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Dispute Settlement Body
4 December 2018

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 4 DECEMBER 2018

Chairperson: Ms. Sunanta Kangvalkulkij (Thailand)

Table of Contents

1 UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

A. Request for the establishment of a panel by India (WT/DS547/8)

1.1. The Chairperson recalled that the DSB had considered this matter at its meeting on 21 November 2018, and had agreed to revert to it. She then drew attention to the communication from India contained in document WT/DS547/8, and invited the representative of India to speak.

1.2. The representative of India said that at the 21 November 2018 DSB meeting, India had requested the establishment of a panel in this dispute regarding the US additional tariffs on certain steel and aluminium products of 25% and 10% respectively. At that DSB meeting, India had outlined some important points related to the dispute, which it would not repeat at the present meeting. It was, however, India's firm view that the US additional tariffs were inconsistent with US WTO obligations under the GATT 1994 and the Agreement on Safeguards. India wished to refer to its statement made at the 21 November 2018 DSB meeting in respect of the same Agenda item. She confirmed that such statement remained fully valid for the purposes of the present meeting. She said that India noted that seven panels had been established at the 21 November 2018 DSB meeting in relation to the same US measures and based on virtually identical legal claims. This collective resort to dispute settlement reflected the serious concern of the Membership over US actions. It also

reflected trust and confidence in the WTO as a forum for resolving international trade disputes. India requested the DSB, for the second time, to establish a panel to examine the matter with standard terms of reference, as set forth in Article 7.1 of the DSU. As stated during the 21 November 2018 DSB meeting, India believed that a single panel should be established under Article 9.1 of the DSU to examine the nine complaints in the "United States – Certain Measures on Steel and Aluminium Products" disputes with China (DS544), India (DS547), the EU (DS548), Canada (DS550), Mexico (DS551), Norway (DS552), the Russian Federation (DS554), Switzerland (DS556) and Turkey (DS564), as all nine panel requests were related to the same matter. India believed that it would be appropriate to establish a single panel to examine these disputes, in particular given the complainants' willingness to coordinate and proceed in this manner. The plain reading of Article 9.1 of the DSU provided that a single panel shall be established, whenever feasible, for the examination of multiple complaints related to the same matter. These circumstances were met and, therefore, there was no valid reason to ignore the clear text of Article 9.1 of the DSU.

1.3. The representative of the United States said that the United States regretted that India had moved forward with this second request for the establishment of a panel. As explained in its statement addressing India's first panel request at the 21 November 2018 DSB meeting, because the United States had invoked Article XXI of the GATT 1994, there was no basis for a panel to review India's claims of WTO-inconsistency. There was no finding a panel could make other than to note that the United States had invoked Article XXI. If the WTO were to undertake to review an invocation of Article XXI, this would undermine the legitimacy of the WTO's dispute settlement system and even the viability of the WTO as a whole. The text of Article XXI was clear: each WTO Member had the right to determine, for itself, what it considered was in its own essential security interests. This had been the understanding of the United States for over 70 years, since the negotiation of the GATT. And that understanding had been shared by every WTO Member whose national security action was subject of complaint, including several WTO Members speaking at the 21 November 2018 DSB meeting, such as the EU, Canada, Russia, and others. India had requested that a single panel be established under Article 9.1 of the DSU to examine various matters on the Agenda of the present meeting, as well as the Agenda of the last DSB meeting of 21 November 2018. The United States did not agree. For a single panel to be established to examine multiple complaints, the DSB must *decide* to establish a single panel. This would be a decision taken by the DSB by consensus. Because the challenged actions had been taken on the basis of US national security interests, the United States continued to see no basis for this dispute. Therefore, the United States did not agree to establish a single panel under Article 9.1.

1.4. The representative of Brazil said that his delegation wished to refer to its statements made at previous DSB meetings on this matter for the purposes of this Agenda item and the next Agenda item.

1.5. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU, with standard terms of reference.

1.6. The representatives of the Kingdom of Bahrain, Brazil, Canada, China, Colombia, the European Union, Hong Kong, China; Iceland, Indonesia, Japan, Kazakhstan, Malaysia, Mexico, New Zealand, Norway, Qatar, the Russian Federation, the Kingdom of Saudi Arabia, Singapore, Switzerland, Chinese Taipei, Thailand, Turkey, Ukraine and the Bolivarian Republic of Venezuela reserved their third-party rights to participate in the Panel's proceedings.

