

**Dispute Settlement Body
18 April 2008**

MINUTES OF MEETING

Held in the Centre William Rappard
on 18 April 2008

Chairman: Mr. Mario Matus (Chile)

<u>Subjects discussed:</u>	<u>Page</u>
1. Surveillance of implementation of recommendations adopted by the DSB.....	2
(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States	2
(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States.....	4
(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States	5
(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities.....	5
2. United States – Continued Dumping and Subsidy Offset Act of 2000: Implementation of the recommendations adopted by the DSB	7
(a) Statements by the European Communities and Japan	7
3. United States – Measures relating to zeroing and sunset reviews	9
(a) Recourse to Article 21.5 of the DSU by Japan: Request for the establishment of a panel.....	9
4. Proposed nomination for the indicative list of governmental and non-governmental panelists	10

1. Surveillance of implementation of recommendations adopted by the DSB

- (a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.65)
- (b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.65)
- (c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.40)
- (d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities (WT/DS291/37/Add.3 – WT/DS292/31/Add.3 – WT/DS293/31/Add.3)

1. The Chairman recalled that Article 21.6 of the DSU required that "unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's Agenda until the issue is resolved". He proposed that the four sub-items to which he had just referred be considered separately.

- (a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.65)

2. The Chairman drew attention to document WT/DS176/11/Add.65, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

3. The representative of the United States said that his country had provided a status report in this dispute on 7 April 2008, in accordance with Article 21.6 of the DSU. As noted in that status report, a number of legislative proposals that would implement the DSB's recommendations and rulings in this dispute had been introduced in the current Congress, in both the US Senate and the US House of Representatives. The US administration continued to work with the US Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Communities said that, more than six years ago, the DSB had adopted the ruling condemning Section 211. However, the EC was still waiting for the United States to comply with that ruling. The EC hoped that the bipartisan bills introduced to repeal Section 211 would finally progress and bring the United States into compliance with its obligations under the TRIPS Agreement.

5. The representative of Cuba said that the aim of the Dispute Settlement Understanding was to provide a rules-based, efficient and reliable system for the settlement of disputes related to the implementation of what had been agreed under the WTO Agreement. If the Agreement had been breached, the system was expected to allow the situation to be resolved with a certain degree of promptitude. Failure to observe the principle of "prompt compliance" caused serious prejudice to all WTO Members. As demonstrated by the dispute under consideration, unresolved disputes affected not only the parties involved. In failing to meet its obligations, the United States undermined a system that was based on rules, procedures and practices agreed by the Membership. Practice and experience unquestionably pointed to the need for urgent reform of the current system, as mandated in paragraph 30 of the Doha Ministerial Declaration. Thus, changes were required to protect and enforce the rights of the weakest Members and those with a smaller share in international trade. Penalties should be laid down for flagrantly non-complying Members that delayed the implementation of the

DSB's rulings beyond reasonable time-limits. Members should work towards proposals that would permit some form of penalty to be imposed on those Members who had failed, for years, to comply with the DSB's recommendations and rulings, under the pretext that legislative measures were pending before the Congress.

6. Section 211, introduced in the US Congress on 21 May 1998 by the Sub-Committee on Courts and Intellectual Property, was an instrument enacted for the purpose of disregarding the trademark rights of Cuban owners. The set of laws already adopted to intensify the Cuban blockade had not been enough, and some kind of manifestation of this policy had been necessary in the area of intellectual property rights to "tighten the screw" even further. The vast importance that the non-complying Member in this dispute supposedly attached to intellectual property was common knowledge. The promotion of strict laws in this area, and efficient enforcement of the TRIPS Agreement and of bilateral agreements that contained the so-called TRIPS plus provisions, constituted a priority for the US administration. This was clearly all about making other countries meet their obligations in this area, while the Member in question continued to apply provisions that violated the TRIPS Agreement and the Paris Convention, which was administered by WIPO. A spokesperson for the Office of the US Trade Representative had stated that enforcement and settlement of disputes would remain top priorities. She had undoubtedly referred to those disputes in which that country was the complaining party, and in which the issue of enforcement implied billions of dollars for US companies. The fact that this case remained unresolved and the persistent non-compliance by the United States affected not only the complaining party but also Cuba, on account of the interest it had in this dispute, as well as those Members that demanded, month after month, a prompt solution to this dispute. This situation also undermined the credibility of the major trading players that were united in promoting observance of international obligations. He then quoted Cuban national hero, José Martí, who had stated that: "Action speaks louder than words". Thus, the immediate repeal of Section 211 demanded action, not trite explanations that all were tired of hearing.

