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Dispute Settlement Body
29 September 2017

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 29 SEPTEMBER 2017

Chairman: Mr. Junichi Ihara (Japan)

Prior to the adoption of the Agenda: the item concerning the adoption of the Panel Reports in the disputes: "Indonesia – Safeguard on Certain Iron or Steel Products" (DS490; DS473), was removed from the proposed Agenda following the decision by Indonesia to appeal the Panel Reports. Also the item concerning the adoption of the Panel Reports in the disputes: "Brazil – Certain Measures Concerning Taxation and Charges" (DS472; DS497), was removed from the proposed Agenda following the decision by Brazil to appeal the Panel Reports.

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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 also 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". He then turned to the first status report under this Agenda item.

A. United States – Anti-dumping measures on certain hot rolled steel products from Japan: status report by the United States (WT/DS184/15/Add.176)

1.2. The Chairman drew attention to document WT/DS184/15/Add.176, 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 the United States had provided a status report in this dispute on 18 September 2017, 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 thanked the United States for its statement and status report. Japan called on the United States to fully implement the DSB's recommendations and rulings so as to resolve this matter.

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.151)

1.6. The Chairman drew attention to document WT/DS160/24/Add.151, 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 the United States had provided a status report in this dispute on 18 September 2017, 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 thanked the United States for its status report and its statement. The EU referred to its previous statements and said that it wished to resolve this dispute as soon as possible.

1.9. The representative of China noted that the United States had, once again, submitted a status report on its implementation in DS160. However, it was China's understanding that the Panel Report in DS160 had been adopted by the DSB on 27 July 2000. More than 17 years had passed since then and the United States was still in violation of the relevant articles of the Berne Convention for the Protection of Literary and Artistic Works, as incorporated into the TRIPS Agreement pursuant to Article 9.1. China noted that the TRIPS Agreement set out the minimum standards of protection of intellectual property rights to be provided by all WTO Members. In this regard, the United States did not provide the required level of protection under the TRIPS Agreement. Therefore China urged the United States to amend the legislation at issue to bring itself into compliance with the TRIPS Agreement, and to faithfully fulfil its obligations under the TRIPS Agreement to protect the intellectual property rights of their holders without any further delay.

1.10. The representative of the United States said that the United States considered that China's criticism was completely unfounded. The intellectual property protection that the United States provided within its own territory equalled or surpassed that of any other Member. Indeed, the United States would find it interesting if a Member criticizing the United States' commitment to strong intellectual property rights had a domestic record of protecting intellectual property rights that appeared less than robust.

1.11. 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.114)

1.12. The Chairman drew attention to document WT/DS291/37/Add.114 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.

1.13. The representative of the European Union said that on 14 September 2017 the draft authorisation decision for one type of genetically modified soybean, one type of genetically modified oilseed rape and the renewal of one type of genetically modified maize (for food and feed use) had been submitted for a vote at the member States committee, with a "no opinion" result. These measures would now be submitted for discussion and possible opinion to the Appeal Committee in October 2017. Moreover, the draft authorisation decisions for two types of genetically modified soybean (for food and feed use) had been submitted for a vote to the Appeal

Committee, with a "no opinion" result. It was now for the European Commission to decide on these two authorisations. The EU continued to be committed to acting in line with its WTO obligations. More generally, and as it had stated previously, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.14. The representative of the United States said that the United States thanked the EU for its status report and its statement at the present meeting. As the United States had noted at prior meetings of the DSB, EU measures affecting the approval of biotech products continued to involve prolonged, unpredictable, and unexplained delays at every stage of the approvals process. The United States at the present meeting also would recall the DSB's findings with respect to EU member State bans on biotech products approved at the EU level. The DSB had found that the member State bans covered in the dispute lacked a scientific basis and were thus inconsistent with the EU's obligations under the SPS Agreement. Despite those findings, the EU had failed to lift all of the member State bans covered by the DSB findings. Moreover, EU member States had proceeded to adopt additional bans on the same products as those covered by the DSB's findings. Even the EU's own courts recognized that any member State bans had to have a scientific basis. Most recently, on 13 September 2017, the Court of Justice of the European Union had ruled in favour of Italian farmers in their challenge to a ban that Italy had imposed on one of the biotech corn products covered in the dispute. The EU Court of Justice had found that an EU member State could not ban a biotech product without evidence of serious risk to health or the environment. And in this case, the EU's scientific authority had found that the biotech corn product had not posed such risks. The United States urged the EU to ensure that its measures affecting the approval of biotech products, including measures adopted by individual EU member States, were based on scientific evidence, and that decisions were taken without undue delay.

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

D. European Union – Anti-dumping measures on biodiesel from Argentina: Status report by the European Union (WT/DS473/17/Add.3)

1.16. The Chairman drew attention to document WT/DS473/17/Add.3 which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning anti-dumping measures on biodiesel from Argentina.

1.17. The representative of the European Union said that his delegation believed that this was the final status report on this matter. As notified to the DSB on 9 August 2017 (WT/DS473/18), Argentina and the EU had mutually agreed to modify the reasonable period of time (RPT) in this dispute to expire on 28 September 2017. At the present meeting, the EU wished to inform the DSB that it had adopted the measure necessary to comply with the DSB's recommendations and rulings in DS473 before the expiry of the modified RPT agreed with Argentina. In particular, on 18 September 2017 the EU had adopted Commission Implementing Regulation (EU) 2017/1578 which had amended Implementing Regulation (EU) No 1194/2013 by imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia. The Regulation had been published in the Official Journal of the European Union on 19 September 2017 (OJ L 239, 19.9.2017, p. 9) and, according to Article 2 of thereof, it had entered into force on 20 September 2017. The adoption of this Regulation had ensured the full implementation of the DSB's recommendations and rulings in this dispute.

1.18. The representative of Argentina said that his country thanked the EU for its status report and noted, with satisfaction, that the EU had complied with the DSB's recommendations and rulings through the adoption of Implementing Regulation (EU) 2017/1578 of 18 September 2017. This had amended Implementing Regulation (EU) No. 1194/2013 of 19 November 2013. Argentina continued to follow the proceedings before the European Court of Justice regarding anti-dumping duties on Argentine exports. In relation to this matter, he noted that the European Commission had appealed a judgement of the General Court of the European Union, which had annulled the anti-dumping duties imposed on Argentine exports in November 2013. Argentina expressed its deep concern regarding the press release issued only two days ago, in which the European Biodiesel Board (EBB) had announced that it would request an investigation to be launched into subsidies on Argentine biodiesel exports. Argentina considered that any decision to initiate a procedure of this nature was groundless, as there were no subsidies for the production of biodiesel

in Argentina. Argentina said that, if necessary, it would defend its rights, including through dispute settlement.

1.19. The DSB took note of the statements.

E. Canada – Anti-dumping measures on imports of certain carbon steel welded pipe from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu: Status Report by Canada (WT/DS482/7/Add.1)

1.20. The Chairman drew attention to document WT/DS482/7/Add.1 which contained the status report by Canada on progress in the implementation of the DSB's recommendations in the case concerning anti-dumping measures on imports of certain carbon steel welded pipe from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

1.21. The representative of Canada said that his delegation wished to refer to the statement made by Canada at the 31 August 2017 DSB meeting. Canada had no new developments to report at the present meeting.

1.22. The representative of Chinese Taipei said that his delegation thanked Canada for its status report and its statement. Chinese Taipei was looking into the legislative amendments and was monitoring the development of review proceedings. It hoped to work with Canada to resolve this matter very soon.

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. Statement by the European Union

2.1. The Chairman noted that this item was on the Agenda of the present meeting at the request of the European Union and invited the representative of the European Union to speak.

2.2. The representative of the European Union said that his delegation, 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 on implementation in this dispute. The EU said that it would continue to place this matter on the Agenda for as long as the United States had not implemented the DSB's recommendations and rulings.

2.3. The representative of Brazil said that, once again, her country thanked the EU for keeping this item on the DSB's Agenda. As one of the parties to the Byrd Amendment disputes, Brazil wished to refer to its previous statements made on this matter. In particular, Brazil wished to refer to its statements regarding the continuation of illegal disbursements, which should cease immediately. Brazil renewed its calls on the United States to fully comply with the DSB's recommendations and rulings in this dispute. Until then, the United States was under an obligation to submit status reports, pursuant to Article 21.6 of the DSU.

2.4. The representative of Canada said that his country thanked the EU for placing this item on the DSB's Agenda. Canada shared the EU's view that the Byrd Amendment remained under the DSB's surveillance until it was no longer applied.

2.5. 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 recalled, furthermore, that the EU had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, some 10 years ago. With respect to the EU's

request for status reports in this matter, as the United States had already explained at previous DSB meetings, there was no obligation under the DSU to provide further status reports once a Member had announced that it had implemented the DSB's recommendations and rulings, regardless of whether the complaining party disagreed about compliance. As the United States had noted previously, the EU had demonstrated repeatedly that it shared this understanding, at least when it was the responding party in a dispute. Once again, this month the EU had provided no status report for disputes in which there was a disagreement between the parties on the EU's compliance.

2.6. The representative of the European Union said that the EU disagreed with the US statement that the EU had failed to provide status reports in cases that had involved the EU. He said that the EU had provided status reports in all disputes that involved the EU (DS291 and DS473).

