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Dispute Settlement Body
26 March 2013

MINUTES OF MEETING

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ON 26 MARCH 2013

Chairman: Mr. Jonathan Fried (Canada)

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Prior to the opening of the meeting, the Chairman made the following statement:

"This Agenda item is entitled 'Surveillance of Implementation of Recommendations Adopted by the DSB'. Before we begin our discussion, I would like to make a few general observations about this regular item on the DSB Agenda. As you know, each month, a good part of our meeting is devoted to matters falling under this item. Having reviewed many of the records of meetings of the DSB, permit me to share my view. It appears to me that, after some 18 years of WTO dispute settlement, Members seem to have fallen into a habit of submitting status reports that generally provide very limited information about specific efforts under way or undertaken to achieve compliance with particular DSB recommendations or rulings. Members' status reports often include identical language, regardless of the recommendations or rulings in question. Dare I say that it is almost as if one were required simply to fill in the blanks in a standard template and then send it off to the DSB Chair. For example, for disputes that are on the DSB Agenda on a regular basis, Members do little more each month than repeat what was said the month before, changing only the date of the report and shedding little if any light on the current status of implementation efforts. For their part, other Members respond expressing yet again their disappointment at the lack of progress and voicing once more the hope that the matter will be resolved soon, requiring little else from the reporting Member. The result is that the discussion under this item – if we can call it a discussion – has become the moment for delegates who do arrive on time to check their e-mails and catch up on their reading, for nothing is likely to be missed if one's attention is diverted.

This practice, or habit, belies the considerable importance to the WTO dispute settlement mechanism of the surveillance function of the DSB, and of the requirement for Members to file status reports informing the Membership of progress on implementation of DSB recommendations or rulings. The drafters of the DSU made clear in Article 21.6 that the DSB 'shall' keep under surveillance the implementation of adopted recommendations or rulings. This surveillance function is one of the unique and distinguishing features of the WTO dispute settlement mechanism. The DSU drafters specified that 'the issue of implementation of the recommendations and ruling shall be placed on the agenda of the DSB after six months following the date of establishment of the reasonable period of time', and they stipulated that the issue 'shall remain on the DSB's agenda until the issue is resolved'. Thus the DSU drafters were not thinking of a one-time requirement to report on implementation; they intended that there be a continuing obligation to keep Members informed about compliance efforts as they progressed. The DSU drafters also required reporting Members to provide copies of status reports to the DSB at least ten days prior to each DSB meeting. This suggests that Members are expected to review the reports to allow Members to engage in a constructive dialogue about them at the DSB meeting. The habits we have fallen into seem rather far off what the DSB drafters intended for this critical surveillance exercise.

As Chair of the DSB, I would therefore encourage Members to take another look at Article 21.6 of the DSU so as to remind ourselves when preparing status reports of the clear intentions of the DSU drafters. I would urge you to bear in mind the continuing obligation to file meaningful status reports until the particular issue is resolved. This implies not just a rote delivery of the same report for each dispute, or the same report each month for the same dispute, changing only the date. If we are to be true to the intentions of the DSU drafters, we should file status reports that provide informative and up-to-date information about compliance efforts as they progress over time. I would also encourage Members to review the status reports ahead of the meeting and to engage the reporting Member in a constructive manner on implementation progress should there be specific questions or should the steps taken not be detailed in the report in question. I should also take this opportunity to remind Members that the compliance rate in WTO dispute settlement is remarkably high – about 90% or more depending on how or when you count. This speaks to the importance Members attach to prompt compliance, a sentiment that the DSU drafters expressed in Article 21.1 of the DSU, which provides that 'prompt compliance with recommendations and rulings is essential in order to ensure effective resolution of disputes to the benefit of all Members'. The Membership and WTO followers alike have observed time and again that the WTO dispute settlement system is one of the crowning achievements of the WTO. Indeed, its rules-based mechanism is an oft-followed model for resolving all manner of disputes between States. Compliance with the rulings or recommendations that the system produces is critical to its continuing success. In that light, let us ensure that we take full advantage of the opportunity – indeed the obligation – we have each month under Agenda item 1 to keep under surveillance the implementation of adopted recommendations or rulings."

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.124)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.124)

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.99)

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.62)

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.11)

F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.10)

G. United States – Measures affecting the production and sale of clove cigarettes: Status report by the United States (WT/DS406/11/Add.3)

H. United States – Anti-dumping measures on certain shrimp and diamond sawblades from China: Status report by the United States (WT/DS422/8/Add.1)

1.1. The Chairman noted that there were eight sub-items under Agenda item 1 and proposed to consider them separately.

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.124)

1.2. The Chairman drew attention to document WT/DS176/11/Add.124, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 14 March 2013, in accordance with Article 21.6 of the DSU. Legislation had been introduced in the current Congress to implement the recommendations and rulings of the DSB. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

1.4. The representative of the European Union said that this was the 122nd time that the EU was making a statement regarding this dispute. The EU thanked the United States for its most recent status report and statement made at the present meeting. The EU hoped that the US authorities would very soon take steps towards implementing the DSB's ruling and resolve this matter.

1.5. The representative of Cuba said that first her country wished to commend the Chairman for taking on the leadership of the DSB and fully trusted his professionalism and experience in managing the DSB's work. In Cuba's view, the Chairman's opening remarks demonstrated his experience and professionalism. Cuba fully supported the Chairman's opening remarks, which were relevant in particular with regard to the Section 211 dispute. Cuba noted that the only change in the status report submitted by the United States in preparation for the present meeting was a new document number, which had risen to 124. This proved that the United States had not taken any action, over the past 11 years, to comply with the DSB's recommendations and rulings, according to which Section 211 was inconsistent with the TRIPS Agreement and the Paris Convention. Under the mechanism of the surveillance of implementation of recommendations and rulings laid down in Article 21 of the DSU, Cuba could do nothing more than to continue to witness the US non-compliance. Cuba regretted that under the current provisions of the DSU, there was no mechanism to ensure an effective solution to end this dispute. The United States had successfully taken advantage of the grey areas under the DSU provisions on compliance. Not even on such a

matter of basic legal ethics had the United States been able to show the slightest change in its position, let alone give any signal of progress towards meeting its obligations. The legislative proposals to which the United States referred to each month in its status reports remained at a standstill because they were neither a priority nor of real interest for the US Administration or Congress. Nevertheless, in an open display of its incoherent foreign policy, Cuba frequently noted that the United States promoted initiatives concerning the "enforcement of intellectual property rights". Outside the WTO, the foundations were being laid for a Transatlantic Trade and Investment Partnership between the United States and the EU. It was a well-known fact that that agreement would seek to achieve far more than the traditional objective of eliminating tariffs and opening markets, and would focus on the "harmonization of international rules". It would address the so-called "shared global trade challenges and opportunities in the 21st century", an area in which the United States and the EU had been committed to "maintaining and promoting a high level of intellectual property protection". Consequently, and aside from any considerations about this future agreement, Cuba found it necessary to remind Members of their responsibility to honour their WTO commitments and their legal and moral obligation to settle pending disputes. This included the full repeal of Section 211, which was the only way to end this dispute.

