



Dispute Settlement Body  
25 January 2016

## MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD  
ON 25 JANUARY 2016

*Chairman: Mr. Harald Neple (Norway)*

Prior to the adoption of the Agenda, the item concerning the adoption of the Panel Report in the dispute on: "Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear" (DS461) was removed from the proposed Agenda following Colombia's decision to appeal the Report.

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## **1 SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB**

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.156)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.156)

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.131)

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.94)

E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.42)

F. United States – Countervailing measures on certain hot-rolled carbon steel flat products from India: Status report by the United States (WT/DS436/14/Add.2)

G. Argentina – Measures affecting the importation of goods: Status report by Argentina (WT/DS438/23 – WT/DS444/23 – WT/DS445/24)

1.1. The Chairman noted that there were seven sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. He recalled that Article 21.6 required that: "Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and shall remain on the DSB's Agenda until the issue is resolved". Under this Agenda item, he invited delegations to provide up-to-date information about compliance efforts and to focus on new developments, suggestions and ideas on progress towards the resolution of disputes. He reminded delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record".

### **A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.156)**

1.2. The Chairman drew attention to document WT/DS176/11/Add.156, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 14 January 2016, in accordance with Article 21.6 of the DSU. Several bills introduced in the current US Congress would repeal Section 211. These were H.R. 274, H.R. 403, H.R. 635 and H.R. 735. Other bills, including H.R. 1627 and Senate Bill 757, would modify Section 211. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings. The United States was also pleased to announce at the present meeting significant positive developments in relation to the Havana Club trademark at issue in the Section 211 dispute. The United States said that as many at the present meeting may know, action on a petition for renewal of the Havana Club trademark had been suspended in 2006 pending the final disposition of certain litigation. That litigation had since concluded. Earlier in the year, on 11 January 2016, the United States had issued a specific license to Cubaexport that allowed it to pay fees for renewal of the US trademark registration. Then, almost two weeks ago, the US Patent and Trademark Office had granted the petition to renew the trademark registration.

Therefore, the Havana Club trademark had been successfully renewed. That Office was currently processing the trademark holder's renewal application for the period 2016-2026. These important steps resolved a long-standing issue of concern to the EU and others. The United States had notified the EU of these positive developments. In light of this step, the United States was moving this dispute into a more cooperative phase that it hoped may create conditions for achieving a final resolution of this dispute. As part of its collaboration with the EU, the United States would be providing the EU directly with information and updates regarding this matter going forward. The United States expected that these recent positive developments also would be welcomed by other WTO Members. Indeed, the United States had been reaching out to provide information as relevant and would expect to continue those efforts in the coming days.

1.4. The representative of the European Union said that the EU considered the grant of a specific license by the OFAC to constitute a very positive step. However, the EU did not consider the matter to be resolved within the meaning of Article 21.6 of the DSU. In order to resolve the matter, the United States would have to repeal Section 211. Although the matter had not been resolved, in view of this positive development, and for the time being, the EU did not consider it necessary for the United States to provide monthly reports for inclusion on the Agenda of regular DSB meetings. However, the EU reserved all its rights in relation to this issue. In light of the US statement that it was not in full compliance, it was understood that should this item be re-inscribed on the Agenda by the United States, upon request by the EU, it would be placed under Agenda item 1. The EU's agreement to remove this item from the Agenda of regular DSB meetings, despite the fact that the matter had not been resolved, was subject to that understanding. The EU further understood that the United States agreed to confer closely with the EU to achieve the full resolution of this dispute.

1.5. The representative of Cuba said that the year 2015 had passed but Members witnessed yet another DSB meeting with the unchanged situation concerning the Section 211 dispute. Almost 14 years had passed since 2 February 2002, when the DSB's rulings and recommendations in this dispute were adopted. The 14 years of non-compliance by the United States in this dispute undermined the security and predictability of the multilateral trading system. The number of months that had passed far exceeded the time-frame of 15 months stipulated in Article 21.3(c) of the DSU as the reasonable period of time for compliance, which had been determined through arbitration. The most recent status report submitted by the United States in this dispute remained practically the same like the previous status reports. Cuba also noted the statement made by the United States at the present meeting. In Cuba's view, following the conclusion of the MC10, Members would have to face major challenges to meet their commitment to move forward with the WTO rules and, more importantly, to strike the right balance between the negotiations and future work, which would reaffirm the intrinsic value and effectiveness of this most important trade organization. Paragraph 13 of the Nairobi Ministerial Declaration adopted by all Members barely a month ago stated: "We [...] commit to pursue and renew efforts to address current challenges and to further strengthen the system, including through effective implementation of the rulings and recommendations of the Dispute Settlement Body (DSB)". In Cuba's view, it was time to start acting in a manner consistent with multilateral trading system rules, and in particular Article 21.1 of the DSU, which stated that "[p]rompt compliance with recommendations [...] is essential in order to ensure effective resolution of disputes to the benefit of all Members".

1.6. Cuba recognized that the re-establishment of diplomatic relations between the United States and Cuba was a positive step. However, more than a year had passed since 17 December 2014 and nothing had changed in the intellectual property rules that the United States applied towards Cuba, nor had there been any changes with regard to the many policies that were part of the economic, commercial and financial embargo imposed on Cuba. Cuba believed that the embargo should be lifted immediately and unconditionally. Cuba recognized that the renewal of Cubaexport's registration of the trademark by the US Patent and Trademark Office (USPTO) was a positive and fair step by the US Administration, since it constituted recognition of the Cuban company's rights as owner of the trademark. However, one had to take into account the fact that while Section 211 remained in force, the US courts were prevented from recognizing Cuban trademarks and patents, and therefore the registration could still be cancelled, at any time, under this legislation, by decision of a US court. Thus, in the lawsuit filed by Bacardi in 2004, the Court of the District of Columbia could rule in favour of cancellation with a view to securing the cancellation of the registration of the Havana Club trademark and the recognition of Bacardi as owner of this trademark. These proceedings had been suspended in 2006 awaiting action by the USPTO. In light of this and the recent statement made by Bacardi, the proceedings would

presumably be resumed. Therefore, as long as Section 211 remained in force, Cuba would continue to demand its repeal since it represented a permanent violation of the TRIPS Agreement and the rulings of the DSB, which had declared that Section 211 was inconsistent with the WTO rules and principles. Therefore, Cuba made a formal request to the DSB that the request made by the EU at the present meeting be rejected, given that Section 211 remained in force and unchanged. The DSB rulings adopted by all Members in relation to this legislation had still not been complied with. In Cuba's view, the surveillance of the implementation of these rulings should remain on the DSB's Agenda, pursuant to Article 21.6 of the DSU. Cuba, therefore, reiterated its formal request that this matter remain on the Agenda of the DSB's regular meetings.