2.7. The DSB took note of the statements.

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

A. Statement by Antigua and Barbuda

3.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Antigua and Barbuda. He invited the representative of Antigua and Barbuda to speak.

3.2. The representative of Antigua and Barbuda said that it continued to be most unfortunate that, despite 14 long years of deprivation, Antigua and Barbuda still had to appear before the DSB, year after year, to report that the United States had not seen it possible to offer fair and equitable terms to Antigua and Barbuda for the significant losses in trade revenues that it had suffered as a result of the United States' violation of the GATS. At the 23 November 2016 DSB meeting, the United States had indicated that it had offered "a broad range of useful suggestions to settle this dispute in November 2013, only to have Antigua ignore the US offer for a long period of time before finally indicating that it was not acceptable". Antigua and Barbuda said that in accordance with the findings of the Arbitration in this dispute, the trade losses to Antigua and Barbuda now stood at more than US$200 million. The US offer that Antigua and Barbuda had found to be "not acceptable" had not amounted to US$2 million. It should be no surprise, therefore, that Antigua and Barbuda could not accept the offer. It had cost Antigua and Barbuda much more than US$2 million to simply bring the trade dispute to the attention of the DSB and to seek redress in conformity with established and binding rules.

3.3. The United States had also told the DSB, at the 23 November 2016 meeting, that "pursuant to Article XXI of the GATS", the United States had offered "a generous package of services concessions as compensation for removing internet gambling from the US schedule", adding that "Antigua is the only Member to block the United States from completing this process". Antigua and Barbuda pointed out that it had not "blocked" the United States from removing its commitment from its schedule. Antigua and Barbuda had acted to safeguard its rights. And at such a time that the United States made a fair, equitable and just offer to Antigua and Barbuda for the extreme harm done to its economy, Antigua and Barbuda stood ready to act in an appropriate manner consistent with the WTO rules that the United States had helped to fashion. Other countries – not named by the United States – had released the United States from its GATS obligations in this particular matter because, although these countries had not paid the cost of bringing it before this Body, the United States had settled their losses in ways that remained undisclosed to the DSB and to Antigua and Barbuda. It could hardly be fair or just that the United States had reached settlements with other countries and not with Antigua and Barbuda which had been the principal victim of losses in trade revenues and employment.

3.4. The United States had also informed the DSB, at its 23 November 2016 meeting, that "the regulation of cross-border gambling is a matter of public morality". Antigua and Barbuda pointed out that, in April 2005, the Appellate Body had found that the United States could not invoke a "morals defence" to its violation of the GATS. What was more, while the United States had banned internet gaming from foreign providers, domestic gambling service providers had continued to operate and thrive. In November 2016, the United States had advised the DSB that it was reviewing "the most recent communication" from Antigua and Barbuda, and that it "will continue

to work expeditiously toward finding a realistic settlement". It was with profound regret that Antigua and Barbuda had to advise that, 10 months later, it had not received a response from the United States - despite many overtures, including a letter dated 5 June 2017 to the US Trade Representative which had gone unanswered. Antigua and Barbuda pointed out that the size of its economy was a mere US$1.4 billion; the size of the US economy was US$18 trillion. Further, over the 14 years in which Antigua and Barbuda had suffered trade revenue losses in this particular matter, exceeding US$200 million, it had in no way taken any hostile or retaliatory action against the United States. Indeed, the contrary was true. For, over that same period, the United States had enjoyed a trade surplus with Antigua and Barbuda of US$2 billion, as it had continued to purchase almost 70% of goods and services from the United States. Antigua and Barbuda had not diverted its purchases away from the US market. Therefore, while the trade revenues losses to Antigua and Barbuda were almost 20% of its GDP, settling with it would represent only 0.0011%, of one year, of the GDP of the United States.

3.5. Antigua and Barbuda had just suffered enormously from the ravages of hurricane Irma. Three weeks ago, the island of Barbuda, Antigua and Barbuda's second most populous island, had been completely decimated by the category five hurricane's battering which had left all the inhabitants homeless and with no potable water, no electricity, no hospital, no school, no port and no airport. Antigua and Barbuda had been forced to declare the island a disaster and to evacuate all the residents to Antigua where they were now being maintained in difficult and cramped circumstances despite best efforts with limited resources. For the first time in 300 years, there was not a single permanent resident on Barbuda, and Antigua was faced with an unexpected and unscheduled increase of 3% of its population and all the demands that such a sudden influx of people entailed. Additionally, Antigua and Barbuda was confronted with an estimated cost of more than US$250 million to rebuild Barbuda and to resettle its inhabitants in their homeland. There would be no better time than the present, for the United States to settle this long running issue which marred an otherwise friendly relationship between Antigua and Barbuda and the United States that had existed for generations. Antigua and Barbuda had the option to suspend concessions regarding US intellectual property rights. Over many years, Antigua and Barbuda had not done so, not because it could not, or because it had not had offers to help it implement the award in a transparent way, consistently with the DSB's authorization. It had not done so because it had a too high regard for the US owners of intellectual property who had contributed much to the enjoyment and advancement of the world. Antigua and Barbuda had hoped that the United States would respond to its restraint in ways that would settle this dispute without causing any loss of income to US copyright holders. Antigua and Barbuda said that it was aware that in 2010, Brazil had been awarded the right to suspend payment of US intellectual property rights in compensation for trade losses. The United States had settled the dispute with Brazil via cash payments of over US$440 million and other ways in 2010 and 2014. It would be very regrettable if tiny Antigua and Barbuda were compelled to be the first country to have to suspend payment of US intellectual property rights despite its best efforts to reach a settlement with the United States, its largest and richest neighbour to whom it had always been – and remained – a friend.

3.6. The representative of the United States said that, as a preliminary matter, on behalf of the United States, he wished to express deep sympathy regarding the devastation that Hurricane Irma had caused in Antigua and Barbuda. The representative of the United States said that he understood that the governments of the United States and Antigua and Barbuda were working together on the provision of humanitarian and other assistance, and the United States hoped that rebuilding would be swift and successful. As the United States had noted at past meetings where Antigua and Barbuda had placed this item on the Agenda, the United States remained committed to resolving this matter. The United States had had numerous discussions with Antigua and Barbuda's new government in the past, and the United States looked forward to future engagement. The United States had been reviewing Antigua's most recent communications with the new US administration, and was trying to work toward identifying a productive way forward. In this regard, Antigua and Barbuda's statement at the present meeting would be taken into account.

3.7. The representative of Jamaica said that his country supported the statement made by the representative of Antigua and Barbuda and took note of the updates provided by the United States on this matter. Jamaica emphasized that this was a matter of particular concern to member states of the Caribbean Community. Jamaica was among the Members that had consistently called for a timely conclusion of this protracted dispute, especially in light of the clear ruling in favour of Antigua and Barbuda within the context of the DSB. Jamaica was therefore hopeful that renewed

effort by both countries in the last two years to resolve the matter would have borne fruit and that the removal of this item from the DSB Agenda would have been permanent. Sadly Jamaica was once again forced to reiterate its call for all WTO Members to comply fully with their obligations, including those arising from rulings of the DSB. For small, vulnerable economies in particular, it was important that the integrity of the dispute settlement mechanism was preserved as a vital element within a rules based system regulating international trade. Jamaica, therefore, took note of the commitment made by Antigua and Barbuda to continue bilateral discussions and consultations with the United States and urged both governments to renew their efforts to implement the DSB's recommendations and rulings in line with the appeal made by Antigua and Barbuda. Jamaica underscored the fact that resolution of this matter was critical to safeguard the legitimacy of the multilateral trading system.

3.8. The representative of Barbados said that his country believed that the functioning of an efficient rules based system was critical for all Members and was especially critical for the participation of small countries in the WTO. It was therefore important for Members to adhere to and respect the rulings of a DSB so as not to question the integrity of the system or undermine the operations of the committees and bodies of the WTO. Barbados considered that it was essential for both parties to come together and arrive at an adequate settlement to bring this matter to a close as soon as possible.

3.9. The representative of the Dominican Republic said that his country wished to express its concern, once again, that this dispute had not been resolved as it already ought to have been. The DSB's recommendations and rulings had still not been implemented. The Dominican Republic supported the statement made by Antigua and Barbuda and said that it truly hoped that, in the dramatic circumstances faced by Antigua and Barbuda was, the United States would be able to comply in this dispute.

3.10. The representative of Cuba said that her country also wished to express its gratitude to Antigua and Barbuda for its statement. Cuba was a Caribbean state that had also been affected by Hurricane Irma and wished to express its solidarity with Antigua and Barbuda. In this dispute, there was a clear lack of compliance with a decision that affected one of the smallest economies in the world. Members could see, in this dispute, how important it was to maintain the balance and stability of the dispute settlement system. Cuba called on both parties to continue the necessary consultations and discussions with a view to complying with the DSB's recommendations and rulings so that this small and vulnerable economy was no longer negatively affected.