1.6. In Cuba's view, it was ironic that the United States was drafting intellectual property legislations, while maintaining Section 211, which allowed the Bacardi company to continue marketing a line of rum through improper use of the Havana Club trademark. This was one of the most well-known cases of trademark counterfeiting and misleading advertising by a company supported by US legislation. The conduct of the United States discredited the WTO dispute settlement system and constituted an infringement of intellectual property rights. Cuba would continue to denounce this situation. Cuba questioned how was it possible that two major powers, the parties to this dispute, which were proposing to subject global trade relations to the regulations of their Transatlantic Partnership, were unable to find a way of complying with the DSB's ruling and putting an end to the infringements of the intellectual property rights of a developing-country Member such as Cuba? This situation demonstrated the need to introduce far-reaching amendments to the DSU provisions in order to ensure effective compliance. Cuba requested that the United States comply with the DSB's recommendations and rulings without further delay, and urged the United States to repeal Section 211, as this was the only way of settling this dispute.

1.7. The representative of the Bolivarian Republic of Venezuela said that her country expressed its disappointment that it had to witness again this matter – a customary feature at each regular DSB meeting for many years. The 124th status report by the United States did not provide any information on progress. In that regard, Venezuela regretted that it had to make the same statement to reiterate its concern about the lack of compliance in this dispute. Venezuela supported Cuba's statement to the effect that, despite the Appellate Body's ruling more than 11 years ago, the United States continued to maintain Section 211 and to institute administrative and judicial proceedings aimed at continuing to usurp the well-known Cuban trademark, the Havana Club. This was part of the North American embargo to which the Cuban people were being subjected. Therefore, Venezuela reiterated its support for Cuba and urged the United States to put an end to its policy of economic, commercial and financial blockade against Cuba and to comply with the DSB's recommendations and rulings. In Venezuela's view, this situation of non-compliance was unacceptable and disappointing. Venezuela was concerned that non-compliance affected the interests of a developing-country Member and undermined the credibility of the DSB and the multilateral trading system.

1.8. The representative of the Plurinational State of Bolivia said that his country supported the Chairman's opening remarks, which were particularly relevant to this long-standing dispute. Once again, Bolivia noted that, for more than ten years, the US status report did not contain any information on progress towards finding a solution to this dispute. Bolivia, therefore, reiterated its concern about the US non-compliance with the DSB's recommendations and rulings. Bolivia was also concerned about the lack of political will on the part of the United States to resolve this dispute. This situation of non-compliance undermined the credibility of the multilateral trading system and caused harm to a developing-country Member. Once again, Bolivia urged the United States to comply with the DSB's recommendations and rulings and to take steps to remove the restrictions imposed under Section 211. Bolivia supported the concerns expressed by Cuba at the present meeting.

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

1.10. The representative of Argentina said that his country appreciated the Chairman's opening remarks. However, it noted that it was difficult to be creative on to this Agenda item. Argentina thanked the United States for its status report, but noted that, once again, the United States had reported lack of compliance in this dispute. This situation of non-compliance was inconsistent with the principle of prompt and effective implementation stipulated in the DSU provisions and affected the interests of a developing-country Member. Argentina, therefore, supported the statements made by Cuba and other delegations at the present meeting and urged both parties to the dispute, in particular the United States, to take necessary measures so as to remove this matter from the DSB's Agenda.

1.11. The representative of India said that his country thanked the United States for its status report and the statement made at the present meeting. India noted with regret that there was no substantive change in the situation and was compelled yet again to stress that the principle of prompt compliance was missing in this dispute. India reiterated its systemic concerns about the continuation of non-compliance, as this undermined the credibility and confidence Members reposed in the system. India urged the United States to report full compliance in this dispute without any further delay.

1.12. The representative of China said that his country thanked the United States for its status report and the statement made at the present meeting. In China's view, the prolonged situation of non-compliance in this dispute was highly incompatible with the prompt and effective implementation required under the DSU provisions, in particular since the interests of a developing-country Member were affected. China joined other Members in urging the United States to implement the DSB's rulings and recommendations without further delay.

1.13. The representative of Nicaragua said that his country thanked the United States for its status report, but noted that it did not contain any information on progress in the implementation of the DSB's recommendations and rulings in this dispute. Nicaragua supported Cuba's statement and reiterated its systemic concern about the US failure to comply with the DSB's recommendations and rulings. The lack of political will on the part of the United States to resolve this dispute undermined the credibility of the multilateral trading system and affected the interests of a developing-country Member. Nicaragua, once again, urged the United States to comply with the DSB's recommendations and rulings by adopting measures that would eliminate the restriction imposed under Section 211.

1.14. The representative of Zimbabwe said that her country thanked the United States for its status report. Zimbabwe, once again, regretted that the United States continued to disregard the DSB's rulings and recommendations regarding Section 211. Zimbabwe, therefore, supported the statements made by Cuba as well as by other delegations and strongly urged the United States to comply with the DSB's recommendations and rulings.

1.15. The representative of Mexico said that his country appreciated the Chairman's opening remarks, which could help Members to improve their participation in the work of the DSB. Mexico thanked the United States for its status report. As Mexico had already stated in the past, Article 21.1 of the DSU required prompt compliance with the DSB's recommendations and rulings in order to ensure the effective resolution of disputes to the benefit of all Members. Mexico urged both parties to this dispute to take the necessary measures to resolve this dispute.

1.16. The representative of Ecuador said that his delegation noted with interest the Chairman's opening remarks. In Ecuador's view, the DSB's function under Article 21.6 of the DSU was of particular importance. Ecuador wished to also stress the unequivocal objective of prompt compliance with the DSB's recommendations and rulings, as set out in Article 21.1 of the DSU. Article 21.1 of the DSU was important at the DSB level as well as the level of panels, arbitrations and appellate review. All WTO Members should comply with the provisions of Article 21.2 and not just a few Members. Ecuador supported the statement made by Cuba at the present meeting and

stressed that Article 21 of the DSU specifically referred to prompt compliance with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Ecuador hoped that the United States would step up its efforts to ensure immediate compliance with the DSB's recommendations and rulings by fully repealing Section 211.

