotaro Oshima for the past four years of excellent service. In this regard, Korea was very pleased to join other Members in thanking him for his invaluable contributions to the Appellate Body's work and wished him well in his future endeavours.

10. The representative of China said that her country thanked the Chairman and the other members of the Selection Committee for their efforts devoted to the selection process. China welcomed and congratulated Ms Zhang Yuejiao and Mr. Seung Wha Chang for their respective reappointment and appointment as Appellate Body members. China also thanked Japan, Korea and Thailand for having nominated highly capable candidates. China recognized that the selection process had been difficult due to the competition among the highly qualified candidates and believed that any of the nominated candidates would have been able to do excellent work. Ms Zhang had served as an Appellate Body member for four years and was, at present, the only women in the Appellate Body. Her dedicated professional service and valuable contribution to the Appellate Body were recognized by Members. China believed that her experience acquired during the first four-year term would enable her to perform well in her second four-year term. China said that Mr. Seung Wha Chang had rich expertise and experience in WTO law and international economic law. China believed that he would make a great contribution to the Appellate Body and to the WTO dispute settlement system. China hoped and was confident that the newly appointed and reappointed Appellate Body members would abide by the principles and rules established under the DSU and the Working Procedures for Appellate Review, and that they would perform their duties faithfully,

independently and impartially. China attached utmost importance to the smooth functioning of the Appellate Body and would continue to work collaboratively with the Appellate Body. Finally, China thanked the outgoing Appellate Body member, Mr. Shotaro Oshima, for his remarkable and persevering services and contributions over the past years, and wished him well in the future.

11. The representative of the European Union said that the EU welcomed the Selection Committee's recommendation to nominate Mr. Chang as an Appellate Body Member. The EU wished him all the best in his work and was confident that his experience in WTO matters as well as in international arbitration and as a judge would enable him to meet the challenges inherent in the Appellate Body's work. The EU also thanked the delegations of Japan and Thailand for having nominated candidates of such high stature in terms of knowledge and experience. Those nominations bore witness to the commitment that these delegations had towards a high-quality Appellate Body and the multilateral trading system. Such high calibre had afforded Members a great choice for this important office. The EU also welcomed Ms Zhang's reappointment and wished her well during her second term. The EU thanked Mr. Oshima for his service over the past four years and wished him well in his future endeavours.

12. The representative of Singapore said that her country thanked the Selection Committee and the Secretariat for their hard work during the selection process. Singapore was a supporter of the multilateral trading system and believed in the importance and centrality of the dispute settlement mechanism to that system. The WTO dispute settlement mechanism had been used to resolve many disputes, possibly more disputes than any other international dispute settlement mechanism. The two-tier dispute settlement process, with an appellate mechanism, was unique in international law and the Appellate Body played a fundamental stabilizing role. With the increase in the number and complexity of disputes, it was imperative to have well-qualified and talented women and men to serve on the Appellate Body. It was important that the Appellate Body was sound, objective, and acted on the basis of legal principles, given its role as the credible arbiter between Members in disputes. Singapore had participated in the selection process: it had interviewed all four candidates and had made its views known to the Selection Committee. Singapore was impressed with the calibre of the candidates that had been put forward by Members this time around. The candidates not only had the necessary technical knowledge and qualifications, but some had the important insights of the fundamentals underlying the WTO system and experience to supplement the Appellate Body's already talented pool. Singapore hoped that this high standard of candidates would be maintained in the future selection processes. Singapore congratulated Mr. Chang on his appointment as an Appellate Body member and was confident that his vast experience and sound technical knowledge would make him an asset to the Appellate Body and the WTO. Singapore congratulated Ms Zhang on her reappointment for a second four-year term and thanked Mr. Oshima for his contributions.

13. The representative of Thailand said that her country thanked the Chairman, the Selection Committee and Members concerned for their participation in the Appellate Body selection process. Thailand also thanked Korea and Japan for having nominated candidates for the selection process. All four candidates were so highly qualified that making a decision to select only one was difficult. Thailand had nominated its candidate because it strongly believed that the WTO, and in particular its dispute settlement mechanism, should be driven by all Members. Members should take turns to carry the torch for advancing the cause of strengthening the system. In that regard, Thailand congratulated Mr. Seung Wha Chang for his appointment and Ms Zhang Yuejiao for her reappointment to the Appellate Body.

14. The DSB took note of the statements.

2. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.114)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.114)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.89)

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.52)

(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.5)

(f) United States – Definitive anti-dumping and countervailing duties on certain products from China: Status report by the United States (WT/DS379/12/Add.4)

(g) Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.1)

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

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

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.114)

16. The Chairman drew attention to document WT/DS176/11/Add.114, 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.

17. The representative of the United States said that his country had provided a status report in this dispute on 11 May 2012, in accordance with Article 21.6 of the DSU. Legislative proposals had been introduced in the current 112th 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.

