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Dispute Settlement Body
5 September 2016

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 5 SEPTEMBER 2016

Chairman: Mr. Xavier Carim (South Africa)

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1.1. The Chairman noted that there were three 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". He turned to the first status report under this Agenda item.

A. United States – Anti–dumping measures on certain hot–rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.163)

1.2. The Chairman drew attention to document WT/DS184/15/Add.163, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Anti-dumping measures on certain hot-rolled steel products from Japan.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 22 August 2016, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that her country thanked the United States for its statement and its status report submitted on 22 August 2016. Japan referred to its previous statements that this matter should be resolved as soon as possible.

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

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.138)

1.6. The Chairman drew attention to document WT/DS160/24/Add.138, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.7. The representative of the United States said that his country had provided a status report in this dispute on 22 August 2016, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

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

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

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.101)

1.10. The Chairman drew attention to document WT/DS291/37/Add.101, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

1.11. The representative of the European Union said that the approval process had been finalized for the three GM soybeans for food and feed use on 22 July 2016 when the European Commission had adopted and published the decisions to authorise these three new GMOs. Two GMOs had been voted on with a no opinion result in the Standing Committee on 8 July 2016 and would be voted at the Appeal Committee on 15 September 2016. In accordance with the applicable regulations, the authorizing decisions would be submitted to the Appeal Committee for a vote. More generally, and as stated many times before, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.12. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. As the United States had noted repeatedly at past meetings of the DSB, EU measures affecting the approval and marketing of biotech products remained of substantial concern to the United States. The EU measures were characterized by lengthy, unpredictable, and unexplained delays in approvals, even after the EU's scientific body had completed exhaustive and time-consuming safety reviews. The United States took note that the EU had finally approved the specific varieties of biotech soybeans that the United States had discussed at the last several DSB meetings. To be sure, this was a welcome development. At the same time, however, the unwarranted delays between the mid-2015 scientific assessments and the final EU approvals illustrated the ongoing problems with the EU measures. Indeed, those delays had already caused adverse effects on trade in soybeans. The United States urged the EU to ensure that its biotech approval measures were consistent with its obligations under the SPS Agreement.

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

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

A. Statements by the European Union and Japan

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

2.2. The representative of the European Union said that the EU, once again, requested the United States to stop transferring anti-dumping and countervailing duties to the US industry. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations and rulings. The EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit status reports in this dispute.

2.3. The representative of Japan said that, since the distributions under the CDSOA had continued, 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 DSB meetings, Japan was of the view that the United States was under an obligation, in accordance with Article 21.6 of the DSU, to provide the DSB with a status report in this dispute. As had been mentioned in the 22 August 2016 communication to the DSB (WT/DS217/70), Japan continued its non-application of suspension of concessions or other obligations, in the form of the imposition of additional import duties. This was so because Japan's level of authorization, established through arbitration under Article 22.6 of the DSU, continued to be marginal. However, as Japan acknowledged the considerable amount remained undisbursed and the United States might execute another round of disbursements to its domestic companies under the CDSOA. Japan therefore retained its rights under Article 22.7 of the DSU. Further, Japan's decision not to suspend concessions and related obligations did not mean that Japan accepted the US contention that its measure, having been found to be inconsistent with the covered agreements, was removed within the meaning of Article 22.8 of the DSU.

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

2.5. The representative of Brazil said that her country, as one of the parties to this dispute, thanked the EU and Japan for keeping this item on the DSB's Agenda. Brazil wished to refer to its previous statements made under this Agenda item 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 and to submit status reports. The United States was under an obligation to submit status reports until such time that full compliance was achieved.