1.17. The representative of the Dominican Republic said that her country appreciated the Chairman's opening remarks. The Dominican Republic thanked the United States for its status report on the implementation of the DSB's recommendations and rulings regarding the inconsistency of Section 211 with Article 42 of the TRIPS Agreement. The Dominican Republic, once again, urged the United States to step up its internal efforts so as to comply with the DSB's recommendations and rulings. The long period of time that had passed with no implementation undermined the credibility of the WTO.

1.18. The representative of Uruguay said that the Chairman's opening remarks had prompted his delegation to make a statement under this Agenda item. Uruguay shared the Chairman's comments and the feeling of frustration. Uruguay noted that, for many years Members had listened to the same repeated arguments. Thus, Uruguay regretted, once again, that it had to urge the parties to this dispute to take on their responsibilities in this case, and to make every effort possible to put an end to 11 years of non-compliance with the DSB's recommendations and rulings.

1.19. The representative of Viet Nam said that his country welcomed the new Chairman and thanked the United States for its status report. Viet Nam noted that more than ten years had passed since the DSB had adopted the recommendations and rulings in this dispute, but the United States had yet to comply. Viet Nam, once again, urged the United States to respect the DSB's recommendations and other international obligations in this regard.

1.20. The representative of the United States said that his country had heard many Members' views on the content of US status reports, as well as what the United States had been doing with respect to implementation on this issue. The United States said that it would like to make the following comments. First, with respect to the content of its status reports, the United States regretted that some Members had suggested that the United States had not provided sufficient detail in its status reports with respect to how the US administration was working with Congress to implement the DSB's recommendations and rulings in this dispute. On this point, the United States said that it would like to recall that it was not always possible or appropriate to recount internal government efforts to pass legislation in its status reports. Indeed, the United States had heard similar critiques in the past about the level of detail included in US status reports in disputes in which Congress had ultimately passed legislation to bring the United States into compliance. Second, in reaction to the comments that the United States had not taken any efforts with respect to this dispute, the US Administration was continuing to work on solutions that would implement the DSB's recommendations and rulings. For example, the United States was now in the 113th Congress. That Congress had only been in session for a few months and yet several bills had already been introduced that would address these matters. For example, H.R. 214, which had been introduced by Representative Serrano of New York in January 2013 would repeal Section 211. Likewise, H.R. 872 and H.R. 873, both introduced by Representative Rangel of New York in late February 2013, would also repeal Section 211. Additionally, H.R. 778, which was introduced by Representative Issa of California in February 2013, would modify Section 211.

1.21. With respect to repeal, some of the delegates who had spoken at the present meeting, including the delegate from Cuba, had stated that the United States had no choice, but to repeal Section 211 in its entirety. On this point, the United States said that it was important to remind delegates that there had been no finding against the entirety of Section 211 or the main thrust of Section 211. The United States said that it would also like to recall that the relevant recommendations and rulings in this dispute related to national treatment and MFN. The United States noted with interest the suggestion that Members were to repeal intellectual property measures that had been found inconsistent with WTO national treatment obligations. The United States noted that this was contrary to the approach that other countries had taken in implementing the DSB's recommendations and rulings with respect to national treatment in other TRIPS cases. The United States hoped that the information was useful to the delegates at the present meeting and looked forward to providing information on this and other issues.

1.22. The Chairman thanked the United States for providing further details and said that he was certain that the United States would be prepared to provide again, should any delegation so wish, the specific bill numbers of those propositions currently before the US Congress.

1.23. The representative of Cuba said that her country thanked the United States for the additional information and wished to make brief comments. If 11 years had not been sufficient to settle this dispute, Cuba wondered how much time was needed for the legislative bodies of any given country to address a similar situation, which was affecting a developing-country Member. In Cuba's view, perhaps for some countries, these were just bills, laws or legislation that needed to be examined in Congress. For Cuba, this was a matter of the highest priority and significance due to considerable economic, financial and trade affects. The blockade had cost the Cuban economy an amount which was higher than US$1 billion. Thus Cuba requested that the matter be urgently and seriously addressed and that the US Congress take the necessary measures to comply in this dispute. In Cuba's view, Section 211 had to be repealed in order to resolve this dispute.

1.24. The Chairman said that he did not think that his opening remarks would have such an immediate impact. He welcomed the good example set by the United States and other delegations reporting under Article 21.6 of the DSU providing details by way of update, and the constructive comments that had been offered by many other delegations. He recalled one other rule contained in the Rules of Procedure for meetings of the General Council, which applied to meetings of the DSB, namely, Rule 27 which provided that: "Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record". Thus, going back to his opening remarks, the focus each month should be on new developments, on suggestions or ideas, on the path forward, on progress towards resolution of the dispute and that did not always need to be at the DSB. In effect, sometimes, the message may be to redouble Members' efforts in capitals or before legislative or other bodies to help ensure progress in a particular dispute.

1.25. 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.124)

1.26. The Chairman drew attention to document WT/DS184/15/Add.124, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.27. The representative of the United States said that his country had provided a status report in this dispute on 14 March 2013, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to the appropriate statutory measures that would resolve this matter.

1.28. The representative of Japan said that Japan appreciated the Chairman's opening remarks and his views that Members had to review Article 21.6 of the DSU. Japan regretted that it had to repeat its statement concerning this dispute. Japan thanked the United States for, and took note of, its statement and status report submitted on 14 March 2013. Japan, once again, called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

1.29. 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.99)

1.30. The Chairman drew attention to document WT/DS160/24/Add.99, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.31. The representative of the United States said that his country had provided a status report in this dispute on 14 March 2013, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

1.32. The representative of the European Union said that the EU thanked the United States for its most recent status report and the statement made at the present meeting. Pursuant to Rule 27 of the Rules of Procedure, the EU referred to its previous statements regarding its desire to resolve this dispute as soon as possible.