1.7. The representative of the Plurinational State of Bolivia said that, once again, her country wished to reiterate its concerns about the US non-compliance with the DSB's recommendations. Such non-compliance affected the credibility of the multilateral trading system. While Bolivia welcomed the recent step and the decision to issue a licence under the registration of the Havana Club trademark in the United States, the fact that Section 211 continued to remain in force undermined the credibility and sustainability of the multilateral trading system, given its systemic implications and the negative effect on a WTO Member. Bolivia, once again, called on the United States to comply with the DSB's recommendations and rulings and to immediately remove the restrictions imposed under Section 211. As long as Section 211 remained in force, it would continue to be in violation of WTO rules. The DSB's recommendations and rulings were still in force and, therefore, Bolivia supported Cuba's request not to agree to the US/EU request made at the present meeting and would wish that this item be kept on the DSB's Agenda.

1.8. The representative of Ecuador said that his country supported the statement made by Cuba. Ecuador noted that the item concerning Section 211 had been under the DSB surveillance for many years. The United States had been submitting status reports regarding its intentions to comply with the DSB's recommendations and rulings, as reflected in the most recent version of the report circulated in WT/DS176/11/Add.156. The US non-compliance with the DSB's recommendations and rulings had allowed Section 211 to remain in force for more than 14 years, despite the fact that it was declared inconsistent with WTO rules. Ecuador was one of the delegations that had clearly stated that the maintenance of Section 211 could undermine the credibility of the DSB and the WTO. This could have a negative effect on all Members, in particular developing-country Members. Ecuador recalled that Article 21 of the DSU referred specifically to prompt compliance with the DSB's recommendations and rulings. In that regard, Ecuador called on the United States to step up its work and promptly comply with the DSB's recommendations and rulings and to repeal Section 211. Ecuador supported Cuba's request to keep this item on the DSB's Agenda.

1.9. The representative of Brazil said that her country thanked the United States for its status report. Brazil was pleased that the US Patent and Trademark Office had recently granted the registration of the Havana Club trademark to the Cuban company Cubaexport. This was certainly an important step towards the resolution of this long-standing dispute. Brazil hoped that the United States and the EU, as well as the United States and Cuba, encouraged by this decision and by the positive developments in the bilateral relationship between the United States and Cuba, would continue to work together in the search for a final and comprehensive solution to this dispute.

1.10. The representative of Zimbabwe said that his country welcomed the US status report regarding this dispute. Zimbabwe commended the positive steps that had been instituted since the restoration of diplomatic relations between the United States and Cuba, in particular, the licensing of the trademark to Cubaexport in the United States. To that end, Zimbabwe urged the United States to continue its efforts to fully repeal Section 211, in accordance with the DSB's rulings and recommendations, with a view to resolving this long-standing matter. Zimbabwe supported Cuba's request to keep this item on the DSB's Agenda.

1.11. The representative of Mexico said that his country thanked the United States for its statement made at the present meeting. Mexico would comment on this statement at a later stage since it had not yet received this statement in writing. However, Mexico considered the step taken to be positive in terms of complying with the DSB's recommendations and rulings. Thus, Mexico hoped that the United States would promptly comply in this dispute.

1.12. The representative of Viet Nam said that her country thanked the United States, Cuba and the EU for the report and statements. Viet Nam noted that the United States and Cuba had important and positive restoration of bilateral diplomatic relations. Viet Nam further noted that the United States had taken certain measures towards lifting the blockade against Cuba. However, Viet Nam also noted that, despite the positive steps taken, Section 211 remained in force and the United States had failed to comply with the WTO rules for almost 14 years. Viet Nam was concerned that such non-compliance continued to undermine the effectiveness of the multilateral trading system. Viet Nam urged the United States to fully comply with the DSB's rulings and recommendations in this dispute.

1.13. The representative of Nicaragua said that his country supported the statement made by Cuba. Nicaragua reiterated its continued concerns with the prolonged situation of non-compliance on the part of the United States with the DSB's rulings and recommendations in this dispute. Nicaragua had carefully listened to the US statement, which had indicated a positive step regarding the renewal of the Cubaexport licence. However, Nicaragua noted that the US status report did not report on any progress made towards the resolution of this 14 year-old dispute. As it had previously stated, Nicaragua was of the view that such non-compliance severely affected the economic interests of a Member with a small economy and undermined the dispute settlement mechanism, a fundamental pillar of the WTO. Nicaragua, like other delegations, could not accept the EU's request that this item should be removed from the DSB Agenda because this matter concerned non-compliance with the DSB's rulings. In Nicaragua's view, this item must remain on the DSB's Agenda. Nicaragua joined other Members in calling on the United States to promptly adopt necessary measures in order to comply with the DSB's rulings.

1.14. The representative of China said that her country thanked the United States for its status report and the statement made at the present meeting. The prolonged situation of non-compliance in this dispute was highly inconsistent with the principle of prompt compliance under the DSU provisions, in particular since the interests of a developing-country Member were affected. China, therefore, urged the United States to implement the DSB's rulings and recommendations without any further delay.