2 UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

A. Request for the establishment of a panel by Switzerland (WT/DS556/15)

2.1. The Chairperson recalled that the DSB had considered this matter at its meeting on 21 November 2018, and had agreed to revert to it. She then drew attention to the communication from Switzerland contained in document WT/DS556/15, and invited the representative of Switzerland to speak.

2.2. The representative of Switzerland said that his delegation wished to refer to its statement made at the 21 November 2018 DSB meeting on this matter. Switzerland, like the other eight complainants in the disputes related to the same matter, firmly believed that the additional duties imposed by the United States on certain steel and aluminium products were inconsistent with US obligations under

the GATT 1994 and the Agreement on Safeguards. The United States had argued that because it was invoking Article XXI of the GATT 1994, an examination of the complaints by a panel would have no basis. Switzerland disagreed with the US position and considered that the mere invocation of Article XXI of the GATT 1994 did not in any way limit the jurisdiction of panels. On the contrary, it was appropriate and even essential that an invocation of Article XXI of the GATT 1994 as a defence be examined within the framework of the WTO dispute settlement system. If such an examination were not possible, each WTO Member could unilaterally – merely by invoking Article XXI of the GATT 1994 – exclude from WTO dispute settlement measures that were nevertheless trade-related. Such an interpretation would undermine the multilateral rules-based system as a whole, to the detriment of all Members. He said that as his delegation had stated at previous DSB meetings, solutions to the global problem of overcapacity in the steel and aluminium sectors had to be consistent with the spirit and letter of the WTO Agreements. Therefore, Switzerland requested, for the second time, the establishment of a panel with standard terms of reference. Switzerland noted that, at the 21 November 2018 DSB meeting, the United States had refused to agree to the establishment of a single panel under Article 9.1 of the DSU to examine the nine complaints relating to the same matter. Switzerland believed that the conditions for the application of Article 9.1 of the DSU had been met, and regretted the US refusal. In any event, Switzerland assumed that the panel established to examine its complaint would be composed of the same individuals like in the case of the other panels established at the 21 November 2018 DSB meeting and at the present meeting in the related disputes. Switzerland also assumed that the timetable for the panel proceedings would be harmonized, as provided for in Article 9.3 of the DSU.

2.3. The representative of the United States said that the United States was disappointed that Switzerland had submitted a second panel request in this dispute. As the United States had explained in its statement addressing Switzerland's first panel request at the 21 November 2018 DSB meeting, because the United States had invoked Article XXI of the GATT 1994, there was no basis for a panel to review Switzerland's claims of WTO-inconsistency. As there was no finding a panel could make other than to note that the United States had invoked Article XXI, the United States did not see any point to this request. If the WTO were to undertake to review a Member's invocation of Article XXI, and its assessment of its own essential security interests, this would undermine the legitimacy of the WTO's dispute settlement system and even the viability of the WTO as a whole. The text of Article XXI was clear: each WTO Member had the right to determine, for itself, what it considered was in its own essential security interests. This had been the understanding of the United States for over 70 years, since the negotiation of the GATT. And that understanding had been shared by every WTO Member whose national security action had been subject of complaint, including several WTO Members who spoke at the last DSB meeting of 21 November 2018, such as the EU, Canada, Russia, and others. In response to Switzerland’s reference to Article 9.3 of the DSU, that provision did not contain any reference to DSB action and, therefore, did not authorize the DSB to take a decision on the matter of choosing panelists or on the harmonization of timetables. Therefore, the DSB needed not and could not consider this issue at all.