2.6. The representative of India said that his country shared the concerns of the EU and Japan regarding the Byrd Amendment. The WTO-inconsistent disbursements continued to the US domestic industry. In India's view, this item should continue to remain on the DSB's Agenda until such time that full compliance was achieved 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 his country had noted at previous DSB meetings, the Deficit Reduction Act, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000, had been enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that the EU, 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, nearly nine years ago. The United States therefore did not understand the purpose for which the EU and Japan had inscribed this item on the Agenda of the present meeting. With respect to comments regarding further status reports in this matter, as it had already explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports which would repeat, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Indeed, as these very WTO Members had demonstrated repeatedly when they had been a responding party in a dispute, there was no obligation under the DSU to provide further status reports once a Member announced that it had implemented those DSB 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 recalled that the DSB had adopted its recommendations and rulings in this dispute in August 2012, and the reasonable period of time had expired in July 2013. As the United States had noted at the previous DSB meeting, China had finally issued a regulation that appeared to set out a licensing application process for electronic payment service (EPS) suppliers to obtain authorization to do business in China. The United States expected that with these regulations, China would allow for the approval of foreign EPS suppliers without further delays, in accordance with China's WTO obligations. At that time, however, it remained unclear whether China would in fact allow foreign EPS providers to operate in China. In the meantime, more than three years after the expiry of the reasonable period of time in this dispute, China's domestic supplier remained the only entity authorized to provide electronic payment services in China.

3.3. The representative of China said that his country regretted that the United States had, once again, brought this matter before the DSB. China wished to refer to its statements made under this Agenda item at previous DSB meetings and emphasized that it had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute. China was pleased that the United States had referred to the issuance of the regulation. China reiterated that the regulation mentioned by the United States was not relevant for the implementation of the DSB's recommendations and rulings in this dispute. Nor was the DSB meeting an appropriate forum to discuss China's domestic regulatory action which was irrelevant to this specific dispute.

3.4. The DSB took note of the statements.

4 UNITED STATES - COUNTERVAILING MEASURES ON CERTAIN HOT-ROLLED CARBON STEEL FLAT PRODUCTS FROM INDIA

A. Statement by India

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

4.2. The representative of India said that, as his country had pointed out at the 21 July 2016 DSB meeting, the United States had not filed a status report in this dispute in accordance with its binding obligation under Article 21.6 of the DSU. In disregard of the DSB's recommendations, the United States had made no efforts to repeal or amend section 1677(7)(G)(iii) of its domestic law so as to bring it into conformity with Article 15.1, 15.2, 15.3 and 15.5 of the SCM Agreement. This was not a minor procedural issue but a serious systemic issue for the dispute settlement mechanism. Ignoring this aspect would render Article 21.6 of the DSU ineffective and would seriously undermine the surveillance mechanism under the DSU. On the "as applied" claims on the CVD determinations, India would consider and pursue appropriate legal remedies in this respect based on the sequencing agreement signed by India and the United States. India urged the United States to accord more serious consideration for implementing the DSB's recommendations through a status report, on the issue of inconsistency of its law. As regards the inconsistent US law, the United States had clarified in previous DSB meetings that the provisions of the WTO-inconsistent domestic law had never been utilized in any investigation. In India's view, the issue of non-utilization of a provision of a law was irrelevant in the context of implementation of the DSB's rulings and recommendations and did not detract from the finding that the provisions of the law had been found to be inconsistent. India noted that, in relation to sub-items 1(a) and 1(b) on the Agenda of the present meeting, the United States had submitted status reports which pertained to working on statutory amendments to domestic laws that had been found to be inconsistent with its WTO obligations and was yet to be modified or repealed. India noted with disappointment that different legal standards were being pursued in different disputes, which pertained to essentially the same issue – legislation which was WTO-inconsistent. India urged the United States to fully comply with the DSB's rulings and recommendations in this dispute and to submit status reports as it did in other similar disputes.

4.3. Another aspect that was relevant to discuss was the issue of sequencing. It was evident that India and the United States differed on the issue of compliance, at least with respect to the "as applied" determinations. In India's view, this needed to be resolved bilaterally, between the parties, or through a compliance panel under Article 21.5 of the DSU. India had not pursued recourse under Article 22 for suspension of concessions. India believed that not doing so was the

legal, logical and consistent step that ensured predictability of the dispute settlement system. India hoped that the United States would also contribute to this consistent practice in other disputes as well.

