



Dispute Settlement Body
26 February 2016

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 26 FEBRUARY 2016

Chairman: Mr. Harald Neple (Norway)

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1 SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.157)

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.132)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.95)

D. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.43)

E. United States – Countervailing measures on certain hot-rolled carbon steel flat products from India: Status report by the United States (WT/DS436/14/Add.3)

1.1. The Chairman noted that there were five sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. He recalled that Article 21.6 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 and shall remain on the DSB's Agenda until the issue is resolved". Under this Agenda item, he invited delegations to provide up-to-date information about compliance efforts and to focus on new developments, suggestions and ideas on progress towards the resolution of disputes. He reminded delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "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".

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.157)

1.2. The Chairman drew attention to document WT/DS184/15/Add.157, 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.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 15 February 2016, 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. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that his country thanked the United States for its statement and status report submitted on 15 February 2016. Japan referred to its previous statements that this issue should be resolved as soon as possible.

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

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.132)

1.6. The Chairman drew attention to document WT/DS160/24/Add.132, 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.

1.7. The representative of the United States said that his country had provided a status report in this dispute on 15 February 2016, 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.

1.8. The representative of the European Union said that the EU thanked the United States for its status report and its statement made at the present meeting. The EU referred to its previous statements made under this Agenda item at previous DSB meetings. The EU wished to resolve this dispute as soon as possible.

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

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.95)

1.10. The Chairman drew attention to document WT/DS291/37/Add.95, 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.

1.11. The representative of the European Union said that, in recent meetings, the EU had already reported on authorisation decisions and other actions towards approval decisions taken up to November 2015. There were no new developments regarding the authorisations in the EU since the previous DSB meeting. More generally, and as stated many times previously, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.12. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. As the United States had noted at past meetings of the DSB, the EU's measures affecting the approval and marketing of biotech products remained of substantial concern to the United States. Delays in the consideration of biotech products, as well as current and impending EU Member state bans on products supposedly approved by the EU, represented serious obstacles to trade in agricultural products. Unfortunately, the United States was unaware of any recent positive developments in relation to the EU's measures. Indeed, even the EU official responsible for reviewing EU administrative actions had recently confirmed that the Commission had failed to take biotech approval decisions within a reasonable time. With regard to the problem of EU Member state bans, the situation appeared to be growing worse, not better. At least 19 Member States or sub-regions had declared their intention to "opt-out" of certain biotech approvals without providing any scientific basis. The United States urged the EU to ensure that its biotech approval measures were consistent with its obligations under the SPS Agreement.

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

D. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.43)

1.14. The Chairman drew attention to document WT/DS404/11/Add.43, 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.

1.15. The representative of the United States said that his country had provided a status report in this dispute on 15 February 2016, in accordance with Article 21.6 of the DSU. As the United States had noted at past DSB meetings, in February 2012 the US Department of Commerce had modified its procedures in a manner that addressed certain findings in this dispute. The United States would continue to consult with interested parties as it worked to address the other recommendations and rulings of the DSB.

1.16. The representative of Viet Nam said that her country thanked the United States for its statement and its status report in this dispute. Viet Nam continued to expect the relevant parts of the DSB's rulings and recommendations in this dispute to be implemented by the United States in the context of the implementation of the second shrimp dispute (DS429). Any delay in the implementation of the DS429 dispute may also delay the implementation of relevant parts of the DS404 dispute.

1.17. The representative of the Bolivarian Republic of Venezuela said that his country supported the statement made by Viet Nam. Venezuela had taken note of the most recent US status report dated 15 February 2016. Venezuela wished to refer to its previous statements on this matter and stressed the importance of prompt and full implementation of the DSB's recommendations and rulings. Any prolonged failure to comply with the recommendations undermined Members' confidence in the system as well as the authority of the DSB. Venezuela urged the United States to take the measures necessary to resolve this dispute and to report on the measures undertaken at the next DSB meeting.

1.18. The representative of Cuba said that her country supported the statement made by Viet Nam. Cuba reiterated the importance of effective compliance with the DSB's recommendations, in particular when the interests of a developing-country Member were affected. Cuba urged the United States to comply with the DSB's rulings and recommendations in this dispute and to finally resolve this dispute.

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

E. United States – Countervailing measures on certain hot-rolled carbon steel flat products from India: Status report by the United States (WT/DS436/14/Add.3)

1.20. The Chairman drew attention to document WT/DS436/14/Add.3, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US countervailing measures on certain hot-rolled carbon steel flat products from India.

1.21. The representative of the United States said that his country had provided a status report in this dispute on 15 February 2016, in accordance with Article 21.6 of the DSU. The United States recalled that the findings in this dispute involved determinations by the US Department of Commerce and the US International Trade Commission (USITC). On 5 October 2015, the US Trade Representative had requested the US Department of Commerce to issue a determination in the underlying proceeding that was not inconsistent with the findings of the Panel and the Appellate Body in this dispute. On 6 November 2015, the US Trade Representative requested that the USITC issue a determination in the underlying proceeding that was not inconsistent with the findings of the Panel and the Appellate Body in this dispute. The United States would continue to work to address the recommendations and rulings of the DSB and to consult with interested parties.