2.4. The representative of the European Union said that at the 21 November 2018 DSB meeting, the DSB had considered seven panel requests similar to the ones brought at the present meeting by India and Switzerland. The EU, therefore, wished to make only a few points in relation to those panel requests before the DSB at the present meeting. For the sake of efficiency, the EU would make only one statement in relation to both panel requests at this point. The EU first wished to welcome India and Switzerland as part of the coalition of complainants for which the DSB had established panels related to the same matter. The EU also did not see the need to repeat the statements which it had made in relation to its own related panel request at the 21 November 2018 DSB meeting. This was even more so since the United States, the respondent in all these disputes, had not truly said anything new either at the 21 November 2018 DSB meeting or at the present meeting. This reflected positively on these disputes being ready for adjudication by the dispute settlement system. The EU looked forward to engaging in that process and to the examination of the merits of the US arguments, inter alia regarding the justifiability and conditions of Article XXI of the GATT. At the 21 November 2018 DSB meeting, the DSB had failed to expressly establish a single panel, contrary to the last sentence of Article 9.1 of the DSU whereby "a single panel should be established to examine [multiple] complaints [related to the same matter] whenever feasible". This meant that Article 9.3 of the DSU applied by default and automatically, and this was a "shall" provision not even addressed to the DSB, but self-executing and directly applicable. Accordingly, the same persons had to serve as panelists and the timetable had to be harmonized to the greatest extent possible. The EU counted on the WTO Secretariat to fully implement this provision. Obviously, the two complaints

brought by India and Switzerland at the present meeting also related to the same matter as did the seven complaints for which the DSB had established panels at the 21 November 2018 DSB meeting.

2.5. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU, with standard terms of reference.

2.6. The representatives of the Kingdom of Bahrain, Brazil, Canada, China, Colombia, the European Union, Hong Kong, China; Iceland, India, Indonesia, Japan, Kazakhstan, Malaysia, Mexico, New Zealand, Norway, Qatar, the Russian Federation, the Kingdom of Saudi Arabia, Singapore, South Africa, Chinese Taipei, Thailand, Turkey, Ukraine and the Bolivarian Republic of Venezuela reserved their third-party rights to participate in the Panel's proceedings.

3 COSTA RICA – MEASURES CONCERNING THE IMPORTATION OF FRESH AVOCADOS FROM MEXICO

A. Request for the establishment of a panel by Mexico (WT/DS524/2)

3.1. The Chairperson drew attention to the communication from Mexico contained in document WT/DS524/2, and invited the representative of Mexico to speak.

3.2. The representative of Mexico said that her delegation welcomed the opportunity at the present meeting to address the concerns raised by the measures adopted by Costa Rica on the importation of fresh avocados for consumption from Mexico. Mexico had held consultations with Costa Rica on 26 and 27 April 2017 in order to find a solution regarding the impact of the Costa Rican measures that restricted or prohibited the importation of fresh avocados for consumption from Mexico. These Costa Rican measures included certain control, inspection and approval procedures. They also included the failure by Costa Rica to implement or recognize in its legal instruments certain obligations laid down in the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Such obligations under the SPS Agreement included among others adaptation to regional conditions, including in respect of pest- or disease-free areas and areas of low pest or disease prevalence. Costa Rica had failed to establish processes or practices that would ensure the recognition of such areas, and thus to render operational the concept of regionalization. Unfortunately, the consultations had failed to resolve this dispute. Mexico believed that the measures adopted by Costa Rica were inconsistent with that country's obligations under the SPS Agreement and the GATT 1994. Since Costa Rica had failed to resolve Mexico's concerns during the consultations, Mexico had no alternative but to request, at the present meeting, the establishment of a panel with standard terms of reference provided for in Article 7.1 of the DSU, to examine this matter and to clarify the issues raised.

3.3. The representative of Costa Rica said that his country wished to express its disappointment regarding Mexico's decision to request the establishment of a panel in this matter. Costa Rica and Mexico had held consultations on 26 and 27 April 2017. The consultations had been productive in that they had enabled the parties to exchange their views on the measures at issue. Costa Rica was open to continue this dialogue with Mexico so that both parties could work towards a mutually satisfactory solution without the need to resort to dispute settlement proceedings. For these reasons, his country was not in a position to accept the establishment of a panel at the present meeting.

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

4 RUSSIAN FEDERATION – ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES

A. Request for the establishment of a panel by the United States (WT/DS566/2)

4.1. The Chairperson drew attention to the communication from the United States contained in document WT/DS566/2, and invited the representative of the United States to speak.