1.33. 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.62)

1.34. The Chairman drew attention to document WT/DS291/37/Add.62, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

1.35. The representative of the European Union said that the EU wished to express its hope that it would continue on the constructive path of dialogue with the United States. The EU authorization system continued to function normally. In 2012, the Commission had authorized five new GMOs[1] and had renewed the authorization of a sixth one.[2] Three of those decisions[3] had been adopted only six months after the relevant EFSA opinions had been published, while the recent decision on MIR162 had been adopted less than four months after the EFSA opinion.[4] Regarding the concerns expressed by the United States on the back-log of approvals, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings. The EU underlined that the GMO regulatory regime was working normally as evidenced by the approval decisions just mentioned. Moreover, at the meeting of the relevant regulatory committee on 20 March 2013, EFSA had presented an opinion on an application for the placing on the market of genetically modified drought tolerant maize[5], and for herbicide-tolerant oilseed rape.[6] This followed on from opinions that had been presented at the meeting on 25 February 2013 concerning GM oilseed rape[7], and pollen in honey.[8] The next stage of the approval process involved a public consultation of 30 days, following which the Commission would then prepare an authorizing decision. It was also important to note that at the Regulatory committee on 25 February 2013, member States had endorsed guidelines for applications for authorization of genetically modified food and feed. Those guidelines would make the process even more transparent and improve consumer confidence in the system.

1.36. The representative of the United States said that his country thanked the EU for its status report and for the statement made at the present meeting. The United States continued to have serious concerns regarding the EU measures affecting the approval of biotech products. The United States had discussed this issue quite a bit at past DSB meetings but, in light of the Chair's

[1] A5547-127 soybean, 356043 soybean, MON87701 soybean, MON87701 X MON89788 soybean, MIR162 maize.
[2] 40-3-2 soybean.
[3] Authorization decision for 356043 and MON87701 soybeans, MON87701 X MON89788 soybean.
[4] EFSA opinion: 21 June 2012; decision on authorization: 18 October 2012.
[5] MON87460.
[6] GT73.
[7] Ms8, Rf3 and Ms8xRf3.
[8] MON810.

comments on Rule 27, the United States would focus its remarks on the most recent issues related to this matter. For example, at the last two meetings of the DSB, the United States had noted concerns with the progress of applications for a new biotech soy variety and a new biotech corn variety. The EU's scientific authority (EFSA) had published positive opinions for both products in 2012. The United States understood that consideration of those products remained delayed in the EU approval system. The EU delegate had referred to these and the fact that the relevant Standing Committee had discussed the EFSA opinion for the corn event at its March 2013 meeting, yet a regulatory proposal for approval had not been presented. As those product applications illustrated, the EU measures affecting the approval of biotech products currently resulted in serious restrictions on trade in agricultural commodities. Therefore, the United States would urge the EU to take steps to address these matters.

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

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.11)

1.38. The Chairman drew attention to document WT/DS371/15/Add.11, which contained the status report by Thailand on progress in the implementation of the DSB's recommendations in the case concerning Thailand's customs and fiscal measures on cigarettes from the Philippines.

1.39. The representative of Thailand said that his country took note of the Chairman's opening remarks urging Members to submit meaningful status reports. The WTO was a Member-driven Organization and it was up to Members to drive it to where it should be. On its part, Thailand had been submitting useful and meaningful status reports. Thailand referred to its most recent status report, which had been circulated on 15 March 2013. Thailand was in the process of finalizing arrangements for further informal consultations with the Philippines in Bangkok in April 2013 regarding the Philippines' concerns regarding the technical aspects of the implementation measures and other matters of concern that had not been subject to the DSB's recommendations and rulings and which the Philippines considered were relevant to the final resolution of this dispute. Thailand appreciated the Philippines patience as Thailand tried to arrange a mutually convenient date for a meeting that, at the request of the Philippines, would involve senior representatives from several different Thai Government agencies. Thailand hoped that the informal consultations would lead to a mutually satisfactory outcome to the dispute without the need for further WTO proceedings. In that regard, Thailand looked forward to constructive discussions.

1.40. The representative of the Philippines said that, as had been announced by the representative of Thailand at the present meeting, on 25 March 2013, Thailand had proposed further informal consultations to address the Philippines' outstanding concerns in this dispute. The Philippines had been suggesting a further bilateral meeting for some time and had also made it clear that it was only willing to pursue this bilateral approach further if the discussions were at a level of engagement sufficient to resolve the outstanding issues. The Philippines was still awaiting formal confirmation of, as well as details on, Thailand's proposal. The Philippines' next steps would depend on the details of Thailand's proposal.

1.41. The Chairman noted that both statements were constructive and gave hope for positive developments so that this matter could soon be removed from the DSB's Agenda.

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

F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.10)

1.43. The Chairman drew attention to document WT/DS404/11/Add.10, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain shrimp from Viet Nam.

1.44. The representative of the United States said that his country had provided a status report in this dispute on 14 March 2013, in accordance with Article 21.6 of the DSU. In February 2012, the US Department of Commerce had published a modification to its procedures in order to implement the DSB's recommendations and rulings regarding the use of "zeroing" in anti-dumping reviews. That modification addressed certain findings in this dispute. In June 2012, the US Trade Representative had requested, pursuant to Section 129 of the Uruguay Round Agreements Act, that the Department of Commerce take action necessary to implement the DSB's recommendations and rulings in this dispute. The United States would continue to consult with interested parties as it worked to address the DSB's recommendations and rulings.

1.45. The representative of Viet Nam said that, as Members were aware, Viet Nam and the United States had agreed to a reasonable period of time of ten months for the implementation of the DSB's recommendations. Viet Nam was surprised to learn that, on 28 June 2012, only four days before the expiry of the reasonable period of time, the USTR had initiated the procedure under Section 129 in this dispute. However, Viet Nam noted that, thus far, no action had been taken by the United States. In addition, Viet Nam noted that USDOC had initiated countervailing investigations on the same products from seven countries, including Viet Nam. Viet Nam, once again, urged the United States to fully implement the DSB's recommendations and rulings without further delay.

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

G. United States – Measures affecting the production and sale of clove cigarettes: Status report by the United States (WT/DS406/11/Add.3)

1.47. The Chairman drew attention to document WT/DS406/11/Add.3 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US measures affecting the production and sale of clove cigarettes.

1.48. The representative of the United States said that, in accordance with Article 21.6 of the DSU, his country had provided a status report in this dispute on 14 March 2013. As noted in that status report, US authorities were conferring with interested parties and working to implement the recommendations and rulings of the DSB in a manner that was appropriate from the perspective of the public health.