4.4. The representative of the United States said that, as his country had explained at prior DSB meetings, the United States had completed implementation with respect to the DSB's recommendations and rulings in this dispute. As it had also previously remarked, the United States remained willing to discuss with India any questions India may have. India, however, had not contacted the United States to do so. As the United States had consistently explained to the DSB, and again under Agenda item 2 of the present meeting, there was no obligation under the DSU to provide further status reports once a Member announced that it had implemented those DSB recommendations and rulings regardless of whether the complaining party disagreed about compliance. India appeared to disagree. On the other hand, India had inscribed the DS436 dispute, in which the United States was the responding party, but not the DS430 dispute, in which India was the responding party, on the Agenda of the present meeting. It appeared to the United States, therefore, that India may have made an error in the DS number in its Agenda request. To assist India in acting according to its principled view on status reports, the United States had inscribed the DS430 dispute on the Agenda. The United States looked forward to India's report under the next Agenda item. With respect to the "as such" finding on section 1677(7)(G)(i)(III) of the Tariff Act of 1930, the United States had explained both to India and to the DSB that no further US action was needed. As the United States had explained before, under US law, the US Department of Commerce had discretion with respect to the timing of a self-initiated investigation. Commerce had confirmed its commitment to exercise this discretion in a manner that was consistent with the international obligations of the United States. Therefore, no further action was needed and India had no basis for its insistence that US law must be changed in order for the United States to comply with the DSB's recommendations in this dispute. India was incorrect that the US claim of compliance was based on the statute never having been applied. While it was true that the statutory provision at issue had never been applied, as had just been noted, that was not the reason a change to the statute was unnecessary. Given that the United States had fully complied in this dispute, the United States was not required to submit further status reports in this matter.

4.5. The DSB took note of the statements.

5 INDIA – MEASURES CONCERNING THE IMPORTATION OF CERTAIN AGRICULTURAL PRODUCTS

A. Statement by the United States

5.1. 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.

5.2. The representative of the United States recalled that this dispute was discussed at two recent meetings of the DSB. At the 22 June 2016 DSB meeting, which was held three days after the 19 June expiration of the reasonable period of time for compliance, the United States had explained that India had not adopted any changes to the measure at issue in this dispute. Members would also recall that India had objected to the level of suspension requested by the United States, referring the matter to arbitration. That arbitration was currently in progress. Nonetheless, the United States remained open to working with India on a mutually agreed resolution to this dispute. Indeed, in contrast to the situation with respect to the prior Agenda item, the United States had been reaching out to India in an attempt to resolve US concerns through bilateral discussions. At the present meeting, the United States wished to inform the DSB of the latest developments regarding this dispute. In late July 2016, India had adopted a measure that revised certain aspects of the measure at issue in this dispute. India had notified this measure to the SPS Committee[1]; but not to the DSB. Unfortunately, the revised measure appeared to retain many of the features of India's prior measure that the DSB had found to be inconsistent with India's obligations under the SPS Agreement. For example: the revised measure appeared to continue to impose import prohibitions on account of avian influenza outbreaks, contrary to the DSB's findings on the OIE Terrestrial Code.[2] Given that the revised measure, like the original

[1] G/SPS/N/IND/150.
[2] "India – Agricultural Products", para. 7.270.

measure, did not appear to be based on a risk assessment, India would appear to have no basis for imposing its import restrictions on US agricultural products. The revised measure appeared to be more trade restrictive than a measure based on international guidelines, contrary to the DSB's findings that international standards meet India's level of protection.[3] India also appeared not to have taken any steps to address the DSB's findings that its measure unjustifiably discriminated against imports in light of the conditions prevailing within India.[4] This list was not exhaustive, but was more than sufficient to demonstrate US concerns that India's revised measure did not address the DSB's findings and recommendations in this dispute. Accordingly, the United States would continue to preserve and enforce US rights under the DSU. As noted, however, the United States remained in bilateral discussions with India and hoped that India would adopt appropriate measures consistent with its WTO obligations.