3.11. The representative of Antigua and Barbuda said that his country wished to make two points. First of all Antigua and Barbuda thanked the many countries represented in the DSB that had offered assistance to Antigua and Barbuda in the aftermath of hurricane Irma. Antigua and Barbuda particularly wished to mention the particular generosity of Venezuela without whose help Antigua and Barbuda could not have evacuated the people from Barbuda to Antigua. Had they not supplied an aircraft to do it, it simply would not have happened and there was no telling what would have happened to those people who had been facing a second hurricane, two days later, in Hurricane Jose. So Antigua and Barbuda thanked all of the governments, the government of the Dominican Republic, the governments of Barbados and Jamaica, Antigua and Barbuda's CARRICOM Colleagues who had come to its assistance quite rapidly. Having said that, Antigua and Barbuda pointed out that the statement made by the United States was a similar statement to the one it had made at the 23 November 2016 DSB Meeting. Ten months had gone by since the United States had said that they were going to be reviewing the latest position that Antigua and Barbuda had put to them. Antigua and Barbuda said that they hoped that, this time, the review would take place. It wished to inform the DSB that it would shortly be writing a letter to the US Trade Representative asking for a formal negotiating session on this matter and it would report to the DSB on what happened with that.

3.12. The DSB took note of the statements.

4 CANADA – MEASURES CONCERNING TRADE IN COMMERCIAL AIRCRAFT

A. Request for the establishment of a panel by Brazil (WT/DS522/6)

4.1. The Chairman recalled that the DSB had considered this matter at its meeting on 31 August 2017 and had agreed to revert to it. He then drew attention to the communication from Brazil contained in document WT/DS522/6 and invited the representative of Brazil to speak.

4.2. The representative of Brazil said that his country was requesting, for the second time, that the DSB establish a panel to examine the numerous measures through which Canada had provided substantial subsidies to Bombardier and its suppliers in favour of the C-Series aircraft program. These support measures from Canada's federal, provincial and local governments had caused, continued to cause, and threatened to cause even more extensive serious prejudice to the interests of the Brazilian aerospace industry, in clear violation of Canada's WTO obligations. The loans, grants, equity infusions, tax credits, and other financial contributions provided by Canada amounted to at least US$3 billion. Brazil considered that these panel proceedings would be essential for restoring fair conditions of competition in the market for commercial aircraft. In addition to the establishment of a panel to examine this matter, Brazil was requesting that the DSB initiate the procedures provided for in Annex V of the SCM Agreement as was required under paragraph 2 of Annex V of the SCM Agreement and designate a representative to serve the function of facilitating the information-gathering process as was required under paragraph 4 of Annex V of the SCM Agreement. When it came to actionable subsidies and their consequences, Brazil regarded the Annex V procedure as an important part of the multilateral dispute settlement system. Brazil expected that the information-gathering process established therein would assist it and the panel in understanding the extent of Canada's federal, regional and local subsidies programs and their impacts. Thus, in Brazil's view, an efficient and effective Annex V process would greatly contribute to the Panel's obligation to make informed and objective findings and recommendations regarding the measures at issue and would play an important role in helping the DSB to discharge its function of achieving a prompt and satisfactory settlement to disputes between Members.

4.3. To facilitate the DSB's obligation to designate a representative, Brazil had already reached out to Canada and was ready to engage in an effort to agree on an individual for the DSB to designate. In the event of any unreasonable delay that would prejudice its interests, Brazil would ask the Chairman of the DSB to work with the parties towards that end. In addition, Brazil would appreciate the Chairman's assistance in ensuring an efficient use of the Annex V procedures. Moreover, Brazil was also ready to work with Canada to define rules of procedure capable of ensuring the efficacy of the Annex V procedure. Brazil hoped that Canada would be a willing and cooperative partner in that endeavour. Once a facilitator was appointed and rules of procedure had been established, Brazil intended to put forward suggestions as to the information that should be sought under this procedure. Brazil had been preparing a list of possible questions for that purpose. In parallel to the Annex V procedures, Brazil also expected discussions on the panel's composition to start promptly. Once more, Brazil counted on Canada to cooperate with Brazil in that regard, so as to secure a timely solution to the present dispute in order to re-establish a level playing field in the commercial aircraft sector.

4.4. The representative of Canada said that his country was disappointed that Brazil had once again requested that the DSB establish a panel with respect to certain Canadian measures concerning trade in commercial aircraft. Canada and Brazil had held consultations on 10 March 2017. During these consultations, Canada had engaged constructively and had provided responses to Brazil's extensive questions. Canada was confident that its measures were consistent with its WTO obligations and it would vigorously defend its interests before the Panel. At the same time, Canada was troubled by the broad and imprecise nature of Brazil's panel request. As requested by Brazil, an information gathering process under Annex V of the SCM Agreement would be initiated at the present meeting following the establishment of a panel. Canada would continue to engage with Brazil with a view to identifying a qualified individual to serve the function of facilitating the information-gathering process under Annex V of the SCM Agreement.

4.5. The representative of the United States said that the United States was pleased to see that Brazil and Canada were in agreement on Brazil's request for the DSB to initiate the procedures provided for in Annex V of the SCM Agreement. The Annex envisaged a collaborative process related to, but separate from, the proceedings before a panel. It created no framework of

procedures to move forward absent consensus of at least the parties to the dispute. Thus, application of the positive consensus rule to initiation of the Annex V procedures and designation of a DSB representative reflected the collaborative approach embodied in Annex V itself. Brazil and Canada's agreement to initiate the Annex V process was consistent with this collaborative process. The United States noted that Brazil's panel request had indicated that it intended to address questions under the Annex V procedure to Canada and several third-country Members, including the United States. In this regard, the United States recalled that Annex V provided that "the parties to the dispute and any third-country Member concerned shall notify to the DSB, as soon as the provisions of paragraph 4 of Article 7 have been invoked, the organization responsible for the administration of this provision within its territory". The United States said that it took this opportunity to confirm that any requests under the Annex V procedure should be directed to the US Mission to the WTO.

4.6. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Articles 4.4 and 7.4 of the SCM Agreement and Article 6 of the DSU with standard terms of reference.

4.7. The representatives of China, the European Union, Japan, the Russian Federation, Singapore and the United States reserved their third-party rights to participate in the Panel's proceedings.

4.8. The Chairman said that with regard to the issue of the procedures for developing information concerning serious prejudice under Annex V of the SCM Agreement, paragraph 2 of Annex V provided that, where matters were referred to the DSB under Article 7.4 of the SCM Agreement, the DSB had to, upon request, initiate the Annex V procedure. The Chairman noted that Brazil had requested in document WT/DS522/6, that the DSB initiate such a procedure. It was the Chairman's understanding that Canada had accepted that the Annex V procedure would be initiated at the present meeting. He further noted that paragraph 4 of Annex V provided that the DSB had to designate a representative to serve the function of facilitating the information-gathering process under that Annex. The Chairman understood that Brazil and Canada were consulting regarding the designation of a representative, and the Chairman stood ready to render any assistance necessary to assist them in that process.

4.9. The DSB took note of the statement.

5 EUROPEAN UNION – ANTI-DUMPING MEASURES ON IMPORTS OF CERTAIN FATTY ALCOHOLS FROM INDONESIA

A. Report of the Appellate Body (WT/DS442/AB/R and WT/DS442/AB/R/Add.1) and Report of the Panel (WT/DS442/R and WT/DS442/R/Add.1)

5.1. The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS442/9 transmitting the Appellate Body Report in the dispute: "European Union – Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia", which had been circulated on 5 September 2017 in document WT/DS442/AB/R and Add.1. The Chairman reminded delegations that the Appellate Body Report and the Panel Report pertaining to this dispute had been circulated as unrestricted documents. As Members were aware, Article 17.14 of the DSU required that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report". He then invited the representative of the parties to the dispute to present their views on the Reports before the DSB.

5.2. The representative of Indonesia said that, as was customary before the adoption of a panel or Appellate Body Report, Indonesia wished to express its views on the Reports in this dispute, pursuant to Articles 16.4 and 17.14 of the DSU. Indonesia thanked the Panel, the Appellate Body and the Secretariat for their work on this appeal. Indonesia was a great supporter of the WTO dispute settlement system. It considered that an efficient, effective, fair and transparent dispute settlement system was essential to the development of the rules-based multilateral trading system as a whole and to the ability of developing countries such as Indonesia to participate in that system. Indonesia was pleased that the Appellate Body had upheld the Panel's ruling on Article 6.7

of the Anti-Dumping Agreement. This finding was systemically important from the perspective of transparency and the due process rights of both investigated companies and other interested parties. Indonesia was also pleased that the Appellate Body had rejected the EU's procedural arguments. It was disappointed that the EU had suggested that Indonesia was not entitled to pursue this appeal. Nevertheless, Indonesia appreciated that the Appellate Body had upheld its rights to do so. However, Indonesia expressed serious concerns regarding the manner in which the Panel and the Appellate Body had addressed Indonesia's claim under Article 2.4 of the Anti-Dumping Agreement. Although it disagreed with the outcome, that was not its main concern. More importantly, Indonesia was very concerned about the manner in which the Panel and Appellate Body had failed to engage with the essentials of its arguments. To recall, in the measure at issue, the EU had made an adjustment to the export price under Article 2.4 of the Anti-Dumping Agreement. This adjustment had been based on treating an Indonesian exporter and its closely-affiliated sales office as if they were independent entities. Where an exporter performed sales functions "in-house", the expenses were part of the exporter's selling, general and administrative costs (SG&A) and were not deducted from the export price (or normal value, as the case may be). Similarly, no profit was deducted in these circumstances. Where an exporter instead payed an independent agent to perform the same functions, the amounts paid to the agent for its costs and profits were deducted as a commission. In this case, had the EU determined that the exporter and the closely-affiliated sales office were part of a single economic entity (the term came from EU law and WTO jurisprudence, not from Indonesia), it would have treated them just like an exporter with an "in-house" sales department. No adjustment would have been made and no dumping margin would have been found. Instead, the EU had decided to treat the exporter and the sales office as if they were separate entities, without examining the common ownership and control of the two companies. On that basis, the EU had deducted from the export price both the selling expenses of the sales affiliate and a "reasonable profit margin independent of the actual profit" of "5% which is considered a reasonable profit for the activities carried out by trading companies in the chemical sector".