1.49. The representative of Indonesia said that his country congratulated the Chairman on his election. Indonesia believed that, under the Chairman's leadership, the dispute settlement system could be further strengthened through a higher level of effective compliance with the DSB's rulings and recommendations, as had already been indicated in his introductory comments. Indonesia thanked the United States for its status report and wished to recall its statement made at the previous DSB meeting on 27 February 2013. With regard to the DSB's recommendations in this dispute, Indonesia strongly believed that the United States would make an effort and take positive actions to adopt its law and regulations in a non-discriminatory manner, as stipulated in the WTO Agreements. Indonesia appreciated the US position to uphold its interest to promote the public health, as long as the measure was not more trade restrictive than necessary. Therefore, Indonesia urged the United States to also abide by the principles and stipulations regulated in the WTO Agreements, in particular, the TBT Agreement and the GATT 1994. Indonesia noted that the reasonable period of time for the United States to implement the DSB's recommendations and rulings in this dispute would expire in less than four months. Therefore, Indonesia urged the United States to report on more concrete progress on the implementation of the DSB's recommendations and rulings in this dispute at the next DSB regular meeting.

1.50. The representative of the United States said that his country appreciated the comments made by Indonesia with respect to further details on US efforts to comply. At the present meeting, the United States was not in a position to state precisely how it would comply with the DSB's recommendations and rulings given the complex public health issues related to the measures at issue. However, the United States could convey that US authorities, including public health regulators, were examining possibilities consistent with public health considerations. As a part of

that process, US regulators were undertaking an assessment of the public health impacts and the collective evidence of the assessment would inform possible US decisions moving forward.

1.51. 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 and diamond sawblades from China: Status report by the United States (WT/DS422/8/Add.1)

1.52. The Chairman drew attention to document WT/DS422/8/Add.1 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US anti-dumping measures on certain shrimp and diamond sawblades from China.

1.53. The representative of the United States said that his country was pleased to report that it had implemented the recommendations and rulings of the DSB in this dispute. The United States had provided a status report in this dispute on 14 March 2013, in accordance with Article 21.6 of the DSU. As noted in that report, the DSB had adopted its recommendations and rulings in this dispute in July 2012. At that time, the United States had informed the DSB of its intention to implement the DSB's recommendations and rulings. The United States and China had agreed that the reasonable period of time for the United States to implement the DSB's recommendations would end on 23 March 2013, and the two parties had jointly notified the DSB of that agreement. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the anti-dumping duty investigations at issue and had done so within the reasonable period of time. First, on 5 September 2012, the United States Trade Representative had requested, pursuant to Section 129 of the Uruguay Round Agreements Act, that the US Department of Commerce ("Commerce") take action necessary to implement the DSB's recommendations and rulings. On 4 March 2013, Commerce had issued its final determinations in the Section 129 proceedings. In its determinations, Commerce had determined the existence of margins for the relevant exporters in a manner consistent with the DSB's recommendations and rulings. Finally, on 22 March 2013, the US Trade Representative had instructed Commerce to implement the Section 129 determinations. The final determinations were effective as of that date, which, the United States noted, was prior to the expiry of the reasonable period of time on 23 March 2013.

1.54. 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 took note that the US Department of Commerce (USDOC) had issued the final determinations in the Section 129 proceedings on 4 March 2013. The USDOC had recalculated, without the application of the "zeroing" practice, the dumping margins with respect to the concerned exporters and had found the zero per cent dumping margins for those mandatory respondents in the original investigations. China understood that, under Section 129 of the Uruguay Round Agreements Act ("URAA"), the USDOC would not implement its Section 129 determinations until the USTR directed it to do so. Thus far, China had not seen the official publication of the notice of implementation of the Section 129 determinations at issue. However, according to the Chinese industry, the USDOC had issued a document on 22 March 2013, stating that the USTR had directed it to implement the Section 129 determinations at issue. China noted that, in that document, the USDOC stated, because it had recalculated the dumping margins of zero per cent for the concerned manufacturers and exporters, it would instruct the US Customs and Border Protection to partially revoke the anti-dumping duty order for warmwater shrimp. However, as for the diamond sawblades investigation, although the USDOC had recalculated a dumping margin of zero per cent for the concerned exporter, it would not revoke the anti-dumping duty order pursuant to a domestic court order. According to the notification and the agreement between China and the United States, the reasonable period of time for the United States to implement the DSB's recommendations and rulings in this dispute had expired on 23 March 2013. In light of this, China was of the view that the United States, by failing to revoke the anti-dumping duty order for the concerned exporter in the diamond sawblades investigation, had failed to bring its measures into conformity with its obligations under the covered agreements. China was highly concerned about the failure of the United States to fully implement the DSB's recommendations and rulings by the expiry of the reasonable period of time. China strongly urged the United States to honour its WTO obligations and fully implement the DSB's recommendations. China looked forward to further discussions with the United States on this issue.

1.55. The representative of the United States said that the issues that had been raised by China were covered in the first US intervention. As China had acknowledged, on 22 March 2013, the US Trade Representative did instruct the Department of Congress to implement the Section 129 redetermination, which meant that the United States had fully addressed the zeroing issue before the expiry of the reasonable period of time. In its comments, China had also referred to a separate litigation situation. However, those comments referred to a domestic court proceeding that addressed an unrelated matter. The United States had fully addressed the DSB's recommendations and rulings with its determination.

1.56. The representative of China said that his country thanked the United States for its explanation. China did not agree that the domestic court order and its effect were unrelated to the implementation of the DSB's recommendations and rulings in this dispute. China would assess the matter further and looked forward to further discussions with the United States on this matter.

1.57. The Chairman said that he had been looking forward to announcing that one of the disputes was being successfully resolved, but it seemed that further consultations would be necessary. He said that, at the present meeting, the DSB would take note of the statements and agree to revert to this matter at its next meeting. He invited China and the United States to communicate through the Chair, should there be further progress towards what sounded like an imminent resolution of this dispute.

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

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

A. Statements by the European Union and Japan

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

2.2. The representative of the European Union said that, unfortunately, the EU had to repeat its position under this Agenda item so that the matter does not fall off the radar screen. Once again, the EU requested that the United States stop transferring anti-dumping and countervailing duties to the US industry. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations and rulings. The EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit status reports in this dispute.

2.3. The representative of Japan said that this matter was raised at every regular DSB meeting. The legal instrument had been declared to be repealed but actual distribution was still continuing. The official website[9] of the US Customs and Border Protection clearly showed that the CDSOA continued to be operational. Japan, once again, urged the United States to stop the illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute. Pursuant to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report in this dispute.