1.22. The representative of India said that his country thanked the United States for its status report in this dispute in accordance with Article 21.6 of the DSU. India noted that, on 6 November 2015, the USTR had requested that the USITC issue a determination that would render its action in that proceeding not inconsistent with the DSB's recommendations and rulings. India looked forward to the United States fully implementing the DSB's recommendations and rulings in this dispute by the expiry of the reasonable period of time on 19 March 2016.

1.23. 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, and he invited the respective representatives to speak.

2.2. The representative of the European Union said that the EU, once again, requested the United States to stop transferring anti-dumping and countervailing duties to the US industry. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations and rulings. The EU 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, since the distributions under the CDSOA had been continuing, Japan, once again, urged the United States to stop the illegal distributions in order to resolve this long-standing dispute. As it had stated at previous meetings, Japan was of the view that the United States was under obligation to provide the DSB with a status report in this dispute, in accordance with Article 21.6 of the DSU.

2.4. The representative of Canada said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. Canada shared their position that the Byrd Amendment remained subject to the DSB's surveillance until the United States ceased to administer it.

2.5. The representative of India said that his country shared the concerns of the EU and Japan. The WTO-inconsistent disbursements continued unabated to the US domestic industry. As stated in earlier DSB meetings, the latest data available¹ for the fiscal year 2014 indicated that about US\$70 million were disbursed to the US domestic industry. India was of the view that this item should continue to remain on the DSB's Agenda until such time that full compliance was achieved in this dispute.

2.6. The representative of Brazil said that her country thanked the EU and Japan for keeping this item on the DSB's Agenda. Brazil referred to its previous statements made under this Agenda item, in particular regarding the continuation of illegal disbursements. Brazil renewed its call on the United States to fully comply with the DSB's recommendations and rulings in these disputes.

2.7. The representative of China said that his country thanked the EU and Japan for placing this item on the Agenda of the present meeting. China urged the United States to fully comply with the DSB's rulings in this dispute.

2.8. The representative of the United States said that, as the United States had noted at previous DSB meetings, the Deficit Reduction Act, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000, had been enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States, furthermore, recalled that the EU, Japan, and other Members had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, over eight years ago. The United States therefore did not understand the purpose for which the EU and Japan had inscribed this item on the Agenda of the present meeting. With respect to comments regarding further status reports in this matter, as it had already explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports which would repeat, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Indeed, as these very WTO Members had demonstrated repeatedly when they had been a responding party in a dispute, there was no obligation under the DSU to provide further status reports once a Member announced that it had implemented those DSB's recommendations and rulings, regardless of whether the complaining party disagreed about compliance.

2.9. The DSB took note of the statements.

¹ <http://www.cbp.gov/sites/default/files/documents/FY2014%20Annual%20Report%20wHolds.pdf>

3 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. Statement by the United States

3.1. The Chairman said that this item was on the Agenda of the present meeting at the request of the United States, and he invited the representative of the United States to speak.

3.2. The representative of the United States said that his country continued to have serious concerns that China had failed to bring its measures into conformity with its WTO obligations. As the United States had noted at past meetings of the DSB, China continued to impose its ban on foreign suppliers of electronic payment services ("EPS") by requiring a license, while at the same time failing to issue all specific measures or procedures for obtaining that license. The United States previously had taken note of an April 2015 State Council decision, which indicated China's intent to open up its EPS market following issuance of implementing regulations by the People's Bank of China and the China Banking Regulatory Commission. To date, however, China had not issued these regulations. As required under its WTO obligations, however, China must adopt the implementing regulations necessary for allowing the operation of foreign EPS suppliers in China. Furthermore, once adopted, any regulations must be implemented in a consistent and fair way. The United States continued to look forward to the prompt issuance and implementation of all measures necessary to permit foreign EPS suppliers to do business in China.

3.3. The representative of China said that his country regretted that the United States had, once again, brought this matter before the DSB. China referred to its statements made at previous DSB meetings under this Agenda item. China emphasized that it had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute. China hoped that the United States would reconsider the systemic implications of its position.

3.4. The DSB took note of the statements.

4 THAILAND – CUSTOMS AND FISCAL MEASURES ON CIGARETTES FROM THE PHILIPPINES

A. Statement by the Philippines

4.1. The Chairman said that this item was on the Agenda of the present meeting at the request of the Philippines and he invited the representative of the Philippines to speak.

4.2. The representative of the Philippines said that her country wished to express its deep concerns about the most recent action of Thailand prosecuting an importer of Philippine cigarettes for the alleged under-declaration of customs value. The Philippines had reported at the previous DSB meeting that the circumstances surrounding the prosecution had demonstrated a very close relationship to the circumstances surrounding the measures at issue in the original WTO proceedings. It involved the same exporter, the same exporting country, the same product, the same declared customs values for the same brands, in the same circumstances of sale. Moreover, it used the same type of legal determination that Thailand itself had abandoned as grounds for its valuation decisions in the original Panel proceedings. Apart from that, there were a series of compliance issues that remained outstanding, nearly four years after Thailand was supposed to have fully complied with the DSB's recommendations and rulings. The Philippines reiterated that of particular importance was a ruling by the Thai Customs Board of Appeals (or "BoA") rejecting transaction value for 210 entries that were covered by the DSB's rulings and recommendations in the original proceedings. As the Philippines had previously noted, the ruling was based on the application of WTO-inconsistent methodology with respect to the customs valuation of related party transactions. Furthermore, the Philippines was deeply disturbed that Thai Customs had explicitly advised the Thai court that they did not need to follow the WTO ruling because it supposedly bound only the Philippines, as the party that had brought the dispute, and did not bind Thailand. In compliance with the DSB's rulings, the Philippines emphasized that all Thai Government instruments, whether executive, legislative, or judicial, were bound by the findings set out in the WTO's rulings, in particular for the issues the Philippines had described at the present meeting. All were bound, to the extent that they engaged in customs valuation, by the disciplines of the WTO Customs Valuation Agreement. While it continued to express its openness to

resolving these issues bilaterally, the recent developments compelled the Philippines to reserve its right to revert to dispute settlement proceedings.