1.15. The representative of Angola said that his country thanked the United States for its status report. Angola supported the statement made by Cuba and the previous speakers regarding the lack of progress in the implementation of the DSB's recommendations and rulings in this dispute. However, despite all the steps taken by the US authorities and legal institutions, the situation had not changed for the past 14 years. Continued non-compliance in this dispute had negatively affected the interests of Cuba, a country with a small and vulnerable economy. Angola noted the US statement on the new developments with regard to this matter. As it had stated several times, Angola welcomed the recent re-establishment of diplomatic relations between the United States and Cuba, after half a century. Angola considered that the re-established bilateral relationship between the two countries provided an opportunity and basis to consolidate relations between the countries in several areas, and in particular in the area of trade. Angola believed that all possible steps should be taken to improve relations between the United States and Cuba and to promptly resolve this dispute. In Angola's view, resolving this dispute would reinforce the DSB's ability to assist Members in settling their disputes. Angola was of the view that the United States should continue the process of implementing the DSB's recommendations and rulings and requested that this item be kept on the DSB's Agenda.

1.16. The representative of Argentina said that his country thanked the United States for its status report, which did not contain any new information. Argentina thanked the United States for its statement, which showed that some progress had been made in this dispute. As Cuba and other delegations had stated, there was still some way to go until full implementation was achieved. However, Argentina was pleased to see this new cooperation, and hoped that this was the beginning of a solution to this matter.

1.17. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Cuba. Venezuela noted with concern that the most recent US status report did not contain any information on progress towards implementation of the DSB's rulings and recommendations in this dispute. Venezuela noted the US statement with regard to recent progress made in this dispute, but it also noted that Section 211 was still in force. In Venezuela's view, the prolonged situation of non-compliance and delays in implementation by the United States undermined the credibility of the dispute settlement system. Venezuela reiterated

the importance of implementing the DSB's recommendations and rulings. As Venezuela had previously stated, this situation of prolonged non-compliance was inconsistent with the DSB's rulings and recommendations. Venezuela urged the United States to comply with the DSB's recommendations and rulings and to repeal Section 211. Venezuela thanked Cuba for its statement and joined the previous speakers in supporting Cuba's request to keep this item on the DSB's Agenda.

1.18. The representative of India said that his country thanked the United States for its update on the development in this dispute. There had been a positive movement in terms of the renewal of the trademark, but as noted by other Members, the repeal of Section 211 would be required for full compliance in this dispute. India noted that Article 21.6 of the DSU stated that the issue of implementation may be raised at the DSB by any Member at any time following the adoption of the DSB's recommendations or rulings. India, however, hoped that the positive developments would lead to a mutually satisfactory solution in this matter, especially since a developing-country Member was seeking compliance. India urged, in particular, that the United States take the positive development reported at the present meeting to its natural culmination and bring its measures into compliance with the DSB's recommendations and rulings.

1.19. The representative of Peru said that her country thanked the United States for its statement made at the present meeting. Peru supported the statements made by Cuba and other delegations and noted that Section 211 was still in effect and that this dispute remained unresolved.

1.20. The representative of Jamaica said that her country thanked the United States, the EU and Cuba for the statements made under this Agenda item. Jamaica noted and welcomed the positive developments in this dispute since the DSB's consideration of this item in November 2015. Jamaica, however, reiterated its concerns regarding the continued failure of the United States to come into full compliance with the DSB's recommendations adopted in 2002 regarding Section 211. The continued US failure to take all the necessary steps to comply with its obligations under the DSU was incompatible with the requirement for prompt and effective implementation of the DSB's decisions, in particular since the US actions affected a developing-country Member with a small, vulnerable, economy. Jamaica, once again, reiterated its deep concern about the systemic implications of such disregard for DSB decisions, which could undermine the overall integrity of the dispute settlement system, a system that remained a cornerstone of the WTO. Jamaica believed that after 14 years since the adoption of the DSB's recommendations, it was more than reasonable for Members to expect that this matter would be resolved in accordance with the DSB's rulings and recommendations. Jamaica supported the call for keeping this item on the DSB's Agenda until its final resolution.

1.21. The representative of Uruguay said that her country thanked the United States for its status report. Uruguay noted that efforts were being made, leading to a first positive step in the settlement of this dispute. Uruguay urged the parties to this dispute to continue to cooperate with Cuba and to ensure the effective implementation of the DSB's rulings and recommendations in this dispute.

1.22. The representative of the Russian Federation said that her country welcomed the positive development in this long-standing dispute which had been attracting the attention of Members as an example of non-compliance with, and disregard of, the DSB's rulings and recommendations. Russia believed that due and timely implementation of the DSB's recommendations and rulings by all Members was essential for maintaining mutual trust and credibility within the entire WTO framework. Russia hoped that the parties to this dispute would build on this momentum and would fully address the remaining issues in this dispute as soon as possible.

1.23. The representative of El Salvador said that her country thanked the United States for its statement made at the present meeting. El Salvador noted the positive steps mentioned at the present meeting. El Salvador hoped that the United States would effectively implement the DSB's recommendations and rulings and resolve this long-standing dispute.

1.24. The Chairman proposed that the DSB take note of the statements and agree that it may revert to this matter.

1.25. The representative of Cuba said that her delegation sought clarification from the Chair as to what was meant by the phrase that the DSB "may revert to this matter".

1.26. The Chairman said that, it was his understanding that status reports were placed on the DSB's Agenda by the Members concerned, and not by the Chairman. This meant that the status reports were placed on the Agenda by the respective parties to the dispute. Therefore, it would be up to them in this case to decide if they wished to do so. Alternatively, pursuant to Article 21.6 of the DSU, the issue of implementation may be raised at the DSB by any Member as a separate item on the Agenda. In other words, if Cuba so wished, or if any other Member so wished, it could put this matter on the DSB's Agenda as a separate item but not under Agenda item 1, which was based on the status report submitted by the relevant parties to disputes.

1.27. The representative of Cuba said that her country wished to reiterate its request made at the present meeting in its opening statement, which was supported by a significant number of countries, namely, that this item be kept on the Agenda of regular DSB meetings. In Cuba's view, proceeding in this way would be in accordance with the DSU provisions. She therefore reiterated Cuba's formal request to keep this item on the Agenda of regular DSB meetings.

1.28. The Chairman said that the DSB would take note of Cuba's statement. However, as he had stated previously, it would be up to the Member concerned to submit a status report since it was not up to the DSB Chairman to make such decisions. He reiterated that Cuba's statement was duly noted and would be reflected in the minutes of the present meeting.

#### **B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.156)**

1.29. The Chairman drew attention to document WT/DS184/15/Add.156, 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.