4.2. The representative of the United States said that several WTO Members were unilaterally retaliating against the United States for actions it had taken pursuant to Section 232 that, as national security actions, were fully justified under Article XXI of the GATT 1994. These Members, including Russia, were pretending that the US actions under Section 232 were so-called "safeguards", and

further pretended that their unilateral, retaliatory duties constituted suspension of substantially equivalent concessions under the WTO Agreement on Safeguards. Just as these Members appeared ready to undermine the dispute settlement system by throwing out the plain meaning of Article XXI and 70 years of practice, so too were they ready to undermine the WTO by pretending they were following WTO rules while taking measures blatantly against those rules. The United States knew from the actions of many of these Members that they did not seriously believe that the US security measures under Section 232 were safeguards. Russia, for example, had not addressed whether its action was in response to an alleged "safeguard" taken as a result of an absolute increase in imports. If there had been an absolute increase, the right to suspend substantially equivalent concessions under the Safeguard Agreement could not be exercised for the first three years of the safeguard measure. To be clear: Article XIX of the GATT 1994 could be invoked by a Member to depart temporarily from its commitments in order to take emergency action with respect to increased imports. The United States, however, was not invoking Article XIX as a basis for its Section 232 actions. Thus, Article XIX and the Safeguards Agreement were not relevant to the US actions under Section 232, and the United States had not utilized its domestic law on safeguards to take the actions under Section 232. Because the United States was not invoking Article XIX, there was no basis for another Member to pretend that Article XIX should have been invoked and to use safeguards rules that were simply inapplicable. The additional, retaliatory duties were nothing other than duties in excess of Russia's WTO commitments and were applied only to the United States, contrary to Russia's most-favoured-nation obligation. The United States would not permit its businesses, farmers, and workers to be targeted in this WTO-inconsistent way. For these reasons, the United States requested that the DSB establish a panel to examine this matter with standard terms of reference.

4.3. The representative of the Russian Federation said that her country was disappointed by the decision of the United States to request the establishment of a panel with respect to Russia's measures taken in accordance with Russian Government Resolution N 788 of 6 July 2018 "[o]n approval of rates of import duties with respect to certain goods originating from the United States of America". That Resolution had been adopted due to the application by the United States since 23 March 2018, of additional duties on certain steel and aluminium products originating, *inter alia,* from Russia. Russia believed that the US duties were in essence safeguard measures. Their nature and the circumstances under which they were taken left no doubt that these measures were in fact safeguards, irrespective of the way the United States characterized them. By adopting Resolution No.788, Russia had exercised its rights under Article 8 of the WTO Agreement on Safeguards to suspend the application of substantially equivalent concessions or other obligations under the GATT 1994 to trade with the United States. Russia believed that its measures were fully justified and applied in accordance with WTO rules. Therefore, her country was not in a position to agree to the establishment of a panel at the present meeting.

4.4. The representative of the European Union said that at the 21 November 2018 DSB meeting, the DSB had considered four panel requests of the United States that were similar to the one brought at the present meeting against Russia. The EU had spoken at the 21 November 2018 DSB meeting in relation to the panel request of the United States that related to the EU suspension of equivalent GATT obligations in response to the undeclared safeguard measures which the United States had taken in support of its steel and aluminium industries. The EU welcomed the fact that Russia, like a number of other Members, had also resorted to its right to suspend equivalent obligations vis-à-vis the United States. The EU looked forward to defending, before the panels, its right and the right of other Members to suspend equivalent obligations, and to defending the rules-based multilateral trading system.

4.5. The representative of Brazil referred to Brazil's statements made at previous DSB meetings on this matter.

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

5 SAUDI ARABIA – MEASURES CONCERNING THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

A. Request for the establishment of a panel by Qatar (WT/DS567/3)

5.1. The Chairperson drew attention to the communication from Qatar contained in document WT/DS567/3, and invited the representative of Qatar to speak.