5.3. Indonesia had repeatedly argued that, in these situations, it was inconsistent with the fair comparison requirement of Article 2.4 of the Anti-Dumping Agreement to treat an exporter and its closely affiliated sales office as independent entities without properly analysing the corporate ownership, management and control links between the entities to determine whether they did business as one or each for their own account. In essence, Indonesia's argument was that an investigating authority had to determine precisely whether a sales office was just a formally or legally "spun-off" sales office department, joined at the hip to the production entity, or instead an economically or commercially truly independent entity. Regrettably, Indonesia did not see this core argument addressed in the Panel Report. It was not that Indonesia’s core argument had been analysed and rejected. It had simply not been addressed at all. Rather than measuring the EU's standard against WTO law, the Panel had appeared simply to find that the EU had properly applied its own standard. This was not a proper means of disposing of a complainant's claim. A decision should convince the parties of its correctness by the power of its reasoning, not by advocacy or argument. Reading the Panel Report, Indonesia had the impression that the Panel was arguing with Indonesia's arguments, not confronting the issues squarely and forthrightly. Indonesia had expected a more thorough treatment of its arguments from the Appellate Body, but was again very disappointed. The Appellate Body said "we [do not] rule … on the circumstances in which an inquiry into the nature of the relationship between transacting entities will suffice or be determinative of … whether allowances should be made pursuant to Article 2.4." But that was precisely what was at issue in this dispute and precisely what Indonesia had asked the Appellate Body to rule on.

5.4. As noted, in this dispute, the issue had been whether the EU could treat closely affiliated entities as if they were independent entities, and make price adjustments on that basis, without examining the degree of corporate ownership, management and control links between the entities. Thus, in its opening statement at the hearing, Indonesia had stated that it "requests the Appellate Body to reverse the Panel's legal standard and find that a decision regarding the treatment of transactions between closely affiliated parties must be based on an analysis of the relationship between the parties, using criteria similar to those articulated by the panel in 'Korea – Certain Paper'". In other words, the legal issue that had been before the Appellate Body was precisely whether, in the Appellate Body's words, the EU's "inquiry into the nature of the relationship", without considering ownership and control links, had sufficed to allow the EU to make a price adjustment fairly under Article 2.4 of the Anti-Dumping Agreement. The Appellate Body's failure to address this issue was very disappointing. Both the Panel and the Appellate Body had told

Indonesia that the significance of the affiliation depended on a "case-by-case" basis. Indonesia had sought a ruling on the EU's specific determination in this case that it could treat closely affiliated entities as if they were independent without considering the degree of corporate ownership, management and control links between them. The Panel and the Appellate Body had either failed to answer, or, by upholding the EU's approach, gave the implicit answer that the criterion was irrelevant or that an investigating authority could ignore the issue of ownership and control links altogether.

5.5. The Appellate Body's "case-by-case" approach was also very unfortunate, because it could lead to the Appellate Body simply not ruling on the issue before it. Indonesia argued that the criterion of corporate and management links always mattered under Article 2.4 of the Anti-Dumping Agreement when deciding to treat closely affiliated parties as one entity or as independent entities. The Appellate Body said that this criterion would only matter sometimes. But it did not tell Indonesia when it would matter. And it refused to say whether it should have mattered in this dispute. This was not sufficient. Even if the Appellate Body thought that these links mattered sometimes but not always, it could not stop there. It had to address whether these links should have been examined in this dispute and, if not, explain why not. It was not enough simply to express disagreement with the complainant's view and say very generally that it was a "case-by-case" matter. In any event, regardless of what the Appellate Body had said it had or had not ruled on, the fact remained that it had affirmed a Panel Report that suggested that in any case in which an affiliated sales office was a "downstream participant" in sales, the investigating authority could treat the exporter and sales office as separate entities, apparently regardless of the ownership and control links between them. This could not be correct.

5.6. Indonesia said that it was also surprised to read in the Appellate Body's findings that the "Panel's reasoning does not imply that when confronted by transactions between closely affiliated parties, investing authorities may replace the expenses actually incurred with the expenses that would have been incurred had the producing entity obtained the service from an independent provider". But that was exactly what the EU had done and the Panel had upheld in this case: the deduction of a price adjustment based on "a reasonable profit margin independent of the actual profit" based on what the EU had "considered a reasonable profit for the activities carried out by trading companies in the chemical sector". In other words, the EU had replaced the actual situation with the costs of using "trading companies in the chemical sector". A Panel or the Appellate Body's legal analysis should have been sufficient to demonstrate to the losing party that the essentials of its position had been considered fully. By this measure, unfortunately, these reports fell short. Indonesia could not see where several of its key arguments had been addressed or why they had been rejected. To give another example, Indonesia had also argued that the fourth sentence of Article 2.4 of the Anti-Dumping Agreement permitted the deduction of selling expenses and profit incurred by an affiliated sales office in the importing country in situations covered by Article 2.3 of the Anti-Dumping Agreement. However, no similar adjustment was authorized with respect to selling expenses and profits of affiliated sales offices that were not in the importing country and not covered by Article 2.3 of the Anti-Dumping Agreement. These arguments regarding an important textual issue had not been confronted either at the Appellate Body's hearing or in its report. This case had presented a legal issue of significant practical and commercial relevance. Very many companies in Indonesia and, most likely, in other developing countries used legally separate but very closely affiliated companies to provide various sales-related services. These included exporters that generated very important export revenues for many developing countries. These companies could find themselves in similar situations in dumping investigations in many jurisdictions.

5.7. By failing to address the issue directly, the Panel and the Appellate Body had failed to clarify the provisions of the covered agreements at issue in this dispute. After lengthy proceedings, Indonesia was left with nothing more than a vague "it depends" on a "case-by-case basis" and with no idea as to how to advise its exporters to organize their sales structures so as to reduce exposure to dumping liability. For the dispute settlement system to stay relevant for the commercial realities of the real world where "real people live and work and die", Members could not be left, after years of litigation, scratching their heads trying to find where the Reports addressed their arguments head-on. Indonesia encouraged future panels and the Appellate Body to examine how they went about confronting – both in hearings and in writing – the key elements of a party's arguments so that when they ruled against a party on an issue, the party was left in no doubt that its arguments had been addressed fully and squarely.

5.8. The representative of the European Union said that his delegation thanked the members of the Appellate Body, the Panelists and the Secretariat for their work on this dispute. The EU acknowledged the time and effort that had been dedicated to this dispute. It recalled that the measures had expired in November 2016. This dispute would, nevertheless, provide useful clarification on some provisions of the Anti-Dumping Agreement and the DSU. Therefore the EU thought these two Reports should be adopted. The EU welcomed in particular the Appellate Body's confirmation of the Panel's finding that the EU authorities had acted consistently with Article 2.4 of the Anti-Dumping Agreement in their treatment of the Indonesian company. This conclusion was in line with the decisions taken by European courts in the same dispute. The EU also took note of the Appellate Body and the Panel's clarification regarding the correct application of Article 6.7 of the Anti-Dumping Agreement to the results of the on-the-spot investigations.

5.9. The representative of the United States said that the United States would like to comment on certain substantive and procedural aspects of this dispute. The United States focused in particular on the "report" issued in the appeal in this matter. First, on substance, while the United States considered the Division to have arrived at the correct outcome in this particular dispute, the United States would like to draw the DSB's attention to an important systemic concern with the "report's" interpretation of the DSU. The EU had claimed that, due to the expiration of the contested measure during panel proceedings, the Panel had erred in making a recommendation with respect to that measure. The United States recalled that Article 19.1 of the DSU set out, in mandatory terms, the requirement that a panel or the Appellate Body "shall recommend" that any measure found to be WTO-inconsistent be brought into conformity with WTO rules. The DSU stated that this "shall" be done – the requirement was not discretionary. The Division had acknowledged this requirement, stating that it had "attach[ed] significance to the fact that Article 19.1 is expressed in mandatory terms and linked directly to the findings made by a panel," and finding that the language "suggests that it is not within a panel's or the Appellate Body's discretion to make a recommendation in the event that a finding of inconsistency has been made". But the Division had then gone on to note its own statement in "US – Certain EC Products" that there was "an inconsistency between the finding of the panel that the relevant measure was no longer in existence and the subsequent recommendation of the panel that the DSB request the United States bring that measure into conformity with its WTO obligations".