1.30. The representative of the United States said that his country had provided a status report in this dispute on 14 January 2016, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve the matter.

1.31. The representative of Japan said that his country thanked the United States for its statement and its status report submitted on 14 January 2016. Japan wished to refer to its previous statements that this issue should be resolved as soon as possible.

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

#### **C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.131)**

1.33. The Chairman drew attention to document WT/DS160/24/Add.131, 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.

1.34. The representative of the United States said that his country had provided a status report in this dispute on 14 January 2016, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

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

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

**D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.94)**

1.37. The Chairman drew attention to document WT/DS291/37/Add.94, 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.

1.38. The representative of the European Union said that, in recent meetings, the EU had already reported on authorisation decisions and other actions towards approval decisions taken up to November 2015. On 4 December 2015, the European Commission had authorized the placing on the market of two GM maize products for food and feed use.<sup>1</sup> The Appeal Committee of 11 January 2016 had voted on three draft Commission Implementing Decisions authorizing the placing on the market of three GM soybean products<sup>2</sup> with a "no opinion" result. It was now for the European Commission to decide on the authorisations. More generally, and as stated many times previously, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.39. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. The United States remained concerned with the EU's measures affecting the approval and marketing of biotech products. Dozens of biotech applications remained pending in the EU approval system and were subject to numerous delays. An EU official responsible for reviewing EU administrative actions had recently confirmed the existence of widespread delays in the EU biotech approval measures. In particular, the EU Ombudsman had concluded that the Commission had failed to take its decisions with respect to biotech products within a reasonable time. Further, even when the EU did approve a biotech product, the approval may not apply within one or more EU member states. Instead, EU member states had banned such products, and had done so without any apparent scientific basis. Instead of taking steps to address this problem, the EU Commission had proposed an amendment to EU biotech approval measures that would facilitate the adoption of additional EU member state bans on biotech products approved at the EU-level. The United States understood that the European Parliament had sought the withdrawal of this proposal. Nonetheless, the proposal had yet to be withdrawn. Accordingly, the United States remained concerned about so-called "opt-out" proposals for biotech products. Indeed, at least 19 member states or sub-regions had declared their intention to "opt-out" of certain biotech approvals without providing any scientific basis. In closing, the United States urged the EU to ensure that its biotech approval measures were consistent with its obligations under the SPS Agreement.

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

**E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.42)**

1.41. The Chairman drew attention to document WT/DS404/11/Add.42, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain shrimp from Viet Nam.

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<sup>1</sup> MON 87427 maize and NK 603xT25 maize

<sup>2</sup> MON 87705xMON 89788 soybean, MON 87708xMON 89788 soybean, FG72 soybean



1.42. The representative of the United States said that his country had provided a status report in this dispute on 14 January 2016, in accordance with Article 21.6 of the DSU. As the United States had noted at past DSB meetings, in February 2012, the US Department of Commerce had modified its procedures in a manner that addressed certain findings in this dispute. The United States would continue to consult with interested parties as it worked to address the other recommendations and rulings of the DSB.

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

1.44. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Viet Nam. Venezuela had taken note of the most recent US status report dated 14 January 2016. Venezuela emphasized the importance of prompt and effective implementation of the DSB's recommendations and rulings. As stated on previous occasions, protracted failure to comply in this dispute undermined Members' confidence in the system and set a negative precedent for the credibility of the DSB. Venezuela urged the United States to take necessary measures to end this situation of non-compliance and to report on the measures it intended to take at the next DSB meeting.

1.45. The representative of Cuba said that her country supported the statement made by Viet Nam. Cuba expressed its concern about the prolonged situation of non-compliance with the DSB's recommendations and rulings in this dispute. Cuba reiterated the importance of prompt and effective compliance with the DSB's rulings, in particular when a developing-country Member, in this case Viet Nam, was affected. Cuba noted that the US status report did not report on any progress made towards compliance in this dispute. Cuba urged the United States to comply with its obligations.

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

#### **F. United States – Countervailing measures on certain hot-rolled carbon steel flat products from India: Status report by the United States (WT/DS436/14/Add.2)**

1.47. The Chairman drew attention to document WT/DS436/14/Add.2, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US countervailing measures on certain hot-rolled carbon steel flat products from India.

1.48. The representative of the United States said that his country had provided a status report in this dispute on 14 January 2016, in accordance with Article 21.6 of the DSU. On 5 October 2015, pursuant to section 129(b) of the Uruguay Round Agreements Act ("URAA"), the US Trade Representative had requested the US Department of Commerce to issue a determination in the underlying proceeding that was not inconsistent with the findings of the Panel and the Appellate Body in this dispute. Also, on 5 October 2015, pursuant to section 129(a) of the URAA, the US Trade Representative had requested the US International Trade Commission (USITC) to issue an advisory report on whether US law permitted the Commission to take steps in connection with the underlying proceeding that would render its determination subject to the DSB's recommendations not inconsistent with the WTO findings. On 23 October 2015, the USITC had responded in the affirmative. On 6 November 2015, the US Trade Representative had proceeded to request that the USITC issue a determination in the underlying proceeding that was not inconsistent with the findings of the Panel and the Appellate Body in this dispute. The United States would continue to work to address the recommendations and rulings of the DSB and to consult with interested parties.

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

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

**G. Argentina – Measures affecting the importation of goods: Status report by Argentina (WT/DS438/23 – WT/DS444/23 – WT/DS445/24)**

1.51. The Chairman drew attention to document WT/DS438/23 – WT/DS444/23 – WT/DS445/24, which contained the status report by Argentina on progress in the implementation of the DSB's recommendations in the case concerning Argentina's measures affecting the importation of goods.