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

19. The representative of Cuba said that the most recent US status report pertaining to the Section 211 dispute contained the same information as the previous status reports submitted by the United States since 2002. The US assertion that it had been working for more than ten years on the implementation of the DSB's recommendations in this dispute without achieving any result was not

sustainable. In Cuba's view, the US status reports undermined the principles of transparency and accountability of DSB meetings. The status reports no longer referred to the sessions of the US Congress in which the supposed legislative proposals for compliance with the DSB's rulings would be examined. Cuba, once again, called upon the United States to submit updated status reports based on facts, in accordance with Article 21.6 of the DSU. It was also important that the United States determine the steps necessary to comply with the DSB's rulings. Section 211 had been found to be inconsistent with the TRIPS Agreement, national treatment, the most-favoured-nation treatment and the Paris Convention. Every month, the DSB witnessed the US negligent and unjustifiable non-compliant behaviour. In early May 2012, the US Trade Representative Office had published a new edition of its annual report on intellectual property rights. This only confirmed that there were no limits to the US authorities' demagogy, discrimination and double standards. The report included a Priority Watch List containing 40 countries that supposedly violated intellectual property rights. Cuba wondered why such unethical behaviour and double standards could be possible. If the Office of the US Trade Representative wanted to conduct an objective analysis of the matter, it should start by acknowledging that it had not taken any steps to comply with the DSB's decisions in this dispute. The United States should present a programme of specific actions, with a set time-table for remedying its inaction and deceptive behaviour, which blatantly violated the intellectual property rights of other countries. Cuba considered that it was unacceptable for any country to unilaterally assume the role of international judge, in particular since that country frequently violated international commitments on intellectual property rights.

20. In Cuba's view, the United States made a mockery of the DSB's rulings in the Section 211 dispute. Section 211 prevented Cuban right holders and successors-in-interest from enjoying the recognition and exercise of their trademark and trade name rights in the United States. Section 211 had been used, in what amounted to a blatant act of piracy, as a pretext to enable the Bacardi Company to use the Havana Club trademark in the United States: the only place in the world where this occurred. In 2011, US courts had issued two rulings that had denied the Cubaexport Company, the legitimate right holder since 1976, permission to renew its registration of the Havana Club trademark. In January 2012, the company had turned to the US highest judicial authority, the Supreme Court, to request that it review the case. On 14 May 2012, that request had also been refused. Such action definitively denied a Cuban company its right to retain ownership of a trademark that it had held legitimately in the United States for more than 30 years, without the US government showing any regard for its international commitments or international public opinion, or indeed respect for the most basic intellectual property rights. Moreover, it was shameful that while all this was happening, the United States acknowledged, through the Department of the Treasury, Office of Foreign Assets Control's response to Cubaexport's request before the Supreme Court, that the refusal to issue a specific licence for the renewal of the registration was a decision that had been taken by the executive branch of the Government on the basis of its foreign policy. It was, therefore, clear that in this case a political problem was at the root of the US failure to comply with its obligations. For that reason, every month the United States tried to deceive Members with an empty and repetitive status report indicating that "something" was being done in Congress. The reason behind this was the absurd and unlawful economic, financial and commercial blockade against Cuba, which was condemned year after year by an overwhelming majority in the UN General Assembly, and which the United States placed before its DSB obligations and respect for other Members.

21. Cuba considered that it was unacceptable that this type of violation should continue to go unpunished in the WTO. The United States was fully responsible for what had happened. Cuba called upon the United States to grant, immediately, the licence that would enable the Cuban company Cubaexport to renew the Havana Club trademark, and to repeal Section 211 immediately, unconditionally and without further delay. Cuba had always respected, without any discrimination, its obligations under international legal instruments relating to intellectual property, thus ensuring that more than 5,000 US trademarks and patents benefitted from their registration in Cuba. If the United States did not take action, it alone would be responsible for the theft of the Havana Club trademark from its lawful owner, Cubaexport, and for any negative consequences that this might have

for the reciprocal protection of intellectual property. Cuba would continue to call upon the United States to fully repeal Section 211 and condemned the harm inflicted on Cuba. In Cuba's view, Section 211 undermined the ideal of a world governed by the rule of law.

22. The representative of Argentina thanked the United States for its status report and statement made at the present meeting. However, Argentina regretted that the status report and statement were similar if not identical to the previous reports and statements by the United States over the past ten years. This situation of non-compliance had a negative impact on the credibility of the multilateral trading system, in particular since it affected the weakest Members. Argentina supported the concerns expressed by Cuba and noted that, in the past 24 months, 75 per cent of the cases under this Agenda item concerned US non-compliance. Therefore, Argentina requested that the United States implement the DSB's rulings and recommendations without further delay. At the present meeting, Argentina wished to express its concern regarding the repeated and continued failure to comply with the DSB's recommendations and urged non-complying Members to bring their measures into compliance with the DSB's recommendations. Argentina recalled that Article 21 of the DSU referred specifically to the need for prompt compliance with the DSB's recommendations and rulings, in particular where the interests of developing-country Members were affected. In that regard, Argentina drew attention to the fact that when Members with relatively greater economic weight failed to comply with the DSB's rulings, to the detriment of the interests of developing-country Members, they undermined the stability of the multilateral trading system and jeopardized its viability. Likewise, the failure to comply with the DSB's decisions undermined the credibility of the system to effectively rectify situations where measures were found to be inconsistent with WTO rules, in particular when unfair situations were prolonged to the detriment of developing countries.