7. The representative of India said that his country thanked the United States for the status report and the statement made at the present meeting. India appreciated the steps taken by the United States thus far to repeal Section 211 as a step in the positive direction. However, as mentioned on several occasions, there was no substantive change in the situation, and India felt compelled again to stress that the principle of prompt compliance was missing in this dispute. India, therefore, wished to renew its systemic concerns about this continuous non-compliance situation by WTO Members, which clearly undermined the credibility and confidence that Members reposed in the system.

8. The representative of Brazil said that his country wished to highlight, once more, its concern about the situation of continued non-compliance in this dispute, which undermined one of the most important purposes of the WTO, namely, the settlement of disputes amongst its Members. Recalling Members' commitment to this pillar of the WTO, Brazil urged the United States to promptly implement the DSB's recommendations and rulings.

9. The representative of China said that his country thanked the United States for its status report and the statement made at the present meeting. China, once again, wished to reiterate its systemic concerns with the protracted implementation process in this dispute. China hoped that the present US Congress would realize that it was in the interest of not only other Members, but also in the interest of the United States to put an end to this situation, which undermined the authority of the TRIPS Agreement and the credibility of the WTO dispute settlement system. Therefore, China urged the United States to make an extra effort to bring itself promptly into conformity with the DSB decision.

10. The representative of Thailand said that his country wished to thank the United States for its status report and the statement made at the present meeting. Like previous speakers, Thailand wished to express its concern over the systemic implications of this dispute. Non-implementation of the DSB's rulings and recommendations undermined the rules-based multilateral trading system.

Thailand, therefore, called on the United States to take the necessary and urgent steps to comply with its obligations under the TRIPS Agreement.

11. The representative of Viet Nam said that, like previous speakers, his country urged the party concerned to respect the DSB's rulings and recommendations.

12. The representative of the Bolivarian Republic of Venezuela said that his country wished to thank Cuba for its statement informing Members of the most recent developments in this dispute. His country also noted the status report submitted by the United States. Six years had now passed, but no implementation of the DSB's recommendations had taken place. The effects of this protracted failure to comply were not only harmful to the sovereignty of the Organization, but also undermined the credibility of the rights negotiated by Members, as well as the confidence of Members in the multilateral trading system. Having witnessed expressions of goodwill on the part of the United States, his country urged the United States to seek alternatives that would ensure prompt compliance with the DSB's recommendations and rulings. If not, compensation for developing countries affected by this continued failure to comply should be provided. It was essential that particular attention be paid to matters affecting the interests of developing countries, as stipulated in paragraphs 1 and 2 of Article 21 of the DSU. Preventing a flagrant violation of this principle must be Members' priority. For these reasons, his country strongly requested that the United States fully comply with its WTO obligations.

13. The representative of Nicaragua said that her country wished to thank the United States for its status report. Nicaragua also thanked Cuba for the statement made at the present meeting. Nicaragua believed that all Members were committed to comply with the DSB's recommendations and rulings. Nicaragua joined previous speakers in calling on the United States to put an end to this excessive delay in implementing the DSB's recommendations.