1.52. The representative of Argentina said that his country had submitted its status report regarding disputes DS438-DS444-DS445, in accordance with Article 21.6 of the DSU. Argentina noted that the Panel Report, as modified by the Appellate Body Report, had determined that the measures identified during the proceedings as "TRRs" (trade-related requirements) and "DJAI" (Advance Sworn Import Declaration) were inconsistent with Articles III:4 and XI:1 of the GATT 1994 and Article XI:1 of the GATT 1994, respectively. Argentina and the three co-complainants had agreed on a reasonable period of time, in accordance with Article 21.3(b) of the DSU. Argentina had worked to implement the DSB's recommendations and rulings within that time-frame, which had expired on 31 December 2015. In order to implement the DSB's recommendations and rulings, Argentina had withdrawn the measures declared to be WTO-inconsistent, in line with Article 3.7 of the DSU and certain WTO case law<sup>3</sup>, on the understanding that it was the best option in this case. As mentioned in the status report, Argentina had stopped applying the "TRRs" measures in October 2015, as was duly reported to the three co-complainants. Thereafter, through General AFIP Resolution No 3823 of 21 December 2015, Argentina repealed the legislation under which the "DJAI" measure was established, taking the necessary steps to ensure that, by the end of the reasonable period of time, there would be no more DJAI applications pending approval. Finally, through the Secretariat of Trade Resolution No 2/2016, Argentina had repealed Resolution No 1/2012 of the Secretariat of Domestic Trade, which had empowered that body to intervene in all foreign trade operations, thereby dispensing with one of the elements of discretion that the Panel and the Appellate Body had observed in the measures.

1.53. In addition, and in order to ensure the transparency of the implementation procedure, the status report described the foreign trade measures adopted by the new Government. First, General AFIP Resolution No 3823 established the Comprehensive Import Monitoring System (SIMI). This system operated through a virtual platform, which enabled information to be standardized and which facilitated the exchange of such information between bodies that were part of the Single Electronic Window (VUCE), according to their relevant spheres of competence, thus making it possible to streamline, simplify and ensure the transparency of all foreign trade operations. The AFIP website would provide operators with access to online information that continued to be updated, thus, ensuring the predictability and simplicity of operations. Furthermore, pursuant to Resolution No 5/2015 of the Ministry of Production, and its supplementary text, Resolution No 2/2016 of the Secretariat of Trade, the handling of applications for the definitive importation of goods for consumption remained subject to the advance processing of automatic import licences, except for around 15% of the tariff universe, which was subject to non-automatic licensing. Both measures would be applied in a transparent manner consistent with WTO rules. Argentina had provided the Secretariat with copies of the legislation referred to in the status report, which was publicly available on the official Infoleg Website (infoleg.gov.ar). In light of the foregoing, Argentina considered that it had fully implemented the DSB's recommendations and rulings of 26 January 2015, within the time-frame agreed with the three co-complainants pursuant to Article 21.3(b) of the DSU.

<sup>3</sup> Report of the Arbitrator, "Japan – DRAMs" (Korea), Article 21.3(c); Report of the Arbitrator, "Colombia - Ports of Entry" (Article 21.3(c)).

1.54. The representative of the European Union said that the EU noted the fact that Argentina had claimed to have ceased to apply the WTO-inconsistent trade-restrictive requirements, so-called "TRRs"; to have repealed the WTO-illegal import-licensing procedure known as the Advanced Sworn Import Declaration ("Declaración Jurada Anticipada de Importación" or DJAI); and to have adopted resolutions establishing new import monitoring and licensing systems. The EU was carefully reviewing the compliance measures adopted by Argentina, and would continue assessing related regulations, user guides, management guidelines and operating manuals as soon as they were published. At the present time, the EU was not fully convinced that measures at issue were sufficient to bring Argentina into full compliance with the DSB's recommendations and rulings in this dispute. With respect to the TRRs measure, the EU was still verifying on the ground that these requirements had ceased to apply and had not morphed into another mechanism. With respect to the DJAI, the EU had noticed that according to Argentina, "at the date of expiry of the reasonable period of time for implementation, there were no more DJAIs pending approval by the authorities involved within the terms of the findings of the Panel and the Appellate Body". The EU wished to receive clarification on the exact meaning contained in that statement. With respect to the new import monitoring and licensing system, the EU was particularly worried about the fact that, while most imports into Argentina would seem to be subject to an automatic import licensing system, certain imports (covering approximately 15% of the tariff lines) would be subject to a non-automatic import licensing system. The EU would be interested in having an explanation of the rationale and justification for subjecting such a high fraction of imported goods to an import-restrictive licensing procedure. The EU looked forward to cooperating with Argentina to enhance its understanding of the scope and operation of Argentina's measures taken to comply.

1.55. The representative of the United States said that his country recalled that, in disputes brought by the United States, the EU, and Japan, the DSB had adopted the findings of the Panel and the Appellate Body that Argentina's import licensing measures breached Argentina's obligations under the GATT 1994. These measures included the so-called "DJAI", an import licensing regime, and other trade-related restrictions including unwritten trade balancing requirements. Pursuant to the agreement of the parties to the dispute, the period of time for Argentina to comply with the DSB's recommendations and rulings had ended on 31 December 2015. Shortly before the end of the reasonable period of time, Argentina had a change of administrations. The United States welcomed the public statements of Argentina's new government that it intended to end the trade-restrictive policies of the prior government. The United States also looked forward to working with the new government to address US concerns with Argentina's trade measures. The United States would need to do so with respect to the measures at issue in this dispute. The United States could not agree at the present meeting with Argentina's claim, in its status report of 14 January 2016, and at the present meeting, that it had come into compliance with the recommendations and rulings of the DSB. The United States was in the process of reviewing the measures cited in Argentina's status report. Based on the face of the new measures, however, the United States had significant questions about how they could serve to bring Argentina's import licensing measures into compliance with its WTO obligations. In particular, the United States was concerned that Argentina appeared to have replaced its DJAI import licensing system with a new system that subjected numerous products to non-automatic import licensing, and which appeared to leave government officials with discretion on whether to grant or deny import licenses. This would, unfortunately, be the same problem that the WTO had found with respect to the previous import licensing regime. The United States also had questions with regard to whether Argentina had released importers from the numerous trade restrictive commitments that were imposed as part of Argentina's trade-related requirements. Despite its concerns, the United States understood that Argentina would be prepared to confer with the complaining parties on implementation actions in this dispute, and the United States was willing and ready to engage in discussions with Argentina. The United States looked forward to working with Argentina's new government to address these matters with the goal of seeing full compliance with WTO rules and a satisfactory resolution of this dispute.