23. The representative of Zimbabwe said that his country thanked the United States for its status report. However, Zimbabwe noted that, despite the regular reports, the United States fell far short of complying with the DSB's rulings and the recommendations pertaining to this dispute. Once again, Zimbabwe urged the United States to repeal Section 211, which was incompatible with the TRIPS Agreement and violated the legitimate rights of Cuban trademark holders.

24. The representative of the Bolivarian Republic of Venezuela said that her country supported Cuba's statement made at the present meeting. Venezuela wished to point out that 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 most-favoured-nation treatment and the Paris Convention. Each month, the US status report, including its most recent report of 11 May 2012, contained the same information as the previous reports. The only changes made were the date and symbol. The report stated that "the US Administration will continue to work on a solution that would resolve this matter". In Venezuela's view, this amounted to "action without results". Venezuela noted that Section 211 remained in force despite having been found to be inconsistent with the TRIPS Agreement. This undermined the dispute settlement system, which was considered to be one of the main achievements of the Uruguay Round. Venezuela was disappointed that the United States failed to implement the Appellate Body's ruling. As it had already done on numerous occasions, Venezuela urged the United States to end its policy of economic, commercial and financial blockade against Cuba and to bear in mind its obligation to comply with the DSB's recommendations.

25. The representative of Uruguay said that his country shared the systemic concerns expressed by previous speakers. Uruguay noted that it had been ten years of non-compliance by the complaining party, which had not had recourse to any of the remedies provided in the DSU provisions in order to seek effective compliance with the DSB's recommendations. Once again, Uruguay called on the parties to this dispute to assume their responsibilities under the multilateral trading system and to end this dispute. Uruguay noted that each month, the same statements and arguments were being repeated over and over again. After 17 years of legal wrangling in the United States, a few days ago Pernod-Ricard had announced its intention to give up the battle for its legitimate rights to the Havana

Club trademark in the United States. Therefore, Uruguay believed that the time had come for the parties in this dispute to make every effort to reach a mutually agreed solution and to refrain from further undermining the credibility of the WTO and the DSB, which was the backbone of the system.

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

27. The representative of Nicaragua said that one of the objectives of the WTO was to promote trade liberalization for the benefit of all, in particular developing and least-developed countries. It was, therefore, inconceivable that this case, which had been on the DSB's Agenda for more than ten years, remained unresolved, thereby affecting Cuba's economic and commercial interests. Nicaragua thanked the United States for its status report and regretted that the content of the report had remained unchanged for years, a fact which reflected the US lack of will to find a solution to this matter. Nicaragua believed that the inability to settle this dispute undermined the efficiency and credibility of the DSB and the multilateral trading system, and could set a precedent with adverse impact on other Members, in particular developing countries. Nicaragua found it inexplicable that a developed-country Member demanded others to comply with their obligations whilst failing to comply with its own obligations. Nicaragua supported Cuba's statement and urged the United States to meet its obligations by bringing the measures at issue into compliance with the DSB's recommendations and by finding a mutually satisfactory solution to this dispute.

28. The representative of the Dominican Republic said that her country thanked the United States for its status report on compliance with the DSB's rulings and recommendations concerning the inconsistency of Section 211 with the WTO rules, as set out in Article 42 of the TRIPS Agreement. The Dominican Republic, once again, urged the United States to step up its internal procedures so as to comply with the DSB's rulings. The Dominican Republic noted that the fact that a long period of time had passed without implementation in this dispute undermined the credibility of the WTO's decisions.

29. The representative of Chile said that his country thanked the United States for its status report pertaining to this dispute. However, Chile was concerned about the fact that many years had elapsed since the adoption of the Reports in this dispute. The US failure to implement the DSB's recommendations affected the credibility of the WTO's dispute settlement system and the interests of a developing-country Member. Chile was concerned about the US non-compliance with regards to intellectual property rights contained in the TRIPS Agreement. Chile urged the United States to find a quick solution and to bring its measure into compliance with the WTO rules.

30. The representative of the Plurinational State of Bolivia said that her country had, once again, heard the same status report submitted by the United States, in which the United States did not report on any progress. Thus, Bolivia reiterated its concern about the lack of solution to this dispute and the US failure to comply with the DSB's rulings. Such non-compliance affected the integrity and credibility of the multilateral trading system, harmed developing countries and the WTO. Once again, Bolivia urged the United States to implement the DSB's rulings and recommendations and make an effort to repeal Section 211. Finally, she said that Bolivia wished to be associated with the concerns expressed by Cuba at the present meeting.

31. The representative of China said that her country thanked the United States for its status report and statement made at the present meeting, but noted that there was lack of substantive progress in the implementation of the DSB's recommendations. The prolonged situation of non-compliance was highly incompatible with the prompt and effective implementation required under the DSU provisions, in particular when the interests of a developing-country Member were affected.