4.3. The representative of Thailand said that his country noted the statement made by the Philippines. As stated in its previous status reports and at the DSB meetings, Thailand had taken all actions necessary to implement the DSB's recommendations and rulings with regard to this dispute.

4.4. The DSB took note of the statements.

5 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS

5.1. The Chairman drew attention to document WT/DSB/W/562, which contained two additional names proposed by Australia 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/562.

5.2. The DSB so agreed.

6 STATEMENT BY CUBA ON THE DISPUTE: "UNITED STATES – SECTION 211 OMNIBUS APPROPRIATIONS ACT OF 1998"

6.1. The representative of Cuba, speaking under "Other Business" said that her country wished to place on record its concern about the procedural error made at the 25 January 2016 DSB meeting with respect to the request to withdraw from the DSB's Agenda the matter concerning the Section 211 dispute. At that meeting there was no consensus to do this since many Members had opposed to such a withdrawal. Under Article 21.6 of the DSU there is an obligation to keep under surveillance the implementation of recommendations of unresolved disputes. In accordance with that Article, there were only two situations in which the issue of implementation of recommendations may be withdrawn from the Agenda: (i) when the dispute had been resolved; or (ii) when the DSB so decided by consensus, as provided for in Article 2.4 of the DSU read in conjunction with Article 21.6 of the DSU. Neither of these two situations had occurred in this case. Cuba noted that the EU and the United States had recognized that recent developments, though positive, did not constitute a resolution of the dispute, which made it clear that it had not been resolved. Cuba also noted that although the DSB may take the decision to withdraw the item from its Agenda (despite the dispute not being resolved), that decision must be taken by consensus, i.e. without any formal opposition by any delegation present at the meeting. This did not happen since Cuba and other Members had opposed the withdrawal of the matter. These were the only two possibilities permitted under Article 21.6 of the DSU for withdrawing dispute DS176 from item 1 of the DSB's Agenda. Cuba recalled that the Chairman had stated that only "the Members affected", understood as the parties to the dispute, could agree to remove the item from the Agenda of the monthly DSB meetings and had suggested that Cuba could raise this matter as a separate item at future DSB meetings. In Cuba's view, this procedure created a negative precedent and was contrary to the DSU provisions. Cuba believed that the proposed solution to this matter was not consistent with Article 21.6 of the DSU, which required that this dispute be kept under item 1 of the DSB's Agenda at future meetings.

6.2. Cuba further stated that Section 211 remained in force, and therefore the danger of cancellation of the Havana Club trademark registration remained latent. Even more important was the fact that Section 211 prevented the US courts from recognizing Cuban trademarks and patents. Recently, Bacardi had submitted a request to the US Treasury Department to explain the reasons for its decision to grant renewal of the Havana Club trademark registration to the Cuban Government and to request the US Patent and Trademark Office to reverse the registration. Moreover, on 11 February 2016, a hearing was held in the Intellectual Property Subcommittee of the US House of Representatives Judiciary Committee to evaluate future actions by that body with respect to the Havana Club trademark. From the statements of the Bacardi company and the government officials who had attended the meeting, it was clear that this matter was still far from reaching a satisfactory solution and would encounter major and costly legal conflicts in the near future. Cuba not only had a systemic interest in this dispute; it was also the Member directly affected by this dispute. Therefore, Cuba reserved its right to bring this matter back to the DSB, if

necessary, to demand the repeal of the measure by the United States. Cuba reiterated that Section 211 incorporated the range of laws that constituted the unilateral, unjust and illegal US blockade policy against Cuba, which had been rejected by the international community. Cuba, therefore, would not rest until Section 211 was repealed.

6.3. The representative of the Plurinational State of Bolivia said that his country thanked Cuba for its statement made at the present meeting, which provided the correct understanding of what had happened at the previous DSB meeting. Bolivia continued to be surprised by how things were managed in the WTO. Bolivia did not understand the grounds on which this matter was removed from the DSB's Agenda, and in particular from Agenda item 1 regarding the surveillance of implementation of recommendations adopted by the DSB. The text of Article 21.6 of the DSU was clear. Matters could be removed from the Agenda only in two situations: (i) the dispute was resolved; or (ii) the DSB so decided by consensus. To date, neither of those two conditions had been met. Bolivia attached considerable importance to transparency, not only in terms of notifications but in terms of how the business of the WTO was conducted. Bolivia, therefore, found it difficult to understand what had happened with respect to this dispute. Bolivia received some questions from its capital as to who had decided to remove this item from the DSB's Agenda. In Bolivia's view, it was not clear why the item had been removed from the Agenda and who would benefit from this action. However, the most important issue was how to rectify this situation. For the time being, Bolivia did not have the answer. Such actions undermined the credibility of the WTO and of the multilateral trading system since the interests of small countries were affected. With regard to the substance of this dispute, for the past 14 years, Bolivia sympathized with Cuba's situation, which had negative consequences for Cuba's economy, as a result of misappropriation of the Havana Club rum trademark by the US Bacardi company, which was in breach of the rights of the Cuba export company. Bolivia urged the United States to comply with the DSB's rulings and recommendations of 2002 and to lift the restrictions imposed by Section 211.