14. The representative of the United States said that his country regretted very much that some Members – including some whose record of protecting intellectual property rights appeared less than robust – continued to criticize the US commitment to intellectual property rights. These criticisms were completely unfounded. It was of course true that the United States remained a strong advocate of substantial protections for intellectual property internationally. However, the United States was also second to no one in providing strong intellectual property protection within its own territory. That said, the United States welcomed these Members' commitment to intellectual property rights, and looked forward to working with all Members to secure the protection of intellectual property rights around the world. In response to the comments about "systemic concerns" about non-compliance, as the United States had stated many times in the past, the record was clear: the United States had come into compliance, fully and promptly, in the vast majority of its disputes, thereby strengthening the dispute settlement system. As for the remaining few instances where the US efforts to do so had not yet been entirely successful, such as this dispute, the United States continued to work actively towards compliance.

15. 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.65)

16. The Chairman drew attention to document WT/DS184/15/Add.65, 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.

17. The representative of the United States said that his country had provided a status report in this dispute on 7 April 2008, in accordance with Article 21.6 of the DSU. As of 23 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. Details were provided in document WT/DS184/15/Add.3. The US administration would work with the US Congress with respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities by 23 November 2002.

18. The representative of Japan said that his country thanked the United States for its statement and its latest status report. Japan acknowledged that, in November 2002, the United States had taken certain measures to implement part of the DSB's recommendations, as reported by the United States. The fact remained, however, that the remaining part of the recommendations had not yet been implemented and the issue of implementation in this dispute was still on the DSB Agenda. Japan strongly hoped that the United States would soon be in a position to report to the DSB on more tangible progress in this long-standing dispute. A full and prompt implementation of the DSB's recommendations and rulings was essential for maintaining the credibility of the WTO dispute settlement system. Japan urged the United States to come into full compliance with its obligations without further delay.

19. 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.40)

20. The Chairman drew attention to document WT/DS160/24/Add.40, 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.

21. The representative of the United States said that his country had provided a status report in this dispute on 7 April 2008, in accordance with Article 21.6 of the DSU. The US administration would work closely with the US Congress and would continue to confer with the EC, in order to reach a mutually satisfactory resolution of this matter. In this regard, the United States shared the EC's goal of discussing how a mutually satisfactory solution to this dispute could be achieved, and appreciated the EC's recent statements that it remained prepared to work with the United States towards that end.

22. The representative of the European Communities said that there was nothing much to say. The US status report was static – it had been a copy and paste exercise for a long time now. The EC was still waiting for the US compliance.

23. 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 Communities (WT/DS291/37/Add.3 – WT/DS292/31/Add.3 – WT/DS293/31/Add.3)

24. The Chairman drew attention to document WT/DS291/37/Add.3 – WT/DS292/31/Add.3 – WT/DS293/31/Add.3, which contained the status report by the European Communities on progress in the implementation of the DSB's recommendations in the case concerning the EC's measures affecting the approval and marketing of biotech products.

25. The representative of the European Communities said that the EC was happy to report that good faith cooperation between the complainants and the EC continued. The EC kept a regular dialogue with the three complainants and held regular technical meetings, which were aimed at addressing all relevant biotech-related issues of their concern. Progress in the processing of pending applications continued. In addition to the seven new GM products authorized in 2007, one GM maize had been authorized on 28 March 2008. Four other products should be approved soon and two more draft authorization decisions should also be discussed in the EC Council in the short term. The EC believed that given the inevitably sensitive nature of biotech issues, dialogue was the appropriate way forward and remained open to continue discussions with the three complainants.

26. The representative of the United States said that his country thanked the EC for its written status report and for its statement made at the present meeting. The reasonable period of time for the EC's compliance in DS291 had expired on 11 January 2008. The issues covered in the dispute remained unresolved, even though nearly five years had passed since the United States had filed its consultation request in May 2003. The commercial impact of this dispute was significant and growing. The EC had claimed progress towards compliance on the basis of the recent approval for import and use of GA-21 maize. The EC's handling of this application, however, in fact exemplified the serious concerns of the United States with delays in the EC's approval system. The GA-21 application had first been filed nearly 10 years ago, in May 1998. The application had received a positive safety assessment from the EC's own scientific committee in September 2000, which was nearly seven and a half years ago. Yet the EC had failed to move the product forward in its approval process. For this reason, the DSB had ruled that the EC's consideration of GA-21 was subject to undue delay, in breach of the EC's obligations under the SPS Agreement.¹