Thus, China urged the United States to implement the DSB's rulings and recommendations without further delay.

32. The representative of Brazil said that her country thanked the United States for its status report but noted that, once again, the United States reported lack of progress on this issue. Brazil remained concerned about this situation of non-compliance and urged the United States to bring its measures into conformity with WTO rules.

33. The representative of Paraguay said that his country wished to be associated with the statement made by Cuba concerning the continued delay in the implementation of the DSB's rulings. Paraguay not only had trade concerns, but like other Members, it also had systemic concerns regarding this matter. Paraguay hoped that the situation of non-compliance would be addressed in the context of the DSU negotiations.

34. 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.114)

35. The Chairman drew attention to document WT/DS184/15/Add.114, 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.

36. The representative of the United States said that his country had provided a status report in this dispute on 11 May 2012, in accordance with Article 21.6 of the DSU. As of November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. With respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

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

38. 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.89)

39. The Chairman drew attention to document WT/DS160/24/Add.89, 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.

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

41. The representative of the European Union said that the EU noted and thanked the United States for its status report. As it had stated many times in the past, the EU wished to resolve this case as soon as possible.

42. 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.52)

43. The Chairman drew attention to document WT/DS291/37/Add.52, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning its measures affecting the approval and marketing of biotech products.

44. 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. Three technical meetings had taken place since 2011. The meetings had offered a good opportunity to discuss directly issues of concern to both sides and to follow up closely on developments in the biotech field. In 2012, the European Commission had already authorized three more GMOs[1] and had renewed the authorization of a fourth one.[2] Two of those decisions[3] had been adopted only six months after the relevant EFSA opinions had been published. Furthermore, on 15 February 2012, EFSA had issued its opinion on the safety of a GM soybean for food and feed uses.[4] A decision for authorization of this soybean had been submitted for a vote to the 2 May 2012 Standing Committee. No qualified majority had been reached and, therefore, the Commission had decided to convey an appeal committee in June 2012. Regarding the concerns expressed by the United States on the backlog of approvals, the EU, once again, recalled that its approval system was not covered by the DSB's recommendations and rulings. The EU underlined that the GMO regulatory regime was working normally as evidenced by the approval decisions just mentioned. The functioning of the GMO regime should not be rigidly assessed purely quantitatively and in the abstract, in terms of the number of authorizations per year, since this was dependent on various product and case-specific elements, and in particular on the quality of applications and on the time needed by applicants to answer requests from EFSA on additional scientific information.

45. The representative of the United States said that his country thanked the EU for its status report and for its statement made at the present meeting. As it had explained at past meetings of the DSB, the United States said that it continued to have substantial concerns regarding EU measures affecting the approval of biotech products. The EU measures, including delays in approvals, had resulted in restrictions on the importation of US agricultural products. The affected commodities included corn and corn products from the current US growing season. At the April 2012 DSB meeting, the United States had recalled the DSB findings that EU member State bans on the corn variety Mon810 were inconsistent with the EU's obligations under the SPS Agreement.[5] The United States in particular had noted its concern that in March 2012, France had renewed its member State ban affecting this corn variety. On 21 May 2012, the EU's scientific authority had published a scientific opinion on the renewed ban adopted by France. The opinion found that France had provided no scientific evidence in support of the ban. This finding was not surprising. For over 15 years, Mon810 corn had been grown safely in many countries around the world. The United States

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

urged the EU to act in accordance with the EU's own scientific findings and to lift the EU member State bans on biotech products approved at the EU level.

46. 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.5)

47. The Chairman drew attention to document WT/DS382/10/Add.5, 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.

48. The representative of the United States said that his country had provided a status report in this dispute on 11 May 2012. As previously noted, on 14 February 2012, the US Department of Commerce had published a modification to its procedures in order to implement the DSB's recommendations and rulings regarding the use of "zeroing" in all anti-dumping reviews, including those concerning the products of Brazil covered in this dispute. On 20 April 2012, as a result of a determination by the US International Trade Commission, the US Department of Commerce had issued a notice revoking the anti-dumping duty order on the products covered in this dispute. The revocation of the order was effective as of 9 March 2011. As a result of the revocation, imports of orange juice from Brazil entered on or after 9 March 2011 were not subject to anti-dumping duties. All anti-dumping duty cash deposits on entries on or after that date would be refunded. Brazil and the United States had entered into an agreement designed to facilitate a final resolution of this dispute. The agreement had been circulated to Members in document WT/DS382/11. The United States looked forward to further discussions with Brazil, as provided in the agreement, on any outstanding issues involving this matter.

49. The representative of Brazil said that her country thanked the United States for its status report. As had been mentioned, the United States had published a final rule modifying its methodology regarding the calculation of dumping margins and assessment rates in anti-dumping review, according to which "zeroing" would no longer be used in these calculations after 16 April 2012. Brazil welcomed this important change and intended to follow closely the implementation of the final rule in the coming months. Brazil also noted that past reviews with unliquidated entries were not covered by the final rule. Brazil intended to consult with the United States with a view to finding a solution to this dispute.