1.56. The representative of Japan said that his country thanked Argentina for its status report and its statement made at the present meeting. To Japan's surprise and dismay, Argentina had just stated in its status report that it had fully implemented the DSB's recommendations and ruling. Japan had serious concerns about Argentina's current status of implementation. In particular, the introduction of the Comprehensive Import Monitoring System (SIMI) to replace the DJAI seemed to be highly problematic for the purpose of effective resolution of this dispute. For example, Article 5 of the General AFIP Resolution No 3823 on which the SIMI was based seemed to allow relevant agencies the broad discretion to restrict an importation on wide-ranging grounds. As the

Panel in this case had repeatedly observed, the discretionary elements were essential features of the original measures, i.e. the DJAI procedure which was found to be inconsistent with Article XI:1 of the GATT 1994. The SIMI appeared to retain this essential feature. Japan called on Argentina to explain how the SIMI could comply with the DSB's recommendations and rulings. According to its status report, "[Argentina] is still evaluating the issuing of regulations relating to the regime, the user manuals and management guidelines, which, if adopted, will be published promptly". It appeared that Argentina was still in the process of developing the SIMI, the work of which had yet to be completed. Japan urged Argentina to design and devise implementing regulations, manuals and guidelines, which would implement the SIMI in a manner that ensured the WTO-consistency of the newly developed import monitoring system. Argentina had also announced that it was introducing new non-automatic import licensing measures within the framework of the SIMI. Japan had to express its particular concerns that the new non-automatic import licensing measures would restrict the importation and would be WTO-inconsistent. Thus, the introduction of the new non-automatic import licensing measures was also far from due implementation of the DSB's recommendations and rulings. Japan strongly urged Argentina to reconsider its plan. To that end, Japan strongly encouraged Argentina to regularly consult with Japan and other complainants to address its concerns with the SIMI and the non-automatic import licensing measures it was now contemplating. Japan emphasized that a continued dialogue between the parties was the preferred avenue to achieve the full implementation by Argentina of the DSB's recommendations and rulings. Should Argentina fail to act promptly to rectify the current situation, Japan would have to exercise its right under the DSU to secure full compliance in this dispute.

1.57. The representative of Argentina said that his country wished to make a statement to respond to the concerns raised by the co-complainants at the present meeting. Argentina thanked them for their respective statements and appreciated the positive tone of those statements. Argentina was fully committed to continue to work with the co-complainants in order to clarify any questions they may have with regard to Argentina's implementation of the DSB's recommendations and rulings. At this point, Argentina wished to clarify certain aspects of the steps it had taken in order to implement the DSB's rulings. With regard to the EU's request for clarification as to what exactly Argentina meant by stating that "there were no more DJAI pending approval" by the expiry of the reasonable period of time, he recalled that on 21 December 2015 Argentina's authorities had decided to repeal the DJAI system and replace it with a new one, which was not subject to this dispute. At that time, there were concerns among the operators regarding the DJAI requests pending for approval due to the need to adapt them to the new system. In this regard, the authorities had looked for the most expeditious way to approve these DJAI requests, which would be valid for 180 days. The DJAI system no longer existed. Consequently, there was no other way to request a certificate for importing to Argentina but through the new system that had been put into place on 21 December 2015. With regard to the co-complainants' question concerning the number of tariff lines subject to the non-automatic import licensing procedure, Argentina understood that there were some concerns. However, the fact that the number may be considered large by the co-complainants did not mean (for that reason alone) that this procedure was inconsistent with the WTO law. Argentina reiterated its readiness and willingness to cooperate with the co-complainants. With regard to Japan's statement, Argentina considered that it was an error to assume that a non-automatic import licensing, *per se*, should restrict trade. For that reason, Argentina could not accept the assertion that, because it had decided to implement a non-automatic import licensing system, it was far from fully complying with the Panel's rulings and recommendations. In addition, Argentina noted that the non-automatic import licensing procedure was not subject to the Panel's examination. Argentina, once again, reiterated that it was ready and willing to cooperate with the co-complainants.

1.58. The representative of the European Union said that the EU thanked Argentina for the additional explanation. Since this was a very complex issue, the EU would appreciate receiving in writing the explanation that had just been provided by Argentina.

1.59. The representative of Argentina confirmed that the statement just made by his delegation would be circulated to all Members after this meeting.

1.60. The DSB took note of the statements.

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

### A. Statements by the European Union and Japan

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

2.2. The representative of the European Union said that the EU, once again, requested the United States to stop transferring anti-dumping and countervailing duties to the US industry. These disbursements were incompatible with the DSB's recommendations and rulings. The EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit status reports in this dispute.

2.3. The representative of Japan said that, since the distributions under the CDSOA had been continuing, Japan, once again, urged the United States to stop the illegal distributions in order to resolve this long-standing dispute. As it had stated at previous meetings, Japan was of the view that the United States was under obligation to provide the DSB with a status report in this dispute, in accordance with Article 21.6 of the DSU.

2.4. The representative of India said that his country shared the concerns of the EU and Japan in these disputes. The WTO-inconsistent disbursements continued unabated to the US domestic industry. India was of the view that this item should continue to remain on the DSB's Agenda until such time that full compliance was achieved in this dispute.

2.5. The representative of Canada said that his country thanked the EU and Japan for having placed this item on the DSB's Agenda. Canada shared their position that this matter should remain subject to the DSB's surveillance until full compliance was achieved.

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

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

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

2.9. The DSB took note of the statements.

### 3 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

#### A. Statement by the United States

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

3.2. The representative of the United States said that his country continued to have serious concerns that China had failed to bring its measures into conformity with its WTO obligations. China continued to impose its ban on foreign suppliers of electronic payment services ("EPS") by requiring a license, while at the same time failing to issue all specific measures or procedures for obtaining that license. The United States previously had taken note of an April 2015 State Council decision, which indicated China's intent to open up its EPS market following issuance of implementing regulations by the People's Bank of China and the China Banking Regulatory Commission. The United States had also noted that the People's Bank of China had issued some draft regulations. To date, however, the China Banking Regulatory Commission had not issued any draft or final regulations implementing the State Council's April 2015 decision. Nor had the People's Bank of China issued final regulations. As a result, a single, Chinese enterprise continued to be the only EPS supplier able to operate in China's domestic market. As required under its WTO obligations, China must adopt the implementing regulations necessary for allowing the operation of foreign EPS suppliers in China, and any regulations must be implemented in a consistent and fair way. The United States continued to look forward to the prompt issuance and implementation of all measures necessary to permit foreign EPS suppliers to do business in China.