27. The application had been withdrawn in the face of the EC's endless delays and had subsequently been resubmitted in July 2005 under the EC's new biotech approval legislation. And again it faced delays. The applicant had received no questions on the application for over seven months. The safety assessment, which confirmed the product's safety, had then taken an additional 17 months, even though EC legislation provided a six-month period, and even though an EC scientific committee had already issued a positive safety assessment years before. And when this product – which had now received two positive assessments from EC scientific committees – had been submitted to the EC member States for approval, member States had failed to follow the scientific assessment and had failed to grant approval. The result was further delays. The application had again been submitted to the member States, this time at the level of the EC Council, and the EC Council had again failed to grant approval. Only then, after an additional waiting period, had the product been finally approved for import and use in the EC.

28. In sum, the approval of GA-21 had taken nearly 10 years from the time an application had first been submitted and nearly seven and a half years from the time GA-21 received its first positive safety assessment from an EC scientific committee. Thus, the experience with GA-21 did not speak favourably of the EC's record, but only emphasized the problems with the EC's biotech approvals. Despite its concerns with the EC's actions concerning the approval of biotech products, the United States at this point looked forward to continuing its dialogue with the EC. The United States continued to hope that the EC would take the steps necessary to resolve this dispute so that there would be no need for the United States to pursue further proceedings under the DSU.

29. The representative of Canada said that his country thanked the EC for its status report. As previously noted, Canada continued to monitor the progress made on this file closely, and was disappointed to hear of the recent Romanian ban on the cultivation of the biotech product "MON810". Canada hoped that a mutually satisfactory resolution of this dispute would be possible before the

¹ "European Communities – Measures Affecting the Approval and Marketing of Biotech Products" (WT/DS291/R), para. 7.2142.

expiry of the reasonable period of time for implementation in June 2008, and Canada trusted that the EC would take all the steps necessary to address member State safeguards of this nature.

30. The representative of Argentina said that his country wished to thank the EC for its status report. As mentioned by the EC, Argentina wished to flag the spirit of cooperation and dialogue in this case. Argentina welcomed the approval of GA-21 maize and looked forward to working with the EC as well as the other co-complainants towards the speedy resolution of this dispute.

31. The representative of the European Communities said that, in reply to the statements made by the United States and Canada, it should be recalled that this Agenda item was about implementation of recommendations and rulings. As correctly stated by the United States, GA-21 maize had been identified as an undue delay case in this dispute. Now, with the authorization, all delays had come to an end, and the EC could not do more to implement. With regard to Canada's statement, the EC noted that no Romanian measures had yet been adopted or notified.

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

2. United States – Continued Dumping and Subsidy Offset Act of 2000: Implementation of the recommendations adopted by the DSB

(a) Statements by the European Communities and Japan

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

34. The representative of Japan said that the latest distributions under the CDSOA, which had been announced in December 2007², amounted to some US\$262 million. This US action demonstrated that the CDSOA was still operational. The CDSOA continued to cause negative trade impacts on Japan and other WTO Members. In this regard, Japan supported the EC's renewal of its retaliatory measures which had been notified to the DSB on 3 April 2008. Japan, once again, urged the United States to immediately terminate the illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute once and for all. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report in this dispute "until the issue is resolved". Japan reserved all its rights under the DSU until the United States came into full compliance.