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

(f) United States – Definitive anti-dumping and countervailing duties on certain products from China: Status report by the United States (WT/DS379/12/Add.4)

51. The Chairman drew attention to document WT/DS379/12/Add.4, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US definitive anti-dumping and countervailing duties on certain products from China.

52. The representative of the United States said that his country had provided a status report in this dispute on 11 May 2012, in accordance with Article 21.6 of the DSU. On 6 April 2012, the US Department of Commerce ("Commerce") had issued to interested parties a preliminary determination with respect to certain issues in the countervailing duty investigation of certain new pneumatic off-the-road tires. On 9 April 2012, Commerce had issued to interested parties a preliminary

determination with respect to certain issues in the countervailing duty investigation of laminated woven sacks. On 18 May 2012, Commerce had issued to interested parties a preliminary determination with respect to the issues of the determination of public bodies and the use of facts available in the countervailing duty investigations of circular welded pipe, light-walled rectangular pipe and tube, certain new pneumatic off-the-road tires, and laminated woven sacks. Commerce had provided an opportunity for interested parties to provide comments on those preliminary determinations and to provide rebuttal comments on any comments that had been submitted by other interested parties. On 14 May 2012, the United States and China had notified the DSB that they had reached an agreement on procedures under Articles 21 and 22 of the DSU. This document had been circulated to Members in WT/DS379/14. The United States would continue to work on solutions to implement fully the DSB's recommendations and rulings.

53. The representative of China said that her country thanked the United States for its status report and statement made at the present meeting. As had been mentioned by the United States, China and the United States had arrived at a sequencing agreement on 11 May 2012, which had been circulated to Members in document WT/DS379/14 on 16 May 2012. Fourteen months had lapsed since the adoption of the Appellate Body Report and the Panel Report in this dispute. Although China had shown great flexibility by agreeing to extend the original reasonable period of time by two months, which had expired on 25 April 2012, the United States had failed to implement the DSB's rulings and recommendations. According to the US status report, the implementation process was quite delayed and only several preliminary determinations had been issued in the investigations. It seemed the United States could not bring the implementation process to a conclusion within several months. By contrast, it only took the United States a very short time to enact a new law which allowed the United States to apply countervailing duties to non-market economies. The bill had been referred to the House Committee on Ways and Means on 29 February 2012 and had been signed by the US President on 13 March 2012. China also had strong concerns about the new law, but it would not elaborate them at the present meeting. This simple time comparison highlighted the serious delay in the implementation process in this dispute. Considering that China was a developing-country Member and Chinese companies concerned had been suffering from the WTO-inconsistent measures taken by the United States, the delayed implementation in this dispute was very inappropriate. It would also give a bad example, cast shadow on the WTO dispute settlement system, and weaken Members' confidence. China was very disappointed that the United States had not implemented the DSB's rulings and recommendations and urged the United States to expedite its work and fully implement the DSB's rulings and recommendations without any further delay. China reserved its right to take further action at the WTO in accordance with the DSU provisions.

54. The representative of the United States said that he would like to respond to China's comments regarding alleged delays in full implementation in this dispute. The issues in this dispute were complex and involved several novel matters. Chinese respondents, including the Government of China, also appeared to recognize the complexity of the issues, as they had requested and received, on numerous occasions, additional time to provide complete responses to questionnaires from the Department of Commerce. As China had indicated earlier, the United States and China had agreed to extend the reasonable period of time for implementation, and this was due in significant part to China's request for more time to respond to Commerce's questionnaires.

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

(g) Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.1)

56. The Chairman drew attention to document WT/DS371/15/Add.1, 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.

57. The representative of Thailand said that her country had provided a status report in this dispute on 11 May 2012, in accordance with Article 21.6 of the DSU. Thailand and the Philippines had notified the DSB that, on 23 September 2011, they had mutually agreed on a reasonable period of time for Thailand to comply with the DSB's recommendations and rulings, pursuant to Article 21.3(b) of the DSU. With respect to the DSB's recommendations and rulings regarding paragraphs 8.3(b) and (c) of the Panel Report, the reasonable period of time to comply was 15 months, expiring on 10 October 2012. With respect to the DSB's recommendations and rulings regarding all other measures, the reasonable period of time to comply was ten months, expiring on 15 May 2012. Thailand was pleased to provide an update on progress in addition to its status report, dated 14 May 2012, that it had brought most of the measures at issue into compliance with the DSB's rulings and recommendations.

58. Regarding the Panel's rulings and recommendations concerning the establishment of maximum retail selling prices ("MRSPs"), which had been used as the base for determining the VAT payable on the sale of cigarettes in Thailand, on 15 May 2012, the Excise Department had issued two regulations eliminating the use of MRSPs as the tax base for VAT payable on resales of both the domestically produced and imported cigarettes. Regarding the Panel's findings under the Customs Valuation Agreement, on 8 May 2012, the Customs Department had issued Regulation No. 711B.E. 2555, revising and expanding the rules and procedures governing how the Customs Department determined customs value using the transaction value and the deductive value methods pursuant to the Customs Valuation Agreement.