5.2. The representative of Qatar said that his delegation had made statements at previous DSB meetings about the unlawful measures imposed by Saudi Arabia that were aimed at the economic isolation of Qatar. These measures violated key pillars of WTO law, and impacted the interests of other Members who traded with Qatar. Despite such disregard of international treaty commitments by Saudi Arabia and several of its neighbours, Qatar had persisted in seeking amicable solutions, and had called for rules-based adjudication at the WTO, and where applicable, by other international courts and tribunals. Continuing with those efforts, Qatar had sought consultations with Saudi Arabia regarding this dispute on 1 October 2018. Indeed, since the start of Saudi Arabia's attempts to economically isolate Qatar, Qatar had attempted to resolve the situation through dialogue and negotiation. Regrettably, and in line with its prior approach, Saudi Arabia had refused to engage in consultations with Qatar. Regrettable, in the context of the WTO, this violated Saudi Arabia's obligations under the DSU. At the present meeting, Qatar sought the establishment of a panel to examine Saudi Arabia's failure to protect intellectual property rights, including with respect to commercial-scale broadcast piracy that had been spreading throughout Saudi Arabia for more than one year. Not only had Saudi Arabia failed to protect the intellectual property rights affected by this broadcast piracy, it had, in fact, actively supported such piracy. The protection of intellectual property rights under the TRIPS Agreement was one of the key pillars of the single-undertaking set out in the covered agreements. The TRIPS Agreement guaranteed certain minimum levels of protection for various forms of intellectual property rights, and included provisions on enforcement unique to an agreement aimed at protecting private rights. While the DSB had previously been notified of disputes regarding the strength, scope and extent of protection of intellectual property rights, Qatar now faced an unprecedented situation where a WTO Member was not only failing to protect intellectual property rights, but was actively supporting and facilitating piracy of content that should be protected by copyrights. The present dispute was focused, in particular, on the piracy impacting beIN Corporation – a company registered under the laws of Qatar – and rights holders from around the world that licensed their intellectual property rights to beIN for Saudi Arabia and the Middle East and North Africa region, at great expense to beIN Corporation. beIN Corporation, along with its subsidiaries and affiliates, engaged in the business of broadcasting premium sports and entertainment content. Soon after Saudi Arabia had severed diplomatic ties with Qatar and imposed measures targeting Qatar, a sophisticated broadcast pirate named "beoutQ" had begun to operate. beoutQ had taken beIN's copyrighted media content (along with beIN's trademarks) without authorization, and had made it accessible on ten beoutQ sports channels, via the internet and satellite broadcasting, within the territory of Saudi Arabia and beyond. beoutQ set-top boxes, and subscriptions to the beoutQ pirate service, had been readily available throughout Saudi Arabia to those willing to enrich the pirates through the purchase of subscriptions at significant cost. In addition to the beoutQ channels, these devices provided access to Internet Protocol Television ("IPTV") applications which allowed beoutQ subscribers to view hundreds of proprietary television channels, and thousands of on-demand programmes, from around the world without the authorization of the rights holders. In sum, beoutQ was a sophisticated full-service commercial business, with a scale of operations that was possible only with extensive financial and technological resources, as well as support from the Saudi Government. Indeed, from the very beginning, there had been indications that beoutQ had enjoyed support from the authorities in Saudi Arabia. beoutQ had openly advertised itself over Twitter, through the accounts of prominent Saudi nationals. Moreover, Saudi authorities across the country had organized public gatherings where the pirated content – including the FIFA 2018 World Cup – had been openly displayed and promoted. The representative of Qatar said that beIN had made several unsuccessful attempts to seek remedies within Saudi Arabia's domestic legal system. beIN's efforts at obtaining the services of legal counsel in Saudi Arabia and to access the Saudi courts had been unsuccessful due to Saudi Arabia's wider scheme of coercive economic measures against Qatar. Unable to access Saudi courts, beIN had also turned directly to the Saudi Government for assistance. Despite multiple communications from beIN, which had set out extensive evidence of piracy by beoutQ and the involvement of prominent Saudi nationals, Saudi authorities had taken no effective action against beoutQ. In particular, Saudi Arabia had violated its obligations under the TRIPS Agreement by, among other things, failing to provide for criminal procedures and penalties in this dispute which involved copyright piracy on a commercial

scale. Saudi Arabia's conduct raised important concerns for many other Members, including those with businesses that had licensed their rights to beIN, as well as those with content creators whose rights were violated through the IPTV applications accessible on beoutQ set-top boxes readily available in Saudi Arabia. To mention a few examples, all FIFA 2018 World Cup games, the National Football League's 2018 Super Bowl, and numerous games of the English Premiere League had been pirated by beoutQ. And thousands of entertainment programmes owned by rights holders from around the world – and especially the United States and the EU – were available illegally and often for free on beoutQ set-top boxes. Saudi Arabia's actions and omissions resulted in numerous gross violations of the TRIPS Agreement, and caused significant harm to Qatar and to other Members. Qatar requested that the DSB establish a panel to examine this matter, and encouraged other Members to join this dispute as third parties.