6.4. The representative of China said that his country welcomed the progressive steps in this dispute and the recent developments in the bilateral relations between the United States and Cuba. However, the prolonged situation of non-compliance was inconsistent with the principle of prompt compliance under the DSU provisions and undermined the credibility of the multilateral trading system. China, therefore, urged the United States to amend the relevant domestic regulation and fully comply with the DSB's rulings and recommendations without any further delay.

6.5. The representative of Jamaica said that her country thanked Cuba for its statement outlining substantive and systemic concerns regarding this item, which was removed from the DSB's Agenda. In spite of the positive developments in this dispute, which had been reported at the 25 January 2016 DSB meeting, Jamaica's understanding was that full compliance with the DSB's rulings and recommendations in this dispute would require further action by the United States, in particular the repeal of Section 211. It was true that the WTO Membership could take some comfort from the cooperative approach exhibited by the parties to the dispute at a time of increased engagement and positive developments in diplomatic relations between the United States and Cuba. However, the reality was that the positive steps that had been taken were not irreversible and, indeed, lacked the finality that would give Members confidence that the matter could be put firmly behind them. In light of the statements made by Cuba and the parties affected by this dispute, Jamaica, therefore, supported and recognized the right of Cuba or any other delegation to raise the issue of implementation in this dispute at any future DSB meeting under the relevant Agenda item.

6.6. The representative of Nicaragua said that his country joined the previous speakers in supporting the statement made by Cuba regarding Section 211, which remained in force and continued to affect Cuba. At the 25 January 2016 DSB meeting, Nicaragua was one of the countries that had objected to the removal of this item from the DSB's Agenda. Therefore, Nicaragua was surprised that this item was not on the Agenda of the present meeting despite the fact that this dispute remained unresolved and that there was no consensus to withdraw the matter from the DSB's Agenda. Nicaragua urged the United States to comply with the DSB's rulings and recommendations and to put in place all relevant measures to resolve this dispute. Continued non-compliance in this dispute undermined the multilateral trading system and in particular the DSB. Finally, Nicaragua sought clarification as to why this item was removed from the Agenda of the present meeting.

6.7. The representative of Ecuador said that his country supported the statement made by Cuba. Ecuador did not wish to repeat its position on this matter, which was well known and had been expressed on many previous occasions. This procedural issue affected the substantive issue of prompt compliance with the DSB's rulings and recommendations. Ecuador recalled that, as mentioned by Cuba, Article 2.4 of the DSU required the DSB to take decisions by consensus. Ecuador noted that, at the previous DSB meeting, there had been no consensus to remove this item from the Agenda because, as stated by Cuba, a number of delegations, including Ecuador, had asked that this item remain on the Agenda. It was therefore a surprise to see that the item was not on the Agenda of the present meeting. As stated by Cuba, Article 21.6 of the DSU had not been complied with in this dispute. This item must remain on the Agenda because the dispute was unresolved. Ecuador called upon the United States to step up its efforts to ensure compliance with the DSB's rulings and recommendations and to repeal Section 211. Ecuador reiterated that in domestic legislations, Members must take into account international agreements. In Ecuador's view, international agreements should take precedence over domestic legislations, which in turn must be brought into line with international commitments. Otherwise, what was the point of being a Member of an international organization? What was the point in signing international treaties or agreements? The exercise of sovereignty allowed countries to transfer authority to international organisations and international agreements by which they were bound. If that was not respected then conflict between domestic and international legislations would arise. International law took precedence over domestic law and countries must bring their domestic law into line with international agreements. In that regard, Ecuador urged the United States to bring its domestic legislation into line with international agreements.

6.8. The representative of India said that this long-standing dispute had repeatedly been placed on the DSB's Agenda. India noted that the surveillance of implementation of the DSB's rulings and recommendations was a central pillar of the dispute settlement system. It was clear that compliance with the DSB's rulings and recommendations had not been achieved in this dispute. At the previous DSB meeting, positive developments had been reported with respect to the resolution of this dispute. However, it was clear that compliance had not yet been achieved. Article 21.6 of the DSU laid out the DSB's surveillance mandate and stipulated that "[t]he DSB shall keep under surveillance the implementation of adopted recommendations or rulings." It also provided that "[t]he issue of implementation of recommendations or rulings may be raised at the DSB by any Member", not only parties to the dispute, "at any time following their adoption". Further, "[u]nless 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". It was clear that this issue had not been resolved. India believed that the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB until the issue was resolved. India renewed its systemic concerns about the continuation of non-compliance in particular in the context of a developing-country Member seeking compliance. In India's view, continued non-compliance by Members eroded the confidence and credibility of the WTO dispute settlement system. India urged the United States to report on compliance in this regard without further delay.