5.10. The Division did not explain the basis in the DSU for that statement, however. And it had failed to engage with the fact, explained at length by the United States, that the statement in "US - Certain EC Products" was obiter dicta as it was not made in response to any issue appealed in that dispute, and therefore it was not necessary to resolve that appeal. Three paragraphs later, the Division applied to the facts before it, not the mandatory requirement found in Article 19.1 of the DSU, but the rule it apparently had derived from certain of its own prior reports, including the dicta just described. Specifically, the "report" concluded that "[a]bsent any finding or acknowledgement by the Panel that the measure at issue is no longer in force, there was no basis for the Panel to have departed from the requirement in Article 19.1 of the DSU to make a recommendation after having found that measure to be inconsistent with the covered agreements". The United States had grave concerns with such a statement. In the face of clear, mandatory language in the DSU, the Appellate Body considered that its own prior reports could support an exception to the clear text of the DSU. The DSU provided no such authority to the Appellate Body or to its reports. The DSU and the other covered agreements set out the agreed rules and commitments of WTO Members, and those rules could not be changed through dispute settlement reports. DSU Articles 3.2 and 19.2 made this clear: "[r]ecommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements". As Indonesia and the United States had also pointed out in the course of this appeal, it was unnecessary for the Division even to reach this legal issue. The alleged evidence of the expiry of the measure had not been timely submitted to the Panel, and the Panel had made no findings on this issue. Therefore, the Division could simply have noted the absence of any factual finding, and it could have avoided reaching a legal issue not necessary to resolve this dispute. Instead, the Division had made an erroneous statement, relying on previous erroneous statements and obiter dicta, and ignoring the clear text of DSU Article 19.1. This was not an approach that was consistent with the DSU or that contributed to Members' confidence in the WTO dispute settlement system.

5.11. Turning to a procedural issue, the United States had raised with Members at the previous DSB meeting important systemic questions regarding the Division hearing this appeal. As the United States would note under the next Agenda item, Members had met informally on this issue

but, frankly, had engaged in very little substantive discussion of the systemic issues. The United States had noted that Mr. Kim was no longer an Appellate Body member as of 1 August, and the "report" in this dispute had not been circulated until 5 September – more than one month later. Members had been informed that Mr. Kim had "signed" the "report" on 31 July 2017, one day before resigning and becoming Korea's Trade Minister. But what was relevant under DSU Article 17.5 was when the report was circulated, not when it was signed. In these circumstances, the United States did not understand why Mr. Kim had not simply been replaced on the Division, so as to permit a current Appellate Body member, fulfilling all the requirements of Article 17, to complete the appeal. As WTO Members also well knew, the term of Mr. Ramírez, another member of the Division hearing this appeal, had expired on 30 June 2017. The DSB had taken no action to permit him to continue to serve as an Appellate Body member. Therefore, Mr. Ramírez too would appear not to have been an Appellate Body member on the date of circulation of this "report". In these circumstances, the "report" had not been provided and circulated on behalf of three Appellate Body members, as was required under DSU Articles 17.1 and 17.5. And because the "report" had not been issued consistent with the requirements of Article 17, it could not be an "Appellate Body report" subject to the adoption procedures reflected in Article 17.14. Rather, the DSB would consider the "report's" adoption subject to the positive consensus rule applicable to DSB decisions, pursuant to DSU Article 2.4 and WTO Agreement Article IX:1, note 3. Given the serious concerns the United States had described with respect to the Division's statements regarding Article 19.1 of the DSU, the United States did not endorse the findings set out in the Division's "report". Nor could the United States support an Appellate Body member's continuation of service without authorization by the DSB. However, the United States understood the parties to the dispute to support adoption of the "reports" of the Panel and the Division in this dispute. As DSU Article 3.7 made clear, "[t]he aim of the dispute settlement mechanism is to secure a positive solution to a dispute". And it appeared that the parties considered that adoption of these "reports" would help them achieve that aim. The United States further noted that the situations with Mr. Kim and Mr. Ramírez only had arisen late into the appellate proceedings. In these particular and exceptional circumstances, therefore, the United States would be willing to join a consensus to adopt the "reports" proposed for adoption at the present meeting, being the "report" contained in WT/DS442/AB/R and Add.1 and the Report contained in WT/DS442/R and Add.1, as modified by the first "report".

5.12. The representative of the European Union said that his delegation wished to express its disagreement with the United States' statement. There was no problem with this Appellate Body Report. The DSB had already discussed the matter of the resignation of Mr. Kim and had not come to a conclusion that this fact raised a problem for the adoption of the Reports in this dispute. The EU did not think there was anything more to add. The DSB was adopting the Appellate Body Report via negative consensus, pursuant to Article 17.14 of the DSU. As this Article provided, the Report had to be adopted by the DSB, unless there was consensus not to adopt the Report. The EU, as the responding party in this dispute, supported the adoption of the Report and, therefore, the Report would be adopted via negative consensus. This was a central feature of the dispute settlement mechanism and it could not be undermined.

5.13. The representative of Canada said that his country had taken note of the United States' statement and wished to briefly comment in this respect. Canada disagreed with any suggestion that the service of Mr. Kim and Mr. Ramírez on this appeal had undermined the reverse consensus rule in Article 17.14 of the DSU. The reverse consensus rule was one of the greatest achievements of the Uruguay Round. Canada considered that the reverse consensus rule applied in this case.

5.14. The representative of Brazil said that his country had listened carefully to the concerns expressed by the United States. Brazil had also noticed that the AB communication in document WT/DS442/9 provided an explanation for what had happened, saying that the members of the Division had completed their work and signed the Report on the last day of July 2017 and then it had been sent for translation. So, for Brazil, that was a fully satisfactory explanation and it wished to endorse the views expressed by Canada and the EU regarding the importance of maintaining the pillar of negative consensus concerning the adoption of reports.

5.15. The representative of Japan said that his delegation noted that the parties to this dispute, Indonesia and the EU, appeared to support the adoption of the Panel Report and the Appellate Body Report. The way in which Mr. Kim's departure had been handled had raised a systemic question. However, this was an isolated instance under the extraordinary circumstances specific to this particular dispute. As such, the issue could be addressed in a discrete manner. Japan could

deem Mr. Kim to have completed the disposition of this appeal to which he had been assigned while an AB Member. Japan would join an act of the DSB to adopt the Reports of the Panel and the Appellate Body in this dispute.

5.16. The representative of New Zealand said that her country thanked the parties for their comments on the Reports. New Zealand noted the concerns raised by the United States and, as it had stated previously, it was certainly willing to discuss those concerns in the appropriate forum. New Zealand was concerned however that the outcome of any discussions in relation to those concerns could only be applied on a prospective basis and should not affect the decisions or proceedings involving Appellate Body divisions that had already been composed, applying Rule 15 of the Working Procedures for Appellate Review.

5.17. The DSB took note of the statements and adopted the Appellate Body Report contained in document WT/DS442/AB/R and Add.1 and the Panel Report contained in document WT/DS442/R and Add.1, as modified by the Appellate Body Report.

5.18. Following the adoption of the Reports, the representative of the United States said that for the reasons the United States had explained, it did not consider the "report" circulated on 5 September 2017, to be an "Appellate Body report" subject to the adoption procedures reflected in Article 17.14 of the DSU. The United States therefore understood that the action the DSB was taking at the present meeting was the adoption of the "report" contained in WT/DS442/AB/R and Add.1 and the Report contained in WT/DS442/R and Add.1, as modified by the first "report".

5.19. The representative of the European Union said that his delegation disagreed with the views expressed by the United States. The DSB was adopting the Appellate Body Report by negative consensus pursuant to Article 17.14 of the DSU.

5.20. The DSB took note of the statements.

6 APPELLATE BODY MATTERS

A. Statement by the Chairman

6.1. The Chairman said that, under this Agenda item, he first wished to make a short statement on the informal meeting held on 15 September 2017 following the discussion at the DSB meeting held on 31 August 2017 regarding the Appellate Body matters. He recalled that at the 31 August 2017 DSB meeting, the United States had expressed concerns regarding certain systemic issues and had stated that it would not be in a position to agree to start any of the selection processes until its systemic concerns were addressed. During the informal meeting held on 15 September 2017, the United States had reviewed with more detail the issues raised at the 31 August 2017 DSB meeting. Other Members had reiterated their concerns about the continued failure of the DSB to launch selection processes for the vacant positions on the Appellate Body. Several delegations had requested the United States to provide additional details of its systemic concerns as well as to submit concrete proposals on how these concerns could be addressed in the DSB. Many delegations had expressed concerns about linking the discussion on systemic issues raised by the United States to the AB selection processes. At the same time, a number of delegations had demonstrated their readiness to engage in discussions to address the systemic concerns. Thirty-three delegations had intervened during the informal meeting, which had provided the opportunity for delegations to express their initial views before taking a collective decision regarding the next steps. As he had stated at the informal meeting, consultations would continue on these matters in order to find a way forward. He reiterated that his door was open and, once again, he invited delegations with views on these matters to contact him directly. In order to get things moving forward in a positive direction, he said that he believed that more concrete and creative ideas were needed. He emphasized, once again, the urgency of filling the vacancies on the Appellate Body. He said that under "Other Business" he would make a statement about the DS workload and, in that context, he would report that the Appellate Body was currently dealing with seven appeals and up to three additional appeals could be filed by the end of 2017. In addition to the existing vacancies, the third vacancy would open up on 11 December 2017 when Mr. Peter Van den Bossche's term would come to an end. The Chairman noted that, by the end of September 2018, the first four-year term of office of another Appellate Body member would come

to an end. Therefore, he urged all Members to show more flexibility and creativity so that the DSB could launch the three selection processes as soon as possible.