59. Regarding the Panel's findings that Thailand had failed to properly publish the rules regarding the release of guarantees, on 8 May 2012, the Thai Customs Department had issued Regulation No. 72/B.E. 2555, which provided the procedures and requirements pertaining to requests for a refund of guarantees on the final assessment of duties and the processing of refunds. Regarding the Panel's findings with respect to delays in the appeal process for customs valuation determinations, the Customs Department had adopted Regulation No. 73/B.E. 2555, effective as of 14 May 2012, which provided the procedures pertaining to appeals of customs valuation determinations, including the procedures for submissions of appeals and related documents.

60. Regarding the Panel's and the Appellate Body's findings concerning the administrative requirements for VAT reporting for resales of imported and domestic cigarettes, on 29 March 2012, the Cabinet had passed a resolution approving the draft Royal Decree submitted by the Revenue Department. Currently, the draft Decree was under the consideration of the Council of State. The draft Decree would ensure that the same VAT reporting requirements would apply to resales of both imported and domestic cigarettes. Thailand expected that the Decree would be in effect by the end of the agreed reasonable period of time for implementation on these items, which would expire on 15 October 2012. Regarding the Panel's and the Appellate Body's findings requiring Thailand to maintain an independent review process for a prompt review of decisions to require customs guarantees on clearance of goods pending determination of the customs value, Thailand had originally considered that a new review process for this purpose could be implemented by regulatory means. The Executive Committee of the Customs Department was currently considering the draft regulation to establish the independent review process proposed by the Customs Department to ensure that the process conformed fully with Thai domestic law. Thailand expected this internal review to be completed at the end of May 2012 and that the draft regulation establishing a new independent review process would come into effect thereafter.

61. Regarding the customs valuation of the specific entries of merchandise listed in the Philippines' request for the establishment of a panel and the entries involved in the Philippines' claim under Article X:3 of the GATT 1994, the Customs Department had consulted with importers and had given them opportunities to provide explanations both in writing and orally. However, in its latest meeting on 4 May 2012, the Board of Appeals had found that the information submitted by the Sub-

Committee handling these appeals was not sufficient for the Board to complete the appeals. The Board had requested the Sub-Committee to provide certain additional information. Thailand expected that these appeals would be finalized once the outstanding information was received. Thailand expected that these appeals would be resolved at the very latest by the expiration of the reasonable period of time for the VAT reporting requirements on 15 October 2012. Thailand had engaged in bilateral discussions with the Philippines prior to this meeting and had reported the above-mentioned progress on implementation.

62. The representative of the Philippines said that his country thanked Thailand for its status report and the additional information provided at the present meeting. The Philippines recalled that the parties to this dispute had taken the somewhat unusual step of agreeing on two different reasonable periods of time for Thailand to bring its WTO-inconsistent measures into conformity with the DSB's recommendations and rulings. The first reasonable period of time, ending on 15 May 2012, for all measures other than those concerning the VAT exemption on resales of domestic cigarettes, and a second reasonable period of time, ending on 15 October 2012, for measures relating to the VAT exemption. The first reasonable period of time had now expired, and Thailand's statement at the present meeting addressed steps it had taken with respect to the WTO-inconsistent measures that were to be brought into conformity by 15 May 2012. While it appreciated Thailand's statement made at the present meeting, the Philippines was concerned that the steps Thailand had reported may not suffice to bring into conformity those WTO-inconsistent measures subject to the 15 May 2012 deadline. The Philippines would assess the situation in light of Thailand's statement made at the present meeting and would address any continuing concerns in on-going bilateral discussions with Thailand. Nonetheless, the Philippines reserved its rights regarding any further steps it may take.

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

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

64. The Chairman drew attention to document WT/DS404/11, 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 anti-dumping measures on certain shrimp from Viet Nam.

65. The representative of the United States said that his country had provided a status report in this dispute on 11 May 2012, in accordance with Article 21.6 of the DSU. On 31 October 2011, the United States and Viet Nam had jointly notified the DSB of their agreement that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would end on 2 July 2012. The notification had been circulated in document WT/DS404/10. On 14 February 2012, the US Department of Commerce had published in the Federal Register, 77 FR 8101, a modification to its procedures in order to implement the DSB's recommendations and rulings regarding the use of "zeroing" in anti-dumping reviews. This modification addressed certain findings 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.