6.9. The representative of the Russian Federation said that her country drew attention to the explicit wording of the DSU that should guide the Membership on this issue: "Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall remain on the DSB's agenda until the issue is resolved". There was no doubt that currently the issue remained unresolved. Russia, therefore, expressed its concern about the present situation and emphasized the importance of taking all steps necessary to fully comply with the DSB's recommendations and rulings so as to resolve this matter.

6.10. The representative of Angola said that his country had hoped to see the resolution of this dispute but unfortunately this was not the case. Angola took note of the current status of this dispute and understood the logic behind Cuba's concern. In Angola's view, Members had to take into account different positions expressed by both sides in order to find a satisfactory solution to this dispute. Thus, Angola requested that the United States fully comply with the DSB's recommendations and rulings.

6.11. The representative of Zimbabwe said that at the DSB meeting on 25 January 2016, his country had objected to the removal of this item from the DSB's Agenda because this issue had not been resolved. In that regard, there was no consensus, and Zimbabwe was surprised that this

issue was not on the Agenda of the present meeting. Zimbabwe supported the statement made by Cuba, and while it recognized the positive action and steps taken by the US administration in resolving this matter, the full implementation of the DSB's rulings and recommendations was yet to be achieved. Therefore, Zimbabwe urged the United States to fully comply with the DSB's rulings and recommendations.

6.12. The representative of Brazil said that her country was not aware that the issue of implementation in the DS176 dispute would be raised under "Other Business" at the present meeting and, therefore, it was not prepared to discuss this matter. Nevertheless, Brazil wished to make two brief comments. First, it seemed not to be appropriate to discuss implementation of any dispute under "Other Business". Second, Brazil wished to highlight that both the EU and the United States had agreed that there was no full implementation of the DSB's recommendations and rulings in this dispute. If that was the case, Brazil wondered how an unresolved dispute could fall off the DSB's surveillance under Article 21.6 of the DSU. Even if practice had evolved that for an item to be put on the Agenda under item 1 the responding party had to make such a request, Article 21.6 of the DSU was clear as it required that the issue of implementation be placed on the Agenda and remain therein until it was resolved.

6.13. The representative of El Salvador said that her country thanked Cuba for placing this item on the DSB's Agenda. El Salvador had listened carefully to Cuba's statement on the application and interpretation of Article 21.6 of the DSU. El Salvador agreed with the legal arguments put forward by Cuba that, at the 25 January 2016 DSB meeting, the conditions set out in Article 21.6 had not been met and, therefore, the DS176 dispute had to be kept on the DSB's Agenda. El Salvador wished to place on record its concern regarding the need to preserve the legality of the DSB's proceedings and to provide legal certainty to the system. Since the dispute had not been resolved, and once again with a view to concluding this long-standing dispute, El Salvador urged the parties to this dispute to promptly find a way to comply with the DSB's recommendations and rulings, bearing in mind that this dispute was adversely affecting a small developing-country Member. El Salvador took note of the fact that Cuba reserved its right to place this matter on the DSB's Agenda in the future.

6.14. The representative of Viet Nam said that her country supported the statement made by Cuba at the present meeting. Viet Nam noted that the United States and Cuba had important and positive restoration of bilateral diplomatic relations. Viet Nam further noted that the United States had taken certain measures towards lifting the blockade against Cuba. However, the issue was not fully resolved and Viet Nam shared the concerns raised by Cuba, Bolivia, and other Members. Despite positive steps taken by the United States, Viet Nam urged the United States to fully comply with the DSB's rulings and recommendations in this dispute. With regard to the concerns raised by Members at the present meeting, Viet Nam sought clarification regarding the removal of this matter from the Agenda of the DSB.

6.15. The representative of Uruguay said that, at previous DSB meetings, Uruguay had made statements regarding this dispute and recognized the steps taken in the right direction by the United States. Uruguay had, on previous occasions, also pointed out that this was an issue that affected the interests of a developing-country Member. Therefore, Uruguay called on the parties to promptly resolve this dispute. With regard to what Cuba had stated at the present meeting, Uruguay believed that this issue required a technical and legal analysis. At the present meeting, Uruguay was not in a position to take a position on this matter and in that regard, it reserved its right to revert to this issue and to express its position at future meetings.

6.16. The representative of Canada said that his country thanked Cuba for raising this systemic issue at the present meeting. Canada had listened to the points raised by Cuba and other delegations. Canada took no position on whether the parties to the dispute in question had acted correctly when the dispute had not been put on the Agenda of the present meeting, and Canada certainly did not wish to interfere in any way with the efforts of the parties to resolve this dispute. Canada, however, wished to comment on a systemic issue, especially in light of the points raised by other delegations about the systemic consequences of the developments in this dispute. In recent years, questions had been raised, both in the DSB and in the DSB Special Session, about the surveillance practices that had emerged in the DSB. Such questions concerned whether the current practices were coherent, whether they were effective, and in particular whether they were, in their current form at least, an efficient use of the DSB's time. As others had pointed out, Article 21.6 of the DSU provided that disputes remained under the DSB's surveillance until they