35. The representative of the European Communities said that, on 27 March 2008, the EC had adopted a regulation that would bring the level of retaliatory measures applied in this dispute down to US\$33.38 million. In accordance with the DSB's authorization to suspend concessions to the United States, this reflected the proportionate decrease of the amount disbursed to US companies from anti-dumping and countervailing duties collected on EC products in the latest distribution of November 2007. The list of products that would remain subject to the 15 per cent additional import duty had been transmitted on 3 April 2008 for circulation to the parties and the DSB. The EC would also like to ask again the United States if and what steps it intended to take to stop the transfer of anti-dumping and countervailing duties to its industry. The EC finally renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit implementation reports in this dispute.

² "FY2007 Annual Disbursements Report" issued by the "US – Customs and Border Protection" 5 December 2007.

36. The representative of Canada said that his country thanked the EC and Japan for keeping this matter on the Agenda of the DSB. Canada agreed with the EC and Japan that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

37. The representative of China said that his country thanked the EC and Japan for, once again, raising this item at the DSB meeting. China supported the view of the previous speakers and wished to join them in urging the United States to comply fully with the DSB's rulings.

38. The representative of Brazil said that his country thanked the EC and Japan for keeping this matter on the DSB Agenda and reiterated the need for prompt compliance by the United States in this dispute. The continued disbursements made by the United States to its domestic industry under the Byrd Amendment impaired the rights of other WTO Members, and, from a systemic perspective, defied the authority of the WTO dispute settlement system. Implementation of the recommendations and rulings adopted by the DSB had been pending for more than five years now. It was time for the United States to meet its obligation under the DSU and to stop distributing duties collected before 1 October 2007 within the scope of the CDSOA.

39. The representative of India said that her country thanked the EC and Japan for maintaining this issue before the DSB once again. India noted with appreciation the positive steps taken by the United States and was pleased that duty deposits collected by the United States after 30 September would no longer be subject to the Byrd Amendment. While this was a significant step forward, duties collected before 1 October 2007 would, nevertheless, continue to be subject to the Byrd Amendment. This had trade-distorting effects on foreign producers and exporters. India, therefore, urged the United States to cease its WTO-inconsistent disbursement. India supported the view that continued surveillance by the DSB was needed.

40. The representative of Thailand said that his country wished to join previous speakers in thanking the EC and Japan for bringing this item before the DSB. Thailand appreciated the positive steps taken by the United States to not disburse to its industries AD/CVD duties collected on goods entering the United States from 1 October 2007. However, AD/CVD duties collected on goods that entered the United States prior to 1 October 2007 continued to be disbursed to the domestic industry under the Byrd Amendment. Thailand, therefore, urged the United States to cease its WTO-inconsistent disbursements, to repeal the Byrd Amendment with immediate practical effect, and to resume providing status reports until such actions were taken and this matter had been fully resolved.

41. The representative of the United States said that, as his country had already explained at previous DSB meetings, the US President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States welcomed Members' recognition that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007. The United States, therefore, did not understand the purpose for which the EC and Japan had inscribed this item on the Agenda of the present meeting. Furthermore, the United States noted that in a dispute for which the panel report had recently been circulated, the EC had strongly advocated the position that a Member could not state, for example, at a DSB meeting that a measure taken to comply by another Member was not consistent with that Member's WTO obligations, unless the Member had first had recourse to dispute settlement proceedings with respect to that measure. The United States, therefore, remained particularly surprised by the statements made by the EC at the present meeting and several recent ones.

42. With respect to comments regarding further status reports in this matter, as the United States had already explained at previous DSB meetings, the United States failed to see what purpose would be served by status reports repeating that the United States had taken all steps necessary to implement

the DSB's recommendations and rulings in these disputes. With respect to the recent notification by the EC of the continuation of its suspension of concessions, the United States continued to review the action by the EC. As Members would recall, the DSB only authorized the suspension of concessions or other obligations as provided in the Award of the Arbitrator. Finally, the United States wished to comment on Members' statements that this legislation – though repealed – continued to cause trade distortions. The United States found this statement surprising. The United States recalled that, with one exception, none of the complaining parties in this dispute had claimed that the CDSOA caused trade-distorting effects under the SCM Agreement. Indeed, none of the Members speaking at the present meeting had made such a claim. Furthermore, though one other Member had claimed that the CDSOA caused trade-distorting effects under the SCM Agreement, those adverse effects claims had been rejected. Members' comments alleging any trade-distorting effects were thus not based on any DSB recommendations and rulings. The United States, therefore, failed to understand the basis for Members' continuing statements that their trade with the United States was being distorted by virtue of the now-repealed CDSOA.