6.2. The representative of the United States said that the United States appreciated the Chairman's organization of an informal meeting of the DSB to consider the concerns raised by the United States at the August meeting of the DSB. A good number of WTO Members had participated in that informal meeting. The United States appreciated that willingness to engage. The United States also noted, however, that many of the interventions by delegations had been focused on process issues. Of course, that was a Member's prerogative. But as a result, the United States did not have a clear vision of the views of many delegations on the specific concerns that it had raised. What was clear in the informal DSB meeting was that the United States did not hear any fundamental disagreements that the two concerns it had raised were important and worthy of the DSB's consideration. As was clear from the previous item, the issuance of a report on appeal that did not adhere to the requirements set out in the DSU raised yet more concerns. For the United States, the issues were clear. Under the DSU, the DSB had a responsibility to decide whether a person who had ceased to be a member of the Appellate Body should continue serving. If the DSB agreed that such a person should continue to serve on an appeal, it would be the DSB's responsibility to provide an appropriate legal basis to permit this to occur. And as stated at last month's DSB meeting, the United States would welcome Mr. Ramírez's continued service on two pending appeals with appropriate action by the DSB. The United States therefore reiterated its willingness to meet with any interested delegation to discuss the concerns raised and to develop appropriate solutions.

6.3. The representative of Canada said that, as his country had done at each meeting where the 2017 AB selection processes had been discussed, Canada wished to reiterate its profound disappointment and serious concern that the DSB had been unable to fulfil the obligation in Article 17.2 of the DSU to appoint Appellate Body members as vacancies arose. Members had heard that the selection processes could not be initiated unless and until the DSB had addressed the concerns of the United States regarding the continued service of Appellate Body members after their terms had expired. Canada called on the United States to inform the DSB precisely what their concerns were and to propose a solution. In Canada's view, these discussions could be moved to the DSB in Special Session where, under the current approach, a possible outcome could be prepared for consideration by the Membership.

6.4. The representative of Singapore, speaking on behalf of ASEAN countries, said that ASEAN countries placed great importance on the rules-based multilateral trading system. One of the key pillars of the WTO was its dispute settlement system including the Appellate Body. This was recognized in Article 3 of the DSU, which provided that the dispute settlement system of the WTO was a central element in providing security and predictability to the multilateral trading system. ASEAN countries wished to highlight its serious systemic concern with the lengthy delays in launching the AB selection processes. They noted that there were currently two vacancies on the Appellate Body and that another vacancy would arise in December 2017. These vacancies had to be filled as soon as possible, especially since Members had a legal obligation to do so, in accordance with Article 17.2 of the DSU, which provided that vacancies had to be filled as they arose. ASEAN countries regretted that a linkage had been made between the launch of the AB selection process and certain systemic issues that had been raised. In the view of ASEAN countries these systemic issues could be dealt with on a different and parallel track and thus, should not prevent the launch of the AB selection process. ASEAN countries urged that utmost flexibility be shown by Members to work towards consensus for a DSB decision to launch the AB selection process expeditiously. It was vital for the effective functioning of the dispute settlement system that the Appellate Body had a full complement of seven members to hear appeals. The continued impasse could have major consequences for the system. In this regard, ASEAN countries were ready to engage constructively and work with Members, as well as with the Chairman, to resolve this deadlock.

6.5. The representative of the Dominican Republic, speaking on behalf of the Informal Group of Developing Countries (IGDC), reiterated the IGDC's position expressed at the informal DSB meeting held on 15 September 2017 where the IGDC had expressed concern about the delay in launching the Appellate Body selection process. The IGDC urged the Chairman to begin the selection process promptly. It also urged all Members to support this process with a view to its prompt completion. It was important for delegations that had expressed concern about initiating the process to provide specific proposals on how their concerns could be addressed, independently

from the selection process. Any further delays in filling the vacancy on the Appellate Body jeopardized the effectiveness of the WTO and its dispute settlement function.

6.6. The representative of Australia said that her country was open to substantive discussions between Members about the legal and systemic concerns raised related to the timing of the resignation of one Appellate Body member, and the appropriate application of Rule 15 of the Appellate Body's Working Procedures following the expiry of the second term of another Appellate Body member. However, in Australia's view, consideration of these systemic issues did not warrant further delaying the commencement of Appellate Body selection and appointment processes. Rather, each of these matters could, and should, be considered by the DSB in parallel.

6.7. The representative of Norway said that, as her country had stated numerous times, Norway reiterated its grave concern with the DSB's common failure to ensure that all vacancies on the Appellate Body were filled. The well-functioned Appellate Body was in Norway's primary interest. Vacancies should have been filled as they arose, however considering the urgency of the situation, Norway underlined its flexibility in reaching a solution and its willingness to join consensus on launching a selection process without further delay. As it had stated at the informal meeting on 15 September 2017, Norway questioned the linkage made by the United States suggesting that the DSB hold off filling the vacancies on the Appellate Body until the mentioned systemic issues were resolved. Norway was open and willing to discussing systemic issues separately but, considering the urgency of the present situation, strongly encouraged the United States to reconsider the linkage and join a consensus to launch the selection process without any further delay.

6.8. The representative of China, speaking in relation to Agenda items 8, 9 and 10, said that his country thanked the proponents for their revised proposals. China noted that the proposal submitted by Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru, and the proposal submitted by the EU had achieved a common ground to launch selection processes to replace all three vacancies that had arisen and would arise in the coming months. China was flexible regarding the manner in which the selection processes should be launched and supported the proponents' suggestions to commence the selection processes for all three vacancies as soon as possible. However, China regretted that the Membership was still not able to launch the selection processes because of the so-called "systemic concerns" that had been raised by one Member. After a careful review of the concerns, and as China had expressed at the informal DSB meeting held on 15 September 2017, it respectfully disagreed with those concerns. First, on the resignation of Mr. Hyun Chong Kim, China was of the view that given the appointment of Mr. Kim as Korea's Trade Minister on 4 August 2017, his resignation had to take effect immediately, as required under Article 17.3 of the DSU.

6.9. Second, on Mr. Ricardo Ramírez-Hernández's continued service, China was of the view that the Appellate Body had acted well within its mandate by including Rule 15 in the Working Procedures for Appellate Review, which only applied to a person who had ceased to be an Appellate Body member. Moreover, Rule 14 of Establishment of the Appellate Body (WT/DSB/1), which had been adopted by the DSB, specifically provided that matters regulating the rotation of the Appellate Body members in serving on appeals should be included in the Working Procedures for Appellate Review. By challenging Rule 15 of the Working Procedures, which had become a customary practice, the United States risked undermining the work of the Appellate Body and the dispute settlement system.

6.10. Third, on the signature issue, it was China's understanding that neither the DSU, nor any rules or procedures of the Appellate Body, required an Appellate Body member to circulate all the reports of the appeals to which he had been assigned prior to leaving his post. Instead, rules regarding members leaving their posts before their terms had expired had been explicitly provided for. A rule to the contrary would unreasonably burden the proper functioning of the Appellate Body. China was afraid that, by challenging the legal effect of the Appellate Body report, due to the resignation of Mr. Kim, the United States risked violating Rule 4(4) of the Working Procedures which related to interference with a division's authority and freedom in conducting their work. In sum, China did not consider the United States' concerns to be supported by the rules or by the prevailing facts. At the same time, China could not agree with the United States that linking the concerns with the Appellate Body member selection processes was the right way to address their concerns. China did not see the logic behind making the linkage between them, and the two issues should be resolved on their own merits. As many Members had expressed, launching the selection

process as soon as possible would help to address the concerns raised by the United States. China echoed previous speakers in saying that it was the obligation and responsibility of each Member to ensure the well-functioning and credible dispute settlement system. China reiterated its serious concerns expressed at the 31 August 2017 DSB meeting and called upon Members to meet their commitments under the multilateral trading system.

6.11. The DSB took note of the statements.

7 PROPOSAL REGARDING THE APPELLATE BODY SELECTION PROCESS (WT/DSB/W/596/REV.4)

8 APPOINTMENT OF APPELLATE BODY MEMBERS: PROPOSAL BY THE EUROPEAN UNION (WT/DSB/W/597/REV.4)

8.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru. In this regard, he drew attention to the communication contained in document WT/DSB/W/596/Rev.4 and invited the respective delegations to speak.

8.2. The representative of Mexico, speaking on behalf of Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru, thanked the Chairman for the report on his consultations. Mexico deeply regretted that, at this point, the AB selection processes had not been initiated. He noted that the selection process to replace Mr. Ramírez should have been launched at the end of 2016 or the beginning of 2017. In their effort to help finding a solution to the current situation, the Latin American proponents had submitted five draft decisions. The present draft decision sought to launch a selection processes to fill the two existing vacancies, and the selection process to appoint a replacement for the post that would arise in December 2017. The proposal was comprised the following elements: (i) to initiate three selection processes to replace Mr. Ricardo Ramírez Hernández, whose second term had ended on 30 June 2017; (ii) to fill the vacancy created by the resignation of Mr. Hyun Chong Kim on 1 August 2017; (iii) to replace Mr. Peter Van den Bossche, whose second term would expire on 11 December 2017; (iv) to establish a Selection Committee; (v) to set a deadline of 29 October 2017 for submitting nominations of candidates; and (vi) to request the Selection Committee to make its recommendations at the regular DSB meeting in February 2018, at the latest. Mexico believed that this proposal was pragmatic and realistic and that it would resolve the current situation and allow the selection processes to be carried out in order to appoint three new Appellate Body members. The Latin American proponents were flexible regarding the deadlines, provided that the Selection Committee had sufficient time to issue its recommendations to the DSB. By doing nothing in the current circumstances, which were very serious, unprecedented and risked leaving the Appellate Body in a dysfunctional situation very soon, the DSB failed to comply with its mandate and breached its obligations.