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

2.5. The representative of India said that his country thanked the EU and Japan for regularly bringing this issue before the DSB. India fully shared their concerns. As had been mentioned by previous speakers, the CDSOA remained operational and the WTO-inconsistent disbursements continued unabated to the US domestic industry. India also agreed that this issue should remain under the DSB's surveillance until such time that full compliance was achieved.

[9] http://www.cbp.gov/linkhandler/cgov/trade/priority_trade/add_cvd/cont_dump/

2.6. The representative of Canada said that, pursuant to Rule 27 of the General Council/DSB, Canada wished to refer to its statements made on this item at previous DSB meetings. Canada's position on this matter remained unchanged.

2.7. The representative of Thailand said that his country thanked Japan and the EU for bringing this item before the DSB. Thailand urged the United States to cease the disbursements and fully implement the DSB's rulings and recommendations on this matter.

2.8. The representative of the United States said that, with respect to comments regarding the need for the United States to submit status reports in this matter, the United States had taken all steps necessary to implement the DSB's recommendations and rulings in this dispute. In particular, the President had signed the Deficit Reduction Act into law on 8 February 2006, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. In that light, the United States failed to understand what purpose would be served by submitting further status reports, and did not understand the purpose for which the EU and Japan had inscribed this item on the Agenda of the present meeting.

2.9. The DSB took note of the statements.

3 INDONESIA – IMPORTATION OF HORTICULTURAL PRODUCTS, ANIMALS AND ANIMAL PRODUCTS

A. Request for the establishment of a panel by the United States (WT/DS455/7)

3.1. The Chairman drew attention to the communication from the United States contained in document WT/DS455/7, and invited the representative of the United States to speak.

3.2. The representative of the United States said that his country was concerned about Indonesia's broad use of import licensing measures that restricted imports of horticultural products, animals, and animal products. Indonesia's import licensing regime was opaque and complex and appeared to be inconsistent with Indonesia's WTO obligations. Among other things, Indonesia's discretionary and non-automatic import licensing regime required importers to obtain import recommendations from the Ministry of Agriculture and import permits from the Ministry of Trade; Indonesia set import quotas for animals and animal products; and Indonesia's import licensing regime was non-transparent. These measures had had a significant adverse impact on exports to Indonesia of a range of products from the United States and from other WTO Members, including, but not limited to, fruits, vegetables, flowers, dried fruits and vegetables, juices and meat. The WTO Agreement generally obligated Members not to impose restrictions on the importation of goods from other Members, including through the use of quotas and licenses. Accordingly, the United States was concerned that Indonesia's measures appeared to be in breach of various provisions of the GATT 1994, the Agriculture Agreement, and the Import Licensing Agreement. For several years, the United States had attempted to resolve its concerns through dialogue with Indonesia. Since 2011, the United States, along with other WTO Members, had raised concerns with Indonesia in various fora. After those efforts had failed to achieve any meaningful results, the United States had requested consultations with Indonesia, but unfortunately those efforts had also failed to resolve the dispute. Accordingly, 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.

3.3. The representative of Indonesia said that his country was disappointed that the United States had requested the establishment of the panel to examine this matter. During the bilateral consultations held on 21 and 22 February 2013 in Geneva, Indonesia had demonstrated its seriousness in finding solutions to resolving these issues. Indonesia had a strong good faith intention to settle the dispute during the consultations, which was indicated by the highest possible level of delegation, both from the Ministry of Trade and the Ministry of Agriculture. Indonesia had been trying its best to meet the request of the US delegation during the consultation. Immediately after the consultation, Indonesia was preparing further responses to more than 99 questions submitted at very short notice. Indonesia was intensively reviewing regulations of the Ministry of Trade and the Ministry of Agriculture with regard to the importation of horticultural products, animal, and animal products. Indonesia, as a respondent and a developing country, was of the view that this case had strong importance to Indonesia. Article 4.10 of the DSU stipulated that

during consultations Members should give special attention to the particular problems and interests of developing-country Members. It was, therefore, Indonesia's fervent hope that it would have an opportunity to present a more comprehensive response and progress to the United States. For these reasons, Indonesia was not in a position to agree to the establishment of a panel at the present meeting. Indonesia sought the cooperation of the United States in exploring the best opportunity to continue to engage in bilateral exchanges and discussions with a view to achieving a mutually satisfactory outcome to this dispute.

3.4. The representative of Canada said that his country wished to bring to the attention of the DSB the joint communication from Canada and the EU, which had been circulated on 11 March 2013 as document WT/DS455/6, regarding the consultations that had been held between the United States and Indonesia in this dispute. In that joint communication, and again at the present meeting, Canada noted Indonesia's failure to respect the provisions of the DSU governing the participation of third parties in formal dispute settlement consultations. Specifically, Indonesia had accepted the requests from Canada, the EU and Australia to be joined in the consultations, thereby agreeing that the claims of substantial trade interest were well-founded. However, it had then refused to allow those Members to actually participate in the consultations that had taken place on 21 and 22 February 2013, and had instead proposed to meet with them separately. Indonesia had not yet organized that separate meeting. But even if it had, such a meeting would satisfy neither the requirements nor the objectives of Article 4.11 of the DSU for joining in consultations third-party Members who had demonstrated a substantial trade interest. One of the purposes for joining such Members was to allow them to observe the explanations, provided to the Member originally requesting the consultations, of the measures in question in order to make an informed decision on the appropriate level of involvement in any subsequent stages of dispute settlement. Indonesia's decision to proceed as it did had deprived Canada and two other Members of the opportunity to learn more about its measures, and to make that informed decision. This was more than a procedural oversight. It went to the heart of the substantive right of Members to obtain sufficient information and explanation about measures that affected their substantial trade interests. Canada, therefore, reiterated its reservations about the regrettable approach taken by Indonesia to the consultations in this dispute. Such an approach could not and should not be seen as a legitimate way to conduct consultations under Article 4 of the DSU.