43. The representative of the European Communities said that the range of the targeted products and the rate of the additional duty had been selected so that the effect of the additional duty over one year on imports from the United States of the selected products represented a value of trade that would not exceed the level of nullification or impairment currently caused to the EC. This level of nullification or impairment had been established precisely on the basis of the formula established by the WTO Arbitrators themselves and of the latest data published by the United States, which concerned the disbursement of duties collected during the Fiscal Year 2007. The EC measures were fully consistent with the decision of the arbitrator and fully respected the rules of the DSU.

44. The DSB took note of the statements.

3. United States – Measures relating to zeroing and sunset reviews

(a) Recourse to Article 21.5 of the DSU by Japan: Request for the establishment of a panel (WT/DS322/27)

45. The Chairman drew attention to the communication from Japan contained in document WT/DS322/27, and invited the representatives of Japan and the United States to speak.

46. The representative of Japan said that, on 7 April 2008, his country had requested the establishment of a compliance panel by the DSB, pursuant to Articles 6 and 21.5 of the DSU, Article XXIII of the GATT 1994, and Article 17.4 of the Anti-Dumping Agreement in connection with the United States' failure to implement the DSB's recommendations and rulings in this dispute. The details of the measures at issue and Japan's claims were set out in document WT/DS322/27 and Japan would not repeat them at the present meeting. Japan wished to express its regret that the issue of compliance in this dispute must be resolved through recourse to the compliance proceedings under Article 21.5 of the DSU. In accordance with paragraph 1 of the *ad hoc* procedures under Articles 21 and 22 of the DSU, agreed by Japan and the United States for exclusive purpose of this dispute and contained in document WT/DS322/26, it was Japan's understanding that the compliance panel would be established by the DSB at the present meeting. Japan hoped that the panel, to be established by the DSB at the present meeting, would rigorously examine the matters referred to it and would come to the right conclusions as expeditiously as possible so as "to promote the prompt resolution of" this dispute.³ As anticipated in the *ad hoc* procedures⁴, Japan would cooperate with the United States in these compliance proceedings to this end.

³ Appellate Body Report: "United States – Softwood Lumber IV" (Article 21.5 of the DSU), para.72.

⁴ WT/DS322/26, para.1(c).

47. The representative of the United States said that his country was disappointed that Japan was seeking the establishment of a panel given that the United States had explained to Japan the actions the United States had taken to comply with the DSB's recommendations and rulings in this dispute. However, pursuant to the US understanding with Japan, which had been circulated to the DSB in document WT/DS322/26, the United States would accept establishment of a panel at the present meeting. The United States would, of course, defend its position vigorously in this proceeding. The United States also wished to note that some of the measures identified in Japan's panel request appeared not to be measures taken to comply with the DSB's recommendations and rulings in this dispute. For example, Japan listed periodic review results in Annex I of its request that had been issued prior to the adoption of the DSB's recommendations and rulings and, in some cases, prior to Japan's original request for consultations. These measures were, therefore, not within the scope of an Article 21.5 proceeding.

48. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by Japan in document WT/DS322/27. The Panel would have standard terms of reference.

49. The representatives of China, the European Communities, Norway, Chinese Taipei and Hong Kong, China reserved their third-party rights to participate in the Panel's proceedings.

4. Proposed nomination for the indicative list of governmental and non-governmental panelists (WT/DSB/W/374)

50. The Chairman drew attention to document WT/DSB/W/374, 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. Unless there was any objection, he proposed that the DSB approve the name contained in document WT/DSB/W/374.

51. The DSB so agreed.