8.3. The representative of the European Union said his delegation thanked Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru for their revised proposal, which referred to all three posts at issue. The EU fully supported the selection of new Appellate Body members without delay. The EU noted that this proposed DSB decision corresponded, in substance, to the EU's proposal included under the next Agenda item. The EU agreed that there was an urgent need to fill these vacancies as soon as possible. For that reason, the EU's proposal had provided for the completion of the selection procedures at the latest in November 2017, and not in February 2018, as had been foreseen in the proposal submitted by Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru. The EU was also ready to join consensus on the Latin American's proposal, if that proposal gathered the support of the Membership.

8.4. The representative of Japan, speaking in relation to Agenda items 8, 9 and 10, said that his country thanked the Chairman for his report. Japan also thanked the proponents for their respective proposals. The so-called "Rule 15" issue that had been raised by the United States would involve an institutional question of whom or which organ of the WTO was responsible for ensuring the legal status of an outgoing Appellate Body member during their transition. In reviewing or addressing the issue, Members may also want to consider how this decades-old rule could apply and operate within the framework of the DSU under the current situation faced by the dispute settlement system. As a WTO organ established specifically to administer the DSU, Japan believed that the DSB was and should be held responsible for addressing institutional issues of a

systemic nature. Turning to the issue of the Appellate Body selection process or processes, as had been noted by the Chairman, the DSB was obliged to fill three vacancies out of seven positions. Given the time and resources required for the DSB to select new members, it was incumbent on the DSB to launch the selection processes as quickly as possible. Appointing a member of the Appellate Body was an important function, entrusted to the DSB under the DSU. Japan urged all Members concerned to exercise flexibility and act in a constructive manner so that the DSB could perform the important function contemplated in the DSU without further delay.

8.5. The representative of Switzerland, speaking in relation to Agenda items 8, 9 and 10, said that his country thanked the Chairman for his report and his ongoing efforts on this matter. As it had stated at previous DSB meetings, including the informal meeting on 15 September 2017, Switzerland was very concerned about the situation regarding the Appellate Body and the growing, detrimental consequences for the well-functioning of the dispute settlement mechanism and for the integrity and credibility of the multilateral trading system more broadly. Switzerland reiterated its readiness to engage in discussions on issues raised by the United States and to explore possible solutions. Yet it strongly believed that the selection processes for all three Appellate Body vacancies should not be held back any longer and should be launched, conducted and completed without further delay, in line with the two, now essentially identical written proposals on the table.

8.6. The representative of the United States said that as the United States had mentioned under Agenda item 8, the United States was not in a position to support the proposed decision. In the United States' view, the United States could not be considering launching a selection process to fill a vacancy if the person to be replaced continued to serve and decide appeals. The United States first would need appropriate action on the part of the DSB. This point would also apply to the upcoming Agenda item 10.

8.7. The representative of Hong Kong, China said that her delegation thanked the respective Members for their proposals regarding the AB selection processes. As it had expressed earlier, Hong Kong, China was deeply concerned about the impasse over the selection process as the dispute settlement system would not be able to function properly with prolonged vacancies on the Appellate Body. Hong Kong, China considered that the imminent task was to fill the vacancies as soon as possible in order to minimize the negative impact on the normal functioning of the dispute settlement system. Hong Kong, China preferred the EU's proposal, as the vacancies could be filled earlier, but was ready to join a consensus to launch the selection processes without further delay. It urged all Members to cooperate to have a smooth selection process so that the vacancies could be filled as soon as possible. With regard to the US concerns, Hong Kong, China did not see that filling the vacancies on the Appellate Body would prejudice the discussions on systemic issues. It appreciated Members' proposals regarding focused discussions on the identified issues with a view to improving the work of the WTO.

8.8. The Chairman said that based on the ongoing discussion he would like to note that Members were making statements with regard to both proposals pertaining to Agenda items 9 and 10. Therefore, these two Agenda items were being de facto considered jointly.

8.9. The representative of New Zealand, speaking in relation to Agenda items 8, 9 and 10, said that her country believed that the efficient and effective functioning of the dispute settlement system was of utmost importance to the good health of the multilateral trading system and New Zealand continued to be seriously concerned by the current impasse in this regard. Selection processes should be a routine matter. New Zealand thanked the proponents for their proposals for how to launch the selection process as well as the Chairman for the suggestions he had put forward at the 31 August 2017 DSB meeting. New Zealand continued to be flexible regarding the process or processes used to fill the three positions and could support any of the suggested ways forward. It acknowledged the EU's flexibility which it thought was very helpful. New Zealand agreed that the key matter was to launch and conclude the processes as soon as possible and it urged all Members to exercise flexibility to allow this to go forward. While New Zealand certainly stood ready to discuss the concerns raised by the United States under the previous Agenda item, it insisted that these were separate and distinct matters from the decision to launch the selection process to fill the new Appellate Body members. New Zealand agreed with previous speakers that the best way forward would be to have separate and parallel processes to consider these issues. With regard to the substance of the US concerns, New Zealand reiterated that any resolution of the issues raised by the United States in relation to Rule 15 of the Working Procedures for Appellate Review could only be done on a prospective basis. It could not affect any decisions or

proceedings involving divisions that have already been composed applying the well-established practices of Rule 15 of the Working Procedures for Appellate Review. As a party to "Indonesia – Importation of Horticultural Products, Animals and Animal Products" (DS478) New Zealand had no objection to Mr. Ramírez continuing to serve on that appeal. It again called on all Members to be constructive and pragmatic and to allow the launching of the selection processes for new Appellate Body members as soon as possible. New Zealand remained ready to work constructively with others in this regard.

8.10. The representative of Turkey, speaking in relation to Agenda items 8, 9 and 10, said that his country thanked the Latin America countries and the EU for updating their respective proposals. Turkey referred to its statement made at the informal DSB meeting held on 15 September 2017. It believed that the concerns raised by the United States about the working procedures of the Appellate Body should be dealt with separately and should not block the immediate start of the selection process for the three vacancies on the Appellate Body. Like many other delegations, Turkey had deep concerns regarding the well-functioning of the Appellate Body. It was the responsibility of the DSB to guarantee the smooth functioning of the overall system. So the DSB should start the process immediately, without further delay. Turkey was ready to join a consensus on either of the two proposals.

8.11. The representative of Norway reiterated that her country continued to be flexible and would be in a position to support either of the proposals that had been put forward. Norway did however have a preference for the proposal from the EU, as it seemed to provide for a more efficient process that could facilitate the selection of the three Appellate Body members within an agreed time-frame. Norway urged all Members to show the utmost flexibility in order to ensure that the DSB surpassed this deadlock, for the benefit of the system.

8.12. The representative of Australia said that her country remained deeply concerned at the impasse the DSB had reached in relation to appointments to the Appellate Body. Australia urged all Members to engage constructively and demonstrate the necessary flexibility to agree to commence a selection process or processes. The DSB's priority had to be to take the necessary action to fill the current and forthcoming vacancies without further delay. In Australia's view, the DSB's failure to take such action would only serve to undermine the proper functioning of the Appellate Body and the WTO dispute settlement system more broadly, an outcome that Australia was determined to avoid. With that in mind, Australia was open to joining a consensus on either of the proposals, which had been put forward at the present meeting. Finally, Australia thanked the Chairman for his consistent efforts to resolve the current impasse, and expressed its hope that Members would take the necessary action and agree on a positive way forward.

8.13. The representative of Venezuela, speaking in relation to Agenda items 8, 9 and 10, said that her country wished to reiterate its concern about the delay in launching the selection processes to fill the current and upcoming vacancies on the Appellate Body. Venezuela supported the proposal that had been presented by the group of LA countries. It also supported the EU's proposal since both proposals were aimed at achieving the same result. Venezuela considered both proposals to be pragmatic and realistic. It believed that launching of the selection processes should not be linked to any discussions on the systemic concerns raised by the United States.

8.14. The representative of Chinese Taipei, speaking in relation to Agenda items 8, 9 and 10, expressed his delegation's appreciation for the Chairman's report and all the efforts he had made to resolve this matter. Chinese Taipei referred to its statements made at previous DSB meetings and the informal DSB meeting held on 15 September 2017. Given the urgency of this matter, Chinese Taipei called on all Members to agree on the selection process or processes as soon as possible. It could support either of the two proposals put forward at the present meeting and looked forward to working closely with other Members to find a solution.

8.15. The representative of Korea said that his country joined others in expressing its concerns about the delay in the launch of the selection process. Korea did not believe that the US concerns about the two procedural issues in the Appellate Body were proper justification to block the launch of the selection process. Korea shared the view of many other Members that they were two separate, independent issues. Thus, Korea urged the relevant parties to reconsider their positions taking into account the systemic harm to the dispute settlement system arising from the failure to timely fill the vacancies. Also, Korea expressed its flexibility and openness to resolve this situation.

In this regard, it was also ready to join a consensus on the two proposals that had been put forward.

8.16. The representative of the Russian Federation said that his country referred to its previous statements made on this matter and urged all Members to act constructively and to start the selection processes as soon as possible.