5.3. The representative of the Kingdom of Saudi Arabia said that his delegation regretted that Qatar had requested a panel in this matter which had no legitimate connection to the WTO or to compliance with WTO rules. Saudi Arabia wished to reconfirm that it fully respected all obligations that applied under the WTO Agreements, including under the TRIPS Agreement. In this connection, Saudi Arabia diligently protected the legitimate rights of all owners of intellectual property that were properly registered in Saudi Arabia, and also took all possible action to protect against the infringement of intellectual property rights within its jurisdiction. He regretted that the following obvious principle needed to be re-stated at the present meeting, namely, that establishing and maintaining diplomatic relations between nation States was a fundamental exercise of State sovereignty, on which the WTO Agreements did not and could not infringe. In this connection, his delegation wished to submit respectfully, for reference by all Members, that on 5 June 2017, Saudi Arabia had severed diplomatic relations with the complaining party in order to protect its essential security interests. Because rejecting formal State interaction was the defining element of severed diplomatic relations, the Saudi Government would not engage with the complaining party in connection with the referenced matter. Furthermore, the Saudi Government considered that the severance of diplomatic relations rendered impossible the conduct of any dispute settlement proceedings in this matter consistent with its essential security interests. As all Members knew, consistent with Article 73 of the TRIPS Agreement, nothing could require any government to engage in dispute settlement proceedings in such circumstances of national security. Indeed, a panel had no power to make a finding in this matter, other than to recognize that Saudi Arabia had invoked Article 73 of the TRIPS Agreement. In sum, his delegation wished to submit strongly that the WTO was not, and could not be turned into, a venue to resolve national security disputes. Saudi Arabia simply would not engage in dispute settlement proceedings, or in any other international interaction, with a party that it did not recognize diplomatically due to an emergency in international relations, other than to assert its invocation of the national security exception under Article 73 of the TRIPS Agreement.

5.4. The representative of the Kingdom of Bahrain said that his country regretted that this matter had been raised before the DSB. Bahrain did not believe that issues related to national security could be resolved within the WTO. He noted that Saudi Arabia had invoked Article 73 of the TRIPS Agreement. As such, there was no basis for a panel to examine the complainant's claims. Therefore, Bahrain supported Saudi Arabia's refusal to establish a panel in this dispute.

5.5. The representative of the United States said that as the United States had observed in prior DSB meetings, Members had understood, from the very beginning of the international trading system, that each WTO Member could judge for itself what actions it considered necessary to protect its essential security interests. Similar to the points that the United States had previously made at the present meeting with respect to GATT Article XXI, it would undermine the legitimacy of the WTO's dispute settlement system if a WTO panel were to undertake review of a Member's invocation of Article 73 of the TRIPS Agreement and a Member's assessment of its own essential security interests. Issues of national security were inherently political in nature, and the text of Article 73, which paralleled GATT 1994 Article XXI, established that this provision was self-judging: every WTO Member had the right to determine, for itself, what was in its own essential security interests. To the extent that Saudi Arabia invoked its essential security interests, there was no basis for a WTO panel to review the claims of WTO-inconsistency raised by Qatar. Nor was there any basis for a WTO panel to review an invocation of Article 73 of the TRIPS Agreement by Saudi Arabia. Under these circumstances, the United States considered the parties should resolve the issues raised in this dispute outside the context of WTO dispute settlement.

5.6. The representative of Egypt said that as mentioned by Saudi Arabia, his country wished to recall its indisputable right to take all measures deemed necessary for national security in line with Article XXI of the GATT 1994 and Article 73 of the TRIPS Agreement. This constituted an important element for safeguarding the rights of Saudi Araba in situations in which security reasons were involved. Egypt wished to reiterate that nothing in these Agreements obliged a Member to provide information pertaining to its essential security interests to the WTO. In this regard, the issues raised in this dispute could not be considered by the WTO dispute settlement system.