3.3. The representative of China said that her country regretted that the United States had, once again, brought this matter before the DSB. China referred to its statements made at previous DSB meetings under this Agenda item and underlined that it had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute. China hoped that the United States would reconsider the systemic implications of its position. She noted that the United States had referred to China's State Council decision to further open and regulate the bank card clearing market, raising the level of opening up in the financial sector. However, as stated at previous meetings, China reiterated that the regulation mentioned by the United States was not relevant to the implementation of the DSB's recommendations and rulings in this dispute. The DSB meeting was not the appropriate forum to discuss this regulation.

3.4. The representative of the United States said that the State Council's decision itself referenced the need for additional regulations for administrative licensing from PBOC and CBRC before foreign suppliers could conduct EPS business in China. Could China inform the United States of when it could expect to see the publication of all the relevant measures?

3.5. The representative of China said that his country noted the request made by the United States. The regulation mentioned by the United States was not relevant with respect to the implementation in this dispute. Thus, China had no information to provide regarding this matter.

3.6. The DSB took note of the statements.

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

#### A. Statement by the Philippines

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

4.2. The representative of the Philippines said that, despite the repeated statements made in the DSB that it "will take steps to ensure" the WTO-consistency of its actions, Thailand had just filed criminal charges against an importer of Philippine cigarettes for the alleged under-declaration of customs value. The circumstances surrounding the prosecution demonstrated a very close relationship to the circumstances surrounding the measures at issue in the original WTO proceedings. Specifically, the original WTO proceedings and the prosecution involved the same importer into Thailand, the same exporter, the same exporting country, the same product, the



same declared customs values for the same brands, and the same circumstances of sale. Moreover, the original WTO proceedings and the prosecution involved the same type of legal determination, namely, a determination by Thailand that the importer had under-declared customs values of Philippine goods. To determine what it considered to be proper customs value, Thailand had used, as the basis for the prosecution, a WTO-inconsistent method that Thailand had initially relied upon in the original panel proceedings, but then it had expressly abandoned as the grounds for its valuation decisions. The WTO panel had ruled that Thailand enjoyed no legitimate grounds to reject the customs values it now subjected to criminal prosecution. In short, the prosecution involved an attempt by Thailand to criminalize declared customs values that the original Panel in this dispute had ruled should not be rejected, through the resurrection of a WTO-inconsistent valuation method that Thailand itself had abandoned in the original proceedings in this dispute. The Philippines was evidently very concerned about this development.

4.3. The Philippines was also concerned about a series of further compliance issues that remained outstanding, nearly four years after Thailand was supposed to fully comply with the DSB's recommendations and rulings. Of particular importance was a ruling by the Thai Customs Board of Appeals (or "BoA") rejecting transaction value for 210 entries from Indonesia that were covered by the DSB's rulings and recommendations in the original proceedings. As the Philippines had previously noted, the ruling was riddled with WTO-inconsistencies, and set out a methodology that perpetuated Thailand's application of WTO-inconsistent conduct with respect to the customs valuation of related party transactions. It was disturbing that Thai Customs had explicitly advised the Thai court that they did not need to follow the WTO ruling because it supposedly bound only the Philippines, as the party that had brought the dispute, and did not bind Thailand. The Philippines had for some time emphasized its openness to resolving these issues bilaterally. In light of the unfortunate developments reported at the present meeting, the Philippines continued to reserve its right to revert to dispute settlement proceedings.

4.4. The representative of Thailand said that his country took note of the Philippines' statement made at the present meeting. As stated in its status reports and at the DSB meetings, Thailand had taken all actions necessary to implement the DSB's recommendations and rulings in this dispute. Thailand, therefore, referred to its previous statements made under this Agenda item.

4.5. The DSB took note of the statements.

## **5 UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM**

### **A. Statement by Viet Nam**

5.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Viet Nam and invited the representative of Viet Nam to speak.

5.2. The representative of Viet Nam said that her country appreciated the opportunity to address the DSB, once again, regarding implementation in this dispute (DS429). Viet Nam noted that, pursuant to Article 21.6 of the DSU, surveillance of implementation of the DSB's recommendations in this dispute would be on the Agenda of the June 2016 DSB meeting. However, Article 21.6 of the DSU also provided that any Member may raise the issue of implementation at any time following the adoption of the relevant panel and Appellate Body reports. As Members were aware, the DSB had adopted the Panel and Appellate Body Reports in this dispute at its meeting in April 2015. At the DSB meeting in May 2015, the United States had expressed its intention to fully implement the DSB's recommendations and rulings. Having failed to reach agreement on a reasonable period of time for implementation, Viet Nam had sought arbitration and the arbitral award provided for a period of 15 months from the date of the adoption of the Reports in this dispute. The purpose of Viet Nam's statement at the present meeting was to express its continued concerns about implementation in this dispute. Nine months had passed since the DSB's adoption of the Reports in this dispute and Viet Nam had not received any information or evidence that the United States had taken any steps towards implementation. While Viet Nam recognized, as did the arbitrator, that the "as such" violation associated with the US "country-wide rate" practice required a change in US policy which may require internal deliberations before announcing proposed WTO-consistent changes in that policy, such deliberations were not required for the "as applied" violations. Nor was bringing the "as applied" violations into conformity with US WTO obligations dependent on how the United States addressed the "as such" violation. Viet Nam was concerned

that by failing to even begin the process of addressing the "as applied" violations, the United States would not be able to meet the deadline of the reasonable period of time. This in turn, may lead to further litigation and further strains on the dispute settlement system, which was already unable to meet the deadlines provided in the DSU. At the present meeting, Viet Nam was simply informing the DSB of these concerns and hoped that the United States would move forward with implementation within the reasonable period of time awarded by the arbitrator.