66. The representative of Viet Nam said that his country thanked the United States for its status report and statement made at the present meeting. This was the first time for Viet Nam to assert its legitimate rights through the WTO dispute settlement mechanism. After the adoption of the Panel Report pertaining to this dispute, the United States Department of Commerce had announced, on 14 February 2012, its modification of the methodology to calculate the weighted average dumping margin to address the application of zeroing methodology in the anti-dumping review procedure (i.e, "Anti-Dumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Anti-Dumping Duty Proceedings; Final Modification"). While welcoming this progress, Viet Nam was concerned that this Final Modification was only applied to

administrative reviews of which preliminary results had been issued more than 60 days after the date of this Modification (16 April 2012) and, therefore, it would not be applied to the reviews in this dispute. In addition, it was Viet Nam's understanding that under US domestic laws, a proceeding must be initiated under Section 129 of the Uruguay Round Agreements Act in order to make necessary changes in anti-dumping determinations to conform with WTO findings of inconsistency. To date no such proceedings had been initiated by the United States with respect to this dispute thus making US implementation in this dispute problematic. Nevertheless, Viet Nam expected the United States to fully comply with the reasonable period of time as agreed upon by the parties. Viet Nam reiterated its rights to pursue any legal proceeding under the WTO in order to protect the legitimate benefits of Vietnamese enterprises and farmers who had been affected by the US measures that were WTO-inconsistent.

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

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

(a) Implementation of the recommendations of the DSB

68. The Chairman recalled that in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In that respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 24 April 2012, the DSB had adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, pertaining to the dispute on: "United States – Measures Affecting the Production and Sale of Clove Cigarettes". He invited the United States to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

69. The representative of the United States said that, at the meeting held on 24 April 2012, the DSB had adopted its recommendations and rulings in the dispute: "United States – Measures Affecting the Production and Sale of Clove Cigarettes" (WT/DS406/R and WT/DS406/AB/R). At the present meeting, as provided for in the first sentence of Article 21.3 of the DSU, the United States wished to state that it intended to implement the recommendations and rulings of the DSB in a manner that protected public health and respected the obligations of the United States under the WTO Agreement. In that regard, the United States would emphasize the DSB finding that the US measure reflected the overwhelming view of the scientific community that banning clove and other flavoured cigarettes benefitted the public health by reducing the likelihood that youth would enter into a lifetime of cigarette addiction. Accordingly, the DSB had found that a ban on clove cigarettes met the requirements of Article 2.2 of the TBT Agreement and was thus no more trade restrictive than necessary to fulfil a legitimate public health objective. The United States would need a reasonable period of time in which to implement in this dispute.

70. The representative of Indonesia said that her country thanked the United States for its statement. Indonesia looked forward to hearing and receiving more information on significant progress, in spite of any domestic obstacles of the United States, in the implementation of the Appellate Body's findings of 4 April 2012, which had been adopted on 24 April 2012. Indonesia believed that the United States would implement the recommendation and comply with the WTO rules and regulations. Indonesia stood ready and looked forward to cooperate bilaterally with the United States.

71. The DSB took note of the statements, and of the information provided by the United States regarding its intentions in respect of implementation of the DSB's recommendations.

4. 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

72. 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.

73. The representative of the European Union said that, as announced at the 24 April 2012 DSB meeting, the EU had modified the level of retaliation against the US to US$3,241,000, effective from 1 May 2012. The regulation imposing the sanctions had been published in the EU's Official Journal on 12 April 2012 and had been notified to the WTO in document WT/DS217/61, circulated on 10 May 2012. As it had done many times before, the EU requested the United States to stop transferring anti-dumping and countervailing duties to the US industry. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations and rulings. Once again, the EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit status reports pertaining to this dispute.

74. The representative of Japan said that the CDSOA remained operational as the distribution process continued.[6] Japan urged the United States to stop the illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report pertaining to this dispute.

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

76. The representative of India said that his country thanked Japan and the EU for regularly bringing this issue before the DSB. India shared their concerns and endorsed their views. As had been mentioned by previous speakers, the CDSOA remained fully operational, allowing for disbursements by the US Administration to its domestic industry. This affected the rights of Members and undermined the credibility of the dispute settlement mechanism. India agreed with previous speakers that this item should continue to remain under surveillance of the DSB until full compliance was achieved.

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

78. The representative of Thailand said that her country thanked Japan and the EU for continuing to bring this item before the DSB. Thailand urged the United States to cease the disbursements and fully implement the DSB's rulings and recommendations pertaining to this matter.

79. 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

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

law included a provision repealing the Continued Dumping and Subsidies 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. With respect to comments regarding further status reports in this matter, as it had explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports repeating the progress the United States had made in the implementation of the DSB's recommendations and rulings. Finally, with regard to the recent action of the EU that the EU had referred to at the present meeting, the United States continued to review this action. As the United States had observed previously, the DSB had only authorized the suspension of concessions or other obligations as provided in the Award of the Arbitrator.

80. The DSB took note of the statements.

5. India – Measures concerning the importation of certain agricultural products

(a) Request for the establishment of a panel by the United States (WT/DS430/3)

81. The Chairman drew attention to the communication from the United States contained in document WT/DS430/3, and invited the representative of the United States to speak.