5.7. The representative of Turkey said that Turkey's position on the application of security exceptions had been clear and straightforward. Members' actions or measures should always be consistent with WTO law. And security exceptions – and that's exactly what they were exceptions - should not be applied out of context or in a way that would add pressure onto the multilateral trading system. His delegation noted with particular concern that an increasing number of Members would base their actions on security exceptions. Turkey believed that this became even more relevant in light of the fact that Members were looking for ideas on how to preserve and improve the multilateral trading system. Not only was this true for the future of the DSB but also for the future of the WTO. Turkey recognized that national security concerns of Members were protected under Article XXI of the GATT 1994, allowing them to take measures that would otherwise be in breach of their GATT obligations. But his country also understood that the relevant WTO law allowed exceptions for extraordinary situations in international relations such as war or armed conflict. Turkey did not support what could constitute an arbitrary use of security exceptions to justify actions not consistent with WTO law, especially those that might have trade distorting or protectionist impacts, albeit implicitly. In conclusion, and in line with Turkey's views expressed at previous DSB meetings in relation to similar cases, Turkey believed that a WTO panel had jurisdiction over the matter submitted at the present meeting. Having said that, Turkey had also stated at previous DSB meetings, and wished to reiterate at the present meeting, that Turkey supported dialogue in achieving solutions to these matters. Turkey hoped that Gulf countries, being close allies within the Gulf Cooperation Council (GCC) and sharing a common history not only among themselves but with countries beyond their region such as Turkey, would find an amicable way to resolve this dispute.

5.8. The representative of the European Union said that his delegation wished to recall its position on some procedural aspects raised in the context of this dispute. The EU noted that Qatar had requested that the panel be established with the standard terms of reference provided for in Article 7.1 of the DSU. Pursuant to Article 7.1 of the DSU, these had to be the terms of reference of the panel, unless the parties to the dispute agreed otherwise within 20 days from the establishment of the panel. He said that the EU noted the statements regarding the panel's jurisdiction or authority over certain issues that might or might not be raised in this dispute. If such issues indeed arose, these arguments could be raised before the panel that would decide on these issues, in accordance with its terms of reference.

5.9. The representative of Qatar said that at the outset, Qatar reserved its right under the DSU to bring any dispute under the covered agreements before the WTO. The DSU required Saudi Arabia to engage in good faith during the first stage of the dispute settlement process, i.e., consultations. But Saudi Arabia had refused to do so, citing the national security exemption of Article 73 of the TRIPS Agreement. If Saudi Arabia had met its DSU obligations, Qatar would not be hearing Saudi Arabia's rationalization and defence for the first time at the present meeting. It appeared that Saudi Arabia wished to defend its failure to protect intellectual property rights by explaining that this lack of protection was necessary for the protection of Saudi Arabia's essential security interests. Qatar failed to understand what, if anything, allowing the unauthorized broadcast of sports programming from around the world – or of any other programming, regardless of its content – had to do with "essential security interests". To be clear, at issue in this dispute was not the censoring of any content that Saudi Arabia wished to remove from the airwaves and Internet. Rather, Qatar requested that a panel be established to consider the unchecked piracy that made content readily available to those who had not compensated the rights holders, and the impact of such piracy on rights holders from Qatar and other WTO Members. Such piracy, which had enriched the pirates through their commercial sales of subscriptions, had been actively facilitated and encouraged by the Saudi Government. The concept of a WTO Member permitting, and in fact actively encouraging, the infringement of intellectual property rights in the name of national security raised concerns that extended far beyond sports and entertainment broadcasting. It raised concerns for all Members with nationals that invested in fields that relied on intellectual property protection as a critical part of their business – for example, pharmaceuticals, biotechnology, semiconductors, software,

information technology, telecommunications, aerospace, automobiles, music, publishing, agriculture, and many others. Saudi Arabia's recourse to national security in the context of this dispute, if successful, would create a grave danger to the international regime of international intellectual property protection.

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