8.17. The representative of Ecuador said that one of the basic principles that governed the multilateral trading system was compliance with its rules. Article 3.2 of the DSU stipulated that the dispute settlement system was an essential element in providing security and predictability to the multilateral trading system. Members had the responsibility to uphold the system. In Ecuador's view, this had not been honoured or respected by not launching the selection process to fill the vacancies on the Appellate Body. Ecuador believed that the dispute settlement system required Members to take a decision to resolve the current difficulties. The present difficulty had been caused by one Member. This should have never happened. Article 17.2 of the DSU provided that vacancies had to be filled as they arose. In Ecuador's view, the Chairman had the prerogative to take a decision to launch the process of filling the vacancies on the Appellate Body. This would be to the benefit of the dispute settlement system. The DSU was very clear and indicated that vacancies had to be filled as they arose and therefore it was the Chairman's prerogative to take an urgent action to fill the vacancies that had arisen. Ecuador supported the proposal that had been put forward by seven Latin American countries.

8.18. The representative of Guatemala said that his country, once again, wished to place on the record its concern about the present situation to which it had referred in its previous statements made on this matter.

8.19. The representative of the European Union said that the two proposals on the table were for the launching of all three selection processes and the EU understood that the DSB could not reach consensus at the present meeting. Therefore, there was nothing more that could be done at the present meeting on this issue, but there was a point of clarification which could be of interest for the next DSB meeting. The EU believed that it had heard the United States say that the reason for which the United States could not join the consensus at the present meeting was that: for as long as a person continued to serve on the Appellate Body, the procedure to replace him or her could not be launched. The EU understood that Mr. Kim was not serving on the Appellate Body anymore and that there was no disagreement on this point. So, for the benefit of the EU's preparation for the next DSB meeting it would be good if the United States could confirm that its objection related only to the procedures for the replacement of Mr. Van den Bossche and Mr. Ramírez and did not cover Mr. Kim.

8.20. The representative of Mexico, speaking on behalf of Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru, said that his country regretted that, for the fifth time, Members had failed to reach a consensus to fulfil their duty to start the selection processes. In this regard, Article 17.2 of the DSU set out an obligation to all Members that "vacancies shall be filled as they arise". Members had a duty to preserve the Appellate Body and the multilateral trading system. In light of what had happened at previous meetings, Mexico found it unacceptable that concerns and discussions on matters relating to the dispute settlement system were being linked to the launch of the Appellate Body selection processes. And given what had been established until now, this appeared to be close to a unanimous position in the DSB. Any substantive discussions that Members had on the appellate proceedings or more extensive debates on the functioning of the Appellate Body, should not prevent them from continuing to operate fully and in conditions enabling it to meet its WTO obligations. The DSB should not make it possible for Members with specific concerns, whether justified or not, to decide to impede the functioning of the dispute settlement system until their concerns had been addressed. Otherwise, the Appellate Body, the dispute settlement system, and the rules based multilateral trading system to be held hostage due to individual Members' positions. The dispute settlement system was a cooperative effort of all Members, and the multilateral trading system depended on its proper functioning. Therefore, the Members' primary concern clearly had to be to recover the institutional nature of the Appellate Body and restore it to its full capacity. This would be without prejudice to Members' willingness to discuss any specific concerns or proposals in order to fine tune the Appellate Body's function. Finally, Mexico reiterated that the DSU did not require a DSB decision in order to initiate the processes to fill vacancies on the Appellate Body. In fact, the DSU explicitly stipulated that

vacancies "shall be filled" as they arose. Thus, there was an obligation that the DSB had to meet. Mexico, therefore, requested the Chairman to use his authority to initiate the selection processes.

8.21. The representative of Chile, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), said that the GRULAC countries wished to make a statement regarding the deadlock regarding the Appellate Body selection processes. The GRULAC countries recognized the Chairman's efforts to find a solution to this problem, and thanked the Chairman for convening the informal meeting on 15 September 2017, at which Members had been able to express their views on the present situation. In this respect, the GRULAC countries wished to emphasize their deep concern about the present situation, which was impeding the proper functioning of one of the WTO's major bodies. If the problem was not resolved, the Appellate Body would be virtually paralysed. This would jeopardize the entire dispute settlement system. They noted that the delay in launching the Appellate Body selection process, with two vacancies having already arisen, meant that Members had failed to comply with an existing mandate, and constituted a breach of legal obligations set out in the DSU. This would have serious consequences for the system and would set a bad precedent for the Organization. It would cause damage and undermine the image and credibility of the WTO, in particular considering the complex international climate that had giving rise to negative repercussions for the multilateral trading system. The GRULAC countries were aware that certain concerns had been raised at the 31 August 2017 DSB meeting, and were being reiterated at the present meeting, with respect to the functioning of the dispute settlement system. These concerns were preventing the launch of the Appellate Body selection process. The GRULAC countries considered that it was important for Members with concerns regarding the system to further explain those concerns to others. However, it could not accept that such concerns prevented legal obligations from being met or that their resolution was linked to the filling of AB vacancies. The GRULAC countries pointed out that the functioning of the system could not be impeded while the concerns of some Members were left unaddressed. They called on Members who opposed the launching of the selection processes to consider the serious repercussions of continuing to block them. They requested those Members not to make the launching of the processes conditional on a distinct process, which had to be addressed on its own merit, and rather to help find a solution to swiftly ensure compliance with the legal obligations. Finally, the GRULAC countries requested the Chairman to continue to seek a solution to this issue.

8.22. The representative of Chile reiterated his country's concern about the negative implications for the system due to the failure to comply with the existing rules for filling the AB vacancies. Chile, therefore, invited the parties involved to demonstrate their flexibility and resolve this problem without delay and without associating it with or making it contingent upon other issues that had to be considered separately. Chile encouraged the Chairman to use his authority to start the appointment process to fill the present and upcoming vacancies on the Appellate Body.

8.23. The representative of Costa Rica, speaking in relation to Agenda items 8, 9 and 10, thanked the Chairman for his consultations. Costa Rica joined other Members that had expressed their concerns about the present situation, and supported the statement made by Chile on behalf of the GRULAC countries. It was the responsibility of all Members to ensure the proper functioning of the WTO. Article 17.2 of the DSU pointed out that vacancies had to be filled as they arose. Although Costa Rica had expressed its readiness to discuss the systemic concerns raised by the United States, and any other proposal aimed at improving this system, these discussions could in no way impede the launching of the selection process for filling the vacancies on the Appellate Body. The selection processes should begin without any delay.

8.24. The representative of Peru said that his country wished to place on the record its support for the statement made by Chile on behalf of the GRULAC countries and the statement by Mexico on behalf of the Latin American proponents.

8.25. The representative of Uruguay said that her country reiterated its statement made at the informal DSB meeting on 15 September 2017. Uruguay supported the proposal submitted by the Latin American proponents as well as the statement that had been made Chile on behalf of the GRULAC. It shared the concerns regarding the need to seek a solution as speedily as possible.

8.26. The representative of Honduras said that his country associated itself with the concerns expressed by Chile, on behalf of the GRULAC countries and the Dominican Republic on behalf of the IGDC. Honduras urged Members to find a solution as quickly as possible.

8.27. The representative of El Salvador said that her country thanked the Chairman for his efforts to consult on these matters. El Salvador wished to join others in supporting the statement by Chile on behalf of the GRULAC and expressed its concerns about the delay in launching the selection process to fill the vacancies on the Appellate Body.

8.28. The Chairman thanked Members for their statements and said that he would continue to consult further on this issue. At the same time, he encouraged Members to carry out more conversations and discussions among themselves so that the DSB could come up with more concrete ideas on a way to move forward. The Chairman regretted that it was not possible to reach a solution at the present DSB meeting. However, he hoped that there could be a way to address both the launching of the selection processes and the systemic issues in an appropriate manner so as to ensure the good functioning of the dispute settlement mechanism.

8.29. The DSB took note of the statements.

9 DISPUTE SETTLEMENT WORKLOAD

A. Statement by the Chairman

9.1. The Chairman said that, as he had announced at the beginning of the meeting, he would now make a report to provide the DSB with information about the number of disputes before panels and at the panel composition stage, the Appellate Body's workload and the ability of the Secretariat to meet expected demand over the coming period. This information reflected the status of disputes up until this DSB meeting on 29 September 2017. Other developments in the course of this meeting would be reflected in the information posted on the Members' website. Currently, there were 19 active panels (including five panels under Article 21.5 of the DSU) that had not yet issued a final report to the parties. Multiple disputes that were being considered simultaneously by the same panel were being counted as one. Limited staff resources currently prevented the assigning of dispute settlement officers to assist panels in one pending dispute. The parties had been informed of the situation, and as soon as the availability of appropriate staff was clear, the parties would be informed and the organization of the proceedings would commence. There were a further five panels at the composition stage. This did not count panels for which there had been no composition activity in the last twelve months. In addition, three final panel reports that had been issued to the parties were presently being translated. The Appellate Body was currently dealing with seven appeals, including the extremely complex compliance proceedings in "EC and Certain Member States – Large Civil Aircraft (Airbus)" and in "US – Large Civil Aircraft (Boeing)". Three of these appeals could not be fully staffed at this point. Up to three additional appeals could be filed by the end of 2017. Finally, two matters had been referred to arbitration under Article 22.6 of the DSU.

9.2. The DSB took note of the statement.