3.5. The representative of the European Union said that the EU wished to express its reservations about the way Indonesia had reacted to the EU's request to be joined in the consultations held between the United States and Indonesia. On 23 January 2013, pursuant to Article 4.11 of the DSU, the EU had notified the United States, Indonesia, and the DSB of its desire to be joined in the consultations requested by the United States in light of the EU's substantial trade interest. On 20 February 2013, Indonesia had informed the EU that it "would like to accept" its requests to join the consultations, but that it "desired to conduct the consultation with the United States on 21/22 February 2013 in Geneva bilaterally, and will conduct another consultation together with third parties on further proposed date". The EU recalled that Article 4.11 of the DSU provided that upon a request to join the consultations, "[s]uch Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded". By informing the DSB that it had accepted the EU's request to be joined in the consultations, Indonesia had indicated its agreement that the EU's claim of substantial interest was well-founded. However, by proposing to hold the consultations with the EU separately from those that had been held between Indonesia and the United States on 21 and 22 February 2013, Indonesia effectively had not "joined" the EU in the consultations, as was required by Article 4.11 of the DSU. The EU wished to express its reservations that Indonesia had chosen to conduct those consultations in that manner. In the EU's view, that approach respected neither the letter nor the spirit of Indonesia's obligations, and the corresponding rights of third-party requesting Members, under Article 4.11 of the DSU, and as such raised significant systemic concerns.

3.6. The representative of Indonesia said that his country wished to refer to the EU and Canada's joint letter dated 7 March 2013, which was a response to Indonesia's letter of 20 February 2013 relating to its acceptance of requests to be joined in the consultations in this dispute. In that joint letter, it was stated that the EU and Canada recalled that Article 4.11 of the DSU provided that upon a request to join the consultations, "[s]uch Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded". Furthermore the EU and Canada had stated that by

proposing to hold the consultations with the third-party requesting Members separately from those that had been held between Indonesia and the United States on 21 and 22 February 2013, Indonesia effectively had not "joined" the third-party requesting Members in the consultations, as was required by Article 4.11 of the DSU. To respond to those concerns, Indonesia noted that Article 4.11 of the DSU indeed provided that upon request to join the consultations, "[s]uch Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded". However, the Article regulated further that the consultations could be held several times in order to resolve the dispute between and/or among Members. It was not limited only to the first consultation held by the Members to that dispute. Pursuant to that provision, in the letter dated 20 February 2013, Indonesia had conveyed to the third parties and had emphasized its good faith by accepting the request to join the consultations for the third parties and would conduct another consultation together with the third parties in a further proposed date.

3.7. Second, Indonesia would not limit any rights of a Member to become a third party in this dispute. However, Article 4.10 of the DSU stipulated that, during consultations, Members should give special attention to the particular problems and interests of developing-country Members. Once again, Indonesia maintained strongly its good faith to resolve this matter. Indonesia, as a respondent and as a developing-country Member, was of the view that this dispute was of strong importance to Indonesia and that the parties to this dispute would address significant and delicate information in the first consultation. In that regard, Indonesia's rationale was to hold the consultation with the United States bilaterally, and to hold another consultation together with the third parties and the complainant. Pursuant to Article 4.10 of the DSU, Indonesia believed that the EU and Canada, as developed countries, would consider and give special attention to Indonesia's particular problems and interests. Indonesia reiterated its strong commitment to its obligations as a WTO Member and to resolving this dispute in good faith, in accordance with the DSU provisions.

3.8. The representative of the United States said that his country wished to briefly comment on both the first and second interventions made by Indonesia. With respect to Indonesia's first intervention and the efforts that they were taking to address these issues, the United States appreciated any good faith efforts and looked forward to working with Indonesia to try to resolve these issues if that was what they desired. With respect to the second intervention by Indonesia in response to the issue raised by Canada and the EU, the United States believed that Indonesia's response to the requests by other Members to join the consultations raised some questions. If Indonesia had intended to accept the requests to join the consultations, then Indonesia should have allowed these Members to participate in the consultations that had been, in fact, held on 21 and 22 February 2013. If, on the other hand, Indonesia had not wished to permit those Members to be joined in the consultations, then it could simply have stated that it did not agree that those claims of substantial interest were well-founded, pursuant to Article 4.11 of the DSU.

3.9. The Chairman said that, as Members knew, the establishment of a panel was a last resort when consultations and amicable discussions failed to reach a mutually agreed solution. In light of Indonesia's declining to agree to the establishment of a panel, a short period of time was left for good faith efforts to seek a mutually agreed solution. In any event, the DSB would revert to this matter at its next meeting. He noted that a number of delegations had raised what may be considered a potentially systemic issue regarding the scope and nature of third-party participation in consultations. At the present meeting, the DSB would take note of the statements, but Members may wish to reflect on the comments made and decide whether they would wish to come back to this matter in the DSB at a future date.

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

4 DECISION BY THE DSB ON THE REAPPOINTMENT OF ONE APPELLATE BODY MEMBER

4.1. The Chairman said that, as announced at the February 2013 DSB meeting, he intended to propose under this Agenda item that the DSB take a decision on the reappointment of Mr. Ricardo Ramírez, an Appellate Body member. Before taking up the proposed decision, he wished to review the process thus far. As in past considerations of possible reappointment, the former Chairman of the DSB, Amb. Bashir and, subsequently, he – the current Chair – had carried out informal consultations on the possible reappointment of Mr. Ramírez. He recalled that in December 2012, Ambassador Bashir had informed delegations that Mr. Ramírez, who was eligible for reappointment pursuant to Article 17.2 of the DSU, was interested and willing to be

reappointed for a second four-year term. Following his announcement, Ambassador Bashir had invited interested delegations to contact him directly on this matter. At the January 2013 DSB meeting, he had reported back to delegations on the results of his consultations and, at the February 2013 DSB meeting, he had informed delegations that a consensus on this matter was likely to emerge. He had also said that this matter would be placed for a decision by the DSB on the Agenda of the regular meeting in March 2013. The Chairman said that, following his election as the Chair of the DSB for 2013, he had continued the informal process of consultations with a view to submitting this matter for a decision at the present DSB meeting. In that regard, he recalled the statement made by the then Chair of the DSB at the meeting held in July 2003, contained in document WT/DSB/M/153. In his statement, the then Chair of the DSB had stated the following: "Under Article 17.2 of the DSU the DSB shall appoint persons to serve on the Appellate Body for a four-year term, and each person may be reappointed once". The then Chair had continued to say that: "the reappointment of Appellate Body members for a second term of office was not automatic and required consideration by, and a formal decision of, the DSB". Therefore, consistent with those requirements, the Chair proposed that the DSB adopt, at the present meeting, a formal decision and agree to reappoint Mr. Ricardo Ramírez for a second four-year term of office, starting on 1 July 2013.