had been "resolved". Using the ordinary meaning of the term "resolution", the scope of the DSB's surveillance mandate was potentially quite broad. Beyond that term, however, Article 21.6 of the DSU did not specify precisely the circumstances in which that surveillance responsibility was to be discharged. The specifics had instead emerged through practice in the DSB. Judging in part by the titles used for the items on the DSB's Agendas, the practice that had emerged over the years seemed to be that formal DSB surveillance only occurred for disputes in which the responding party had not claimed compliance. These disputes were put on the Agenda at the request of the responding party and were accompanied by a status report. Once compliance was claimed however, regardless of whether the other party agreed with that claim such that the dispute could be seen to be "resolved", the dispute was no longer under the formal surveillance of the DSB. The second sentence of Article 21.6 of the DSU had given rise to a second category of indirect surveillance, which usually took place under items 2 through 5 or 6 of the DSB's Agenda, depending on the meeting. In those circumstances, the item was at the request of the complaining party. These additional Agenda items were arguably still a legitimate part of the DSB's official surveillance mandate, albeit they were not formally labelled as such.

6.17. There were also other categories of disputes that were arguably still technically under the DSB's surveillance in the sense that they were not yet "resolved". These included: (i) disputes in which the responding party had claimed compliance, a claim with which the complaining party disagreed, but chose not to raise it again in the DSB; (ii) disputes that were subject to compliance review; and (iii) disputes that were subject to an authorization for retaliation. These disputes were not resolved and as such, remained under the DSB's surveillance. Canada did not contest the legitimacy of the practice of implementing surveillance in this way, even if it involved an evolution from the original language in the DSU. Put simply, the DSB's surveillance regime could be characterized as consisting of disputes in which there was no claim of compliance being subject to formal surveillance and once compliance had been claimed, disputes that fell into one of the other categories of informal surveillance, depending on the circumstances. Developments in the DSB's surveillance of the DS176 dispute seemed, however, to introduce a new category of surveillance that did not fit within the practice that had emerged. In fact, moving the DS176 dispute from the first category to the second category, despite the fact that there had been no claim of compliance, and indeed there was explicit agreement that the dispute had not been resolved, led Canada to wonder whether the DSB's surveillance mandate could be fairly described simply as "whatever the parties to a dispute agree it to be".

6.18. Canada was not in principle opposed to allowing the disputing parties to determine the nature of the surveillance that was required. After all, if the parties agreed that formal surveillance was not required, why would other Members or the DSB want to interfere with that agreement, especially if it helped them resolve their dispute. Canada did, however, consider that it was important that the DSB strike the right balance between its collective responsibility to administer the DSU, including the compliance and surveillance provisions, and the right of parties to agree on the trajectory that their dispute would follow. For instance, while the DSB should be, and generally was, reluctant to interfere with agreements between parties to existing disputes, it did have a responsibility to provide to other Members a degree of certainty and predictability about how they should expect to conduct themselves in future disputes. As the surveillance practices became more ad hoc and variable depending on the dispute, which created uncertainty about how DSB surveillance actually operated, Canada wondered whether it was time for the DSB to consider taking stock of its surveillance practices and attempting to clarify the scope and operation of its surveillance responsibilities, and provide more certainty to Members about their responsibilities and options in disputes subject to surveillance obligations. As part of such an exercise, the DSB could, for instance, reaffirm that disputes remained under surveillance until they were resolved; codify the clear preference and practice that the parties to a dispute retained a degree of control over whether the DSB would consider an item; and provide guidance on when and how disputes would be put on the Agenda. Members may in the process consider reducing the need and the incentive for parties to make repetitive statements at every DSB meeting when there were no new developments in a dispute. Canada stood ready to engage formally and informally with other Members to develop such guidance to clarify and improve the operation of the DSB's surveillance mandate.

6.19. The representative of Mexico said that his country urged the United States to promptly comply with Article 21.1 of the DSU. Mexico reserved its right to revert to the procedural issues raised at the present meeting.

6.20. The representative of Argentina said that it was not his country's intention to make a statement on this matter under "Other Business". Argentina simply wished to urge the parties to this dispute to find a solution as soon as possible. Argentina took note of the argument put forward by Cuba regarding the fact that this matter had not been placed under Agenda item 1 of the present meeting. However, Argentina had nothing further to add on this matter at the present meeting.

6.21. The representative of Peru said that her country was not aware that this matter was going to be raised under "Other Business". Although some progress had been made in this dispute, Peru shared the concerns raised by delegations at the present meeting. In that regard, Peru reiterated its position and urged the parties to this and other disputes to take all measures necessary to comply with the DSB's recommendations and rulings. Peru would monitor this dispute and hoped that necessary steps would be taken to resolve it. Peru reserved its right to revert to this matter at a later date.

6.22. The representative of the United States said that his country queried whether the Members speaking under this item had considered the rules they had adopted in the DSB before preparing those interventions. Rule 25 of the DSB Rules of Procedure stated that: "[r]epresentatives should avoid unduly long debates under 'Other Business'. Discussions on substantive issues under 'Other Business' shall be avoided, and the General Council shall limit itself to taking note of the announcement by the sponsoring delegation, as well as any reactions to such an announcement by other delegations directly concerned".² The United States referred Members to its statement made at the DSB meeting on 25 January 2016, noting significant positive developments in this matter and the more cooperative approach agreed by the disputing parties.