5.3. The representative of the United States said that his country simply did not understand Viet Nam's rationale for placing this matter on the Agenda of the present meeting. At the DSB meeting held on 20 May 2015, the United States had stated its intention to comply with the DSB's recommendations in this dispute, and that it would need a reasonable period of time (RPT) to do so. Viet Nam had subsequently requested that the RPT be determined by an arbitrator. On 15 December 2015, the arbitrator determined that the RPT in this dispute would be 15 months, ending on 22 July 2016. Under Article 21.6 of the DSU, the first report of the United States to the DSB on the status of implementation was due six months after the date of the establishment of the RPT, that was, 15 June 2016. The United States recalled that the present date was 25 January 2016. If Viet Nam had particular questions regarding the ongoing US implementation process, the United States was willing to address those questions on a bilateral basis.

5.4. The representative of Viet Nam said that her country thanked the United States for its statement. As provided in Article 21.6 of the DSU, any Member may raise the issue of implementation at any time following the adoption of the relevant panel and Appellate Body Reports. In Viet Nam's view, raising this matter at the present meeting was fully consistent with the DSU provisions. Viet Nam also wished to raise its concerns with the United States and would like the United States to take further steps and accelerate the implementation process. This was the aim and purpose of Viet Nam's statement at the present meeting.

5.5. The DSB took note of the statements.

## **6 APPOINTMENT/REAPPOINTMENT OF APPELLATE BODY MEMBERS**

6.1. The Chairman recalled that, at the November 2015 regular DSB meeting, he had made a statement to inform delegations about certain matters related to the Appellate Body. First, he had informed delegations that the second four-year term of Ms. Yuejiao Zhang would expire on 31 May 2016 and that, pursuant to Article 17.2 of the DSU, she was not eligible for reappointment. Accordingly, the DSB would have to decide on the appointment of a new Appellate Body member to replace her. The Chairman said that he had also informed delegations that the first four-year term of office of Mr. Seung Wha Chang would expire on 31 May 2016 and that Mr. Chang was eligible for reappointment to a second and final term of office and that he had expressed his interest and willingness to be reappointed for a second four-year term. The Chairman recalled that, at the November 2015 DSB meeting, he had announced his intention to circulate a proposal regarding these matters for a DSB decision at the present meeting. The Chair's draft proposal had been circulated to all Members on 15 January 2016 by fax. It was therefore his intention at the present meeting to propose that the DSB agree to the five elements contained in that fax. However, he wished to inform delegations that, in relation to paragraph 5 of his proposal, he had received some drafting suggestions. He hoped that those drafting suggestions would be acceptable to all delegations. He therefore asked the Secretariat to distribute a room document to delegations containing those small drafting suggestions. He hoped that delegations would agree to the proposal since this was an urgent matter, which could not be left pending for another month. He then proposed that the DSB agree to the following: (i) to launch a selection process for one position in the Appellate Body to replace Ms. Yuejiao Zhang, whose second four-year term of office will expire on 31 May 2016; (ii) to establish a Selection Committee, consistent with the procedures set out in document WT/DSB/1 and with previous selection processes, composed of the Director-General and the 2016 Chairpersons of the General Council, the Goods Council, the Services Council, the TRIPS Council and the DSB, to be chaired by the DSB Chair; (iii) to set a deadline of 15 March 2016 at 6 pm for Members to submit nominations of candidates; (iv) to request the Selection Committee to carry out its work in April/May 2016 in order to make a recommendation to the DSB by no later than 12 May 2016, so that the DSB could take a decision to appoint a new Appellate Body member at its regular meeting scheduled for 23 May 2016; and (v) to request the DSB Chairman to carry out consultations on the possible reappointment of Mr. Seung Wha Chang, whose first four-year term of office would expire on 31 May 2016, and who was eligible for



reappointment by the DSB to a second four-year term and who had expressed his willingness to serve a second term.

6.2. The DSB took note of the statement and agreed to the proposal outlined by the Chairman.

6.3. The Chairman further stated that the text of the decision taken at the present meeting would be circulated as a DSB document to all Members.<sup>4</sup> He said that, as was done in the past, nominations of candidates, together with their CVs should be addressed to the DSB Chairman, in care of the Council and TNC Division, and would be circulated as Job documents to all Members.

6.4. The DSB took note of the statement.

## **7 THE DISPUTE SETTLEMENT WORKLOAD**

### **A. Statement by the Chairman**

7.1. The Chairman, speaking under "Other Business", said that he wished to provide information about the Appellate Body's workload, the number of disputes in the panel queue and at the panel composition stage, and the ability of the Secretariat to meet expected demand over the coming period. With regard to appeals, he said that the Appellate Body was currently dealing with one appeal.<sup>5</sup> Based on the projected dates for the circulation of the next panel reports, the Appellate Body could expect that up to three appeals may be filed in the first quarter of 2016.<sup>6</sup> With regard to panels/arbitrations, there were 20 active panels (including two panels under Article 21.5 of the DSU). He noted that he was counting multiple disputes that were being considered simultaneously by the same panel as one. For example, the "Australia – Tobacco Plain Packaging" panels, which were in fact four active disputes, were counted as a single panel in his report. In addition, he said that he had excluded suspended panels. The Rules Division and the Legal Affairs Division were working together to reduce the queue of panels awaiting availability of staff to assist the panels that had been composed. In the previous two months, a number of panels in the queue as of October 2015, had been assigned staff and had established their time-tables. Currently, there were four composed panels awaiting staff to assist them<sup>7</sup> and eight panels at the composition stage.

7.2. The DSB took note of the statement.

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<sup>4</sup> Subsequently, the text of the DSB decision regarding this matter was circulated in document WT/DSB/70.

<sup>5</sup> DS453 "Argentina – Measures Related to Trade in Goods and Services".

<sup>6</sup> DS461 "Colombia – Textiles"; DS456 "India – Solar Cells"; and DS464 "US – Washing Machines".

<sup>7</sup> DS486 "EU – PET"; DS488 "US – OCTG" (Korea); DS480 "EU – Biodiesel" (Indonesia); and DS490/DS496 "Indonesia – Iron or Steel Products".