82. The representative of the United States said that his country, and other WTO Members, had raised concerns about India's avian influenza measures for several years. These measures prohibited the importation of various agricultural products into India from those countries reporting outbreaks of Low Pathogenic Notifiable Avian Influenza ("LPAI"). Such restrictions on imports had no basis in science and consistent with the scientific evidence, the guidelines of the World Organization for Animal Health (OIE) did not provide for bans on shipment of these products when a country reported LPAI. In the US request for consultations, the United States had raised its concerns that India's avian influenza measures appeared inconsistent with India's obligations under the SPS Agreement and the GATT 1994. While the United States appreciated India's engagement in the consultations held on 16-17 April 2012, unfortunately those consultations had failed to resolve the dispute. As had been described in more detail in its panel request, the United States remained concerned that India's measures were inconsistent with a number of India's WTO obligations. For example, it appeared that India's measures were not based on international guidelines, lacked scientific justification, were not based on a risk assessment, and applied requirements that were not applied to India's own domestic production. Therefore, the United States requested that the DSB establish a panel to examine the matter set out in the US panel request, with standard terms of reference.

83. The representative of India said that his country regretted that the United States had chosen to request the establishment of a panel at the present meeting instead of continuing with the consultations on this dispute. The United States had cited a notification No. 1663(E), dated 19 July 2011, issued by the Department of Animal Husbandry, Dairying and Fisheries of India in its request for the establishment of a panel alleging that the provisions of the said notification were inconsistent with certain provisions of the SPS Agreement. India had had a constructive exchange of views with the United States during the consultations held on 16 and 17 April 2012 in Geneva. India had demonstrated its sincerity in the consultations by bringing in a delegation which included technical experts. During the consultations, India had responded to a number of questions raised by the United States and had also provided clarifications on its domestic regime.

84. During the consultations, India had clarified that the restrictions on imports for certain agricultural products were contingent upon Members' reporting Notifiable Avian Influenza (NAI). India had specifically clarified that the import restrictions on certain agricultural products were not

applicable to the United States since it had notified freedom from NAI to the OIE. In fact, India had provided evidence of permission for imports of certain products listed in the US panel request during the consultations. At the conclusion of the consultations, India had also showed its willingness to further pursue consultations including at the technical experts level in order to find appropriate solutions. India's relevant measures identified by the United States had the legitimate objective of protecting human, animal health and food safety and these were consistent with India's WTO obligations. During the consultations, India had explained to the United States the scientific reasons for the challenged measures. Thus, India considered it unfortunate that the United States had chosen to request the establishment of a panel. India believed that it was premature to establish a panel at this stage and, therefore, it was not in a position to accept the US request at the present meeting.

85. The representative of the United States said that, in its statement, India had asserted that its measures did not currently prohibit imports from the United States because the United States had not had an outbreak of LPAI in the last few months. In that regard, the United States would note that neither the measures nor any other document stated this, and that the United States was not aware of any current US shipments. But regardless of that issue, India did not dispute that its measures imposed nationwide import prohibitions on a Member as soon as it reported an outbreak of LPAI. Further, India had made clear that its measures remained in force and that India intended to maintain them. The restrictions imposed by India's measures continued to create a substantial impediment to trade, and the United States was requesting that a WTO panel be established to examine the consistency of those measures with India's obligations under the WTO Agreement.

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

6. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/480)

87. The Chairman drew attention to document WT/DSB/W/480, which contained additional names proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/480.

88. The DSB so agreed.

7. China – Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment

(a) Statement by the United States

89. The representative of the United States, speaking under "Other Business", said that his country would like to call Members' attention to a communication from the United States and China regarding a Memorandum of Understanding (MOU) relating to films for theatrical release in China. The communication had been circulated as document WT/DS363/19. The MOU constituted important progress toward a resolution of the dispute on: "China - Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products" (DS363). The United States was, however, surprised and disappointed that China had not submitted a status report in connection with this dispute for the present DSB meeting. While, as indicated above, China had made significant progress in its implementation in this dispute, the United States had repeatedly made clear that China had not completed the implementation process. And, indeed, China had not claimed that it had taken all actions necessary to comply in this dispute. Accordingly, the United States had engaged in discussions with China regarding its future submission of status reports, as provided for in Article 21.6 of the DSU.

90. The representative of China said that her country took note of the views expressed by the United States at the present meeting but did not agree that China still needed to submit status reports in this dispute. Regarding the implementation of the DSB's recommendations and rulings in this dispute, as reported by the United States, China and the United States had arrived at a Memorandum of Understanding on films for theatrical release, which had been circulated to all Members. For every other measure subject to the DSB's recommendations and rulings in this dispute, China had taken all necessary steps to fully comply with its obligations. Thus, China had fully complied with its obligations under Article 21.6 of the DSU and this was also consistent with the current practice of Members. China believed that it did not have any obligation to provide further status reports in this dispute. However, if the United States had any further questions or doubts, China would be happy to have bilateral discussions on this matter.

91. The representative of the United States said that, in response to China's comments, his country would note that the recently concluded MOU did not represent a final resolution of the film-related issues in this case. The MOU did represent important progress, however, and the United States expected to continue working with China on these issues. In addition, with respect to products other than films, China's implementation was not yet complete.

92. The DSB took note of the statements.