6.23. The representative of the European Union said that the EU wished to refer to its statement made on this matter at the 25 January 2016 DSB meeting.

6.24. The representative of the Bolivarian Republic of Venezuela said that his country thanked Cuba for raising this matter under "Other Business". Venezuela fully supported the statement made by Cuba and shared its concerns. In Venezuela's view, there had been a procedural error regarding the interpretation of Article 21.6 of the DSU. Venezuela believed that there was a need for the DSB to monitor the implementation of the DSB's rulings and recommendations, which was why this particular matter should remain on the DSB's Agenda until the dispute had been resolved. This should not set a precedent for future work of the DSB. With respect to this dispute, the circumstances covered by Article 21.6 had not occurred since Section 211 had not been repealed. Furthermore, under Article 2.4 of the DSU, decisions could only be taken by consensus. In other words, no Member should object to the proposed decision. This was not what had happened at the previous DSB meeting given that Cuba's request had been supported by other Members, including Venezuela. This matter could have systemic implications for the DSB and the credibility of the dispute settlement system. In that regard, Venezuela emphasized the importance of respecting the DSU provisions.

6.25. The representative of Cuba said that her country wished to comment on the statement made by Canada. Cuba would appreciate it if Canada could circulate its statement to all delegations. Cuba noted that Canada had provided a number of possible interpretations of DSB practices. However, Cuba believed that, in international law, practice could never override the law. Cuba underlined that Article 21.6 of the DSU was clear, but it had not been properly complied with. Furthermore, with respect to this dispute, a group of Members had objected to this matter being removed from Agenda item 1 since this dispute had not been resolved and should remain under the DSB's surveillance. Cuba was not aware of any precedent in this regard. In Cuba's view, Article 21.6 of the DSU did not provide for this situation. The position taken on this matter had significant systemic implications and had to be carefully considered in order to avoid setting a negative precedent. Article 21.6 of the DSU was clear that all Members must participate in the decision-making process and not just the parties to the dispute. Cuba did not just have a systemic interest in this matter, but as a developing-country Member, it was directly affected by this dispute. Cuba, therefore, reserved its right to revert to this matter at an appropriate time.

² WT/L/161, WT/DSB/9, Rule 25 (emphasis added).

6.26. The representative of Ecuador said that his country supported the statement made by Cuba. In Ecuador's view, Members must respect the rule of law in the WTO. Members had to recognize that there was such a thing as customary practice and that trade practice and trade customs were generally accepted, in particular in civil law countries. However, there were some requirements to be considered including whether there was a legal recognition of that practice or custom, by the law. If the text of the law did not recognize customary practice, it could not be invoked. Such customary practice must meet certain requirements and cannot be against the law. The law could not be amended through practice. This was often a matter for private law if looking at civil law in individual cases, but not with respect to WTO law.

6.27. The Chairman said that this matter was being discussed under "Other Business" and, therefore, the DSB could only take note of the statements made. It would be up to delegations to raise this issue in any manner, including in terms of the systemic implications going forward if they so wished.

6.28. The DSB took note of the statements.

7 THE DISPUTE SETTLEMENT WORKLOAD

A. Statement by the Chairman

7.1. The Chairman, speaking under "Other Business", said that he wished to provide information about the Appellate Body's workload, the number of disputes in the panel queue and at the panel composition stage and the ability of the Secretariat to meet expected demand over the coming period. With regard to appeals, he said that the Appellate Body was currently dealing with two appeals.³ Based on the projected dates for the circulation of the next panel reports, the Appellate Body could expect that up to four more appeals may be filed in the first half of 2016.⁴ Several more appeals were likely in the second half of 2016, including the extremely large compliance proceedings in the "EC and Certain member States – Large Civil Aircraft (Airbus)" dispute. Given the limited number of staff available in the Appellate Body Secretariat, as of the second half of 2016 there was likely to be a waiting period until all these appeals could be staffed and Appellate Body members could turn to dealing with them. With regard to panels/arbitrations, currently there were 21 composed panels (including two panels under Article 21.5 of the DSU) that had not yet issued a final report to the parties. He noted that he was counting multiple disputes that were being considered simultaneously by the same panel as one. For example, "Australia – Tobacco Plain Packaging" panels, which were in fact four active disputes, were counted as a single panel in his report. In addition, he said that he had excluded suspended panels. The Rules Division and the Legal Affairs Division continued to work together to reduce the queue of panels awaiting availability of staff to assist the panels that had been composed. Currently, there were five composed panels awaiting staff to assist them⁵, three of which were composed after 31 October 2015, when the Director-General had addressed the DSB. Four of the panels that were in the queue as of 31 October 2015 were currently staffed and active.⁶ As of the present day, there were six panels at the composition stage.

7.2. The DSB took note of the statement.

³ DS453 "Argentina – Financial Services"; DS461 "Colombia – Textiles".

⁴ DS456 "India – Solar Cells"; DS464 "US – Washing Machines"; DS473 "EU – Biodiesel"; and DS475 "Russia – Pigs".

⁵ DS486 "EU – PET"; DS488 "US – OCTG" (Korea); DS480 "EU – Biodiesel" (Indonesia); DS490/DS496 "Indonesia – Iron or Steel Products"; and DS491 "US – Coated Paper" (Indonesia).