4.2. The DSB so agreed.

4.3. The Chairman further stated that he also wished to inform delegations that the second four-year term of office of Mr. David Unterhalter and the first four-year term of office of Mr. Peter Van den Bossche were set to expire on 11 December 2013. He had recently been informed that Mr. Van den Bossche, who was eligible for a second four-year term, pursuant to Article 17.2 of the DSU, had expressed his interest and willingness to be reappointed. Therefore, taking into consideration those facts, it was his intention to make a proposal at the next DSB meeting to be held in April 2013 regarding one selection process for the position currently held by Mr. Unterhalter. He would also begin the informal process of consultations on the possible reappointment of Mr. Van den Bossche. It would be his intention to conclude this task in good time, taking into account the fact that delegations would be busy in the months leading up to the Ministerial Conference in Bali. In the meantime, he invited delegations to start thinking about possible nominations of candidates for the position currently held by Mr. Unterhalter. Details regarding the time-line and the process would be proposed by the Chairman prior to the April 2013 DSB meeting.

4.4. The DSB took note of the statement.

5 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/500)

5.1. The Chairman drew attention to document WT/DSB/W/500, 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/500.

5.2. The DSB so agreed.

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

A. Statement by Dominica, on behalf of Antigua and Barbuda

6.1. The Chairman said that, as announced at the outset of the meeting, under "Other Business" the representative of Dominica would make a statement on behalf of Antigua and Barbuda.

6.2. The representative of Dominica, speaking on behalf of Antigua and Barbuda, under "Other Business", read out the following statement: "This short intervention is Antigua and Barbuda's attempt to keep the DSB updated on progress in the implementation of the DSB's decision in WT/DS285. The delegation of Antigua and Barbuda has so far not seen substantial progress on compliance by the United States with the DSB's decision. Nor have they seen substantial progress by the United States in achieving a settlement with Antigua and Barbuda. Antigua and Barbuda

continues to be disappointed by the lack of progress in the case and to suffer the impact of the shutdown of the online gambling industry which was once the second largest employer. The negative consequences of this protracted impasse are very real for Antigua and Barbuda. It should be clear that further delay is not an option, nor should it be an option for the DSB. It is not a secret that WT/DS285 is regarded as a test case for those Member states seeking to determine whether the DSU can deliver practical and timely benefits for small and vulnerable economies. The delegation of Antigua and Barbuda continues to call on the United States to explain why it is not yet in a position to honour the decision of the DSB, or to reach an agreed settlement with Antigua and Barbuda. After more than five years of patient negotiation, Antigua and Barbuda has come reluctantly to the view that only utilization of the authorization for cross-retaliation received from the DSB on 28 January will move this matter forward. But before it sets its foot to that path, Antigua and Barbuda appeals to the United States to make one last effort at bringing its complex bureaucratic structure to a decision that will avoid unpredictable consequences. The delegation of Antigua and Barbuda also appeals to the DSB to realize that justice delayed is justice denied; and urges closer attention to the systemic issues that surround this case that threaten the health of the system the WTO has for the resolution of trade disputes."

6.3. The representative of Dominica further stated that there was a longer version of the statement prepared by Antigua and Barbuda and requested that it be included in the records of the present meeting.

6.4. The Chairman noted the request and said that this would be done.

6.5. The representative of the United States said that his country would like to comment on both the substantive and procedural comments made by Dominica on behalf of Antigua and Barbuda. With respect to the substance, the United States welcomed the engagement that it had with Antigua and would continue that constructive effort to resolve this matter. In that spirit of cooperation, the United States had no other remarks at the present meeting on the substance. With respect to Dominica's comment that it would like to submit a longer statement for the record on behalf of Antigua and Barbuda, the United States was a bit surprised by this unusual request and was concerned that it would prevent the United States from having the opportunity to fully respond to the statement. As this was a bit unusual, the United States believed that Members should further consider whether it was appropriate to put that into the record.

6.6. The Chairman said that he would review this matter in detail and observed, from a personal perspective, that if a more detailed statement provided more information to the Membership, this would in his view educate the Membership. He said he would, however, abide by the WTO's rules of procedure.

6.7. The representative of the Bolivarian Republic of Venezuela said that her country supported Antigua and Barbuda's statement as delivered by Dominica. Venezuela noted that this was another case of failure to respect the DSB's recommendations and rulings. There seemed to be the US refusal to comply with the DSB's recommendations and rulings on cross-border gambling services by Antiguan providers to US users. This violated Article 21 of the DSU, and affected a developing-country Member whose economy was based on service providers. Thus, Venezuela supported Antigua and Barbuda and condemned the US lack of compliance. Venezuela urged the United States to make progress in this dispute.

6.8. The representative of Cuba said that her country fully supported the statement made by Dominica, on behalf of Antigua and Barbuda. The monthly DSB Agenda confirmed the large number of cases where one Member had failed to comply with the DSB's recommendations and rulings. Cuba stressed that this was another unfortunate case of a long-standing failure by the United States to comply with the DSB's recommendations and rulings. The US non-compliance in this dispute affected the interests of Antigua and Barbuda, a small vulnerable economy that needed the resources that were at stake in this dispute. Compliance in this dispute would enable Antigua and Barbuda to rely on those resources for its further economic development. Cuba, once again, urged the United States to take stock of the pending non-compliance issues in the DSB and to find solutions to all its disputes that were currently before the DSB.

6.9. The Chairman said that, before closing off this item, and without again offering a final ruling, he wished to make a few remarks. First, consistent with the General Council's Rules of Procedure

and in the interests of having expedited proceedings at meetings, there was a general preference for shorter statements with further elaboration to be circulated in writing, rather than reading out long statements. He acknowledged, however, that the element of surprise should be discouraged. He observed that, rather than having an item under "Other Business" with a long statement that did not give other delegations an opportunity to respond, one would normally expect advance notice of such item, or a request to put the item on the Agenda so that delegations could circulate thoughts in advance, in the interests of fostering dialogue. He said that, in his view, on balance, the main interest was transparency and full information. Therefore, taking all that into account, he expressed confidence that Members would come up with a practical procedure that would balance all of these considerations in the future.

6.10. The representative of the United States said that his country appreciated the views shared by the Chair on this issue. The United States believed that the DSB minutes should reflect what was actually stated in the meeting and would be concerned about taking an action that could set a different precedent.

6.11. The Chairman said that, at times, in the General Council or in other WTO bodies, a delegation may, as a result of shortage of time, make a short statement and submit a longer written statement to which Members would have an opportunity to refer at a later time in order to respond. There was, therefore, a balance that needed to be struck. He said that he would welcome comments between now and the next DSB meeting in order to find the best solution to this matter.

6.12. The DSB took note of the statements.[10]

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[10] Subsequently, the longer version of the statement by Antigua and Barbuda was circulated in document WT/DS285/26.