⁶ DS487 "US – Tax Incentives"; DS479 "Russia – Commercial Vehicles"; DS483 "China – Cellulose Pulp"; and DS482 "Canada – Welded Pipe".

8 ELECTION OF CHAIRPERSON

8.1. The Chairman said that he had enjoyed working with all delegations throughout the past year. He had learned to value the DSB system even more, through his experience of working with delegations who were the guarantors of a very important part of the WTO system. As Members were aware, at its meeting on 24 February 2016, the General Council had taken note of the consensus on a slate of names for Chairpersons to a number of WTO bodies including the DSB. On the basis of the understanding reached by the General Council, he proposed that the DSB elect by acclamation Ambassador Xavier Carim of South Africa as Chairman of the DSB.

8.2. The DSB so agreed.

8.3. The incoming Chairman said that he thanked the outgoing Chairman, Ambassador Harald Neple and wished him well in his new responsibilities as Chairman of the General Council. It was an honour for him to have been elected as Chairman of the DSB and he thanked the Membership for the confidence that it had shown in him. He also wished to express his deep gratitude to the African Group for supporting his nomination. He was certainly looking forward to taking up this role as the Chair of the DSB and to working closely with all delegations over the course of 2016. He would depend on all delegations and the Secretariat to ensure that the DSB work would proceed as smoothly as possible. From time to time, he would depend on Ambassador Neple, who had done an excellent job over the course of 2015, to help him navigate any difficult issues that may arise.

8.4. The representative of the United States said that his country congratulated Ambassador Carim on his election, and extended its welcome to him as he assumed the Chairmanship of the DSB. The United States looked forward to working with him over the coming year. The United States also thanked Ambassador Neple for his many contributions to the work of the DSB during the past year.

8.5. The representative of the European Union said that the EU warmly welcomed Ambassador Carim to the DSB. The EU was sure that delegations were in excellent hands, as during Ambassador Neple's term. The EU wished Ambassador Neple all the best as the new Chairman of the General Council.

8.6. The representative of Mexico said that his country welcomed Ambassador Carim and thanked Ambassador Neple for his efficient work. Mexico wished him every success in his future endeavours.

8.7. The representative of Japan said that his country congratulated Ambassador Carim on his election as the new Chairman of the DSB. Japan looked forward to working with him in the coming year. Japan also wished to express its appreciation to Ambassador Neple for his excellent work in handling difficult tasks related to the DSB. Japan wished him all the best in his new challenging assignment as the next Chairman of the General Council.

8.8. The representative of Jamaica, speaking as Chair of the CARICOM Group said that her country and the CARICOM Group warmly welcomed Ambassador Carim as the Chairman of the DSB and thanked Ambassador Neple for his excellent stewardship of the DSB over the past year.

8.9. The representative of China said that his country joined other delegations in welcoming Ambassador Carim as the new Chairman of the DSB and looked forward to his leadership in carrying out the work of the DSB this year. China also thanked Ambassador Neple for his excellent work during the past year.

8.10. The representative of Angola said that his country thanked Ambassador Neple for his work and welcomed Ambassador Carim. Angola wished them both success.

8.11. The representative of the Russian Federation said that her country joined other Members in welcoming Ambassador Carim as the Chairman of the DSB and wished him a good and productive term of office. Russia was certain that the DSB would benefit in the best way under his Chairmanship. Russia also thanked Ambassador Neple for his wise and efficient Chairmanship and wished him all the best in his new assignment.

8.12. The representative of Zimbabwe said that his country joined other delegations in welcoming Ambassador Carim and wished him the best. Zimbabwe hoped that Ambassador Carim would continue to steer the DSB in the manner Zimbabwe knew he would. Zimbabwe wished Ambassador Neple all the best in his new role as the Chairman of the General Council.

8.13. The representative of Korea said that his country welcomed Ambassador Carim as the new Chairman of the DSB and looked forward to working with him in the coming year. Korea also thanked Ambassador Neple for the excellent work that he had done over the past year and for his service to the DSB. Korea wished him the best and congratulated both the outgoing and incoming Chairmen.

8.14. The representative of Brazil said that her country joined other delegations in welcoming Ambassador Carim to the DSB and thanking Ambassador Neple for his work.

8.15. The representative of India said that his country joined other Members in congratulating Ambassador Carim on his election as the Chairman of the DSB. India looked forward to working with him and assured him of its support. India also thanked Ambassador Neple for the excellent work during the past year and wished him the best in his future endeavours.

8.16. The representative of Ecuador said that his country welcomed Ambassador Carim as the new Chairman of the DSB and thanked Ambassador Neple for his Chairmanship over the past year.

8.17. The representative of Egypt said that her country warmly welcomed and congratulated Ambassador Carim on his appointment. Egypt wished him all the best and was sure that he would be successful in his role as the Chairman of the DSB. Egypt thanked Ambassador Neple for his work and wished him success in his new appointment.

8.18. The outgoing Chairman said that he wished to thank the Secretariat for the invaluable assistance and thanked delegations for their kind words.

8.19. The incoming Chairman thanked all delegations for their kind words and warm wishes for the year ahead. He said that he would draw on their support in the coming year and that he already had a sense of some of the issues that would be discussed over the course of the year.

8.20. The DSB took note of the statements.