5.3. The representative of India said that, on 19 June 2015, the DSB had adopted its recommendations and rulings in the dispute: "India – Measures Concerning the Importation of Certain Agricultural Products" (DS430). At the following DSB meeting, India had informed the DSB of its intention to implement the DSB's recommendations and rulings in this dispute. On 8 December 2015, India and the United States had informed the DSB that they had agreed that a reasonable period of time for India to implement the DSB's recommendations and rulings would end on 19 June 2016. Indian authorities had been conferring with interested parties since the adoption of the DSB's rulings and recommendations with the intention of fully complying within the reasonable period of time. Indian authorities had held extensive internal stakeholder consultations in that regard. Based on those consultations and deliberations, India had prepared the draft notification on the proposed measure and had notified the same to the SPS Committee (notification G/SPS/N/IND/143 dated 20 April 2016), allowing the import of poultry and poultry products into India from countries, zones or compartments free from avian influenza, in accordance with the relevant international standard, i.e. the OIE Terrestrial Code. The draft notification had provided a 60-day time-period for interested parties to comment on it. Further, India had, in its addendum dated 21 June 2016, amended item 8 of the aforesaid notification to appropriately reflect the relevant international standard. India had only received comments on its draft notification from the United States. Those comments were taken into consideration by the Government of India when it had subsequently issued the new notification, S.O. 2337(E) dated 8 July 2016 ("notification").[5]

5.4. The notification had been issued in exercise of the power conferred by Section 3(1) and Section 3A of the Livestock Act, 1898 (9 of 1898). The issuance had been made in supersession of the Government of India's earlier notification – the measure in the present dispute. The notification had also been notified to the DSB on 19 July 2016 and was contained in document WT/DS430/18. India had also framed the relevant guidelines, referred to in the notification, as well as the questionnaire for recognizing parts of a country, zone or compartment as being free from Avian Influenza.[6] With the publication of the new notification superseding the earlier notification, India had fully complied with the DSB's rulings and recommendations in this dispute. India had also been engaged bilaterally with the United States to allay its concerns about compliance. Successful and meaningful bilateral exchanges had taken place since July. India was disappointed that the United States had, once again, raised this issue at the DSB despite the fact that India was engaging in good faith efforts to discuss the issue with the United States.

5.5. One important aspect that India wished to raise at the present meeting was the practice of entering into agreed procedures with respect to the proceedings related to compliance and suspension of concessions. On 8 July 2016, the United States had made a request, pursuant to Article 22.2 of the DSU, for authorization from the DSB to suspend concessions under the WTO covered agreements. India had objected to this request at the same DSB meeting.[7] India had sought a suspension of arbitration proceedings in view of the steps taken by India to comply in this dispute. To date, the United States had not agreed to suspend the arbitration under Article 22.6 of the DSU pursuant to India's objection to the US request for authorization to suspend concessions or other obligations under the covered agreements. In India's opinion, if there was a disagreement between the parties with respect to "the consistency with a covered agreement of measures taken

[3] "India – Agricultural Products" (AB), para. 5.232.
[4] "India – Agricultural Products", para. 8.1(c)(vi).
[5] Available at http://egazette.nic.in/WriteReadData/2016/170589.pdf
[6] Available at www.dahd.nic.in
[7] https://www.wto.org/english/news_e/news16_e/dsb_19jul16_e.htm

to comply with the recommendations and rulings" the proper course of action was first to have recourse to Article 21.5 of the DSU.[8] In fact, this had also been the position of the United States in other disputes. In the recent "US – Tuna" dispute (DS381), the United States itself had observed that "the DSB cannot grant authorization to suspend concessions in any amount where the Member concerned has come into compliance".[9] India agreed with that statement. In this dispute, India had brought itself into full compliance. However, if the United States disagreed, the issue of compliance had to be decided in accordance with the procedures of Article 21.5 of the DSU. As noted earlier, in the DS436 dispute, India and the United States had entered into a sequencing agreement that essentially sequenced compliance proceedings and the suspension of obligations. India had entered into such an agreement with the United States because of its practical effectiveness. This was now a common practice adopted by WTO Members. Technically, India could have immediately sought the suspension of concessions as it did not agree that the United States had brought itself into compliance. However, India had considered that the appropriate approach, even in such a scenario, would be to enter into a sequencing agreement.

5.6. India noted that Japan, at the DSB meeting on 19 July 2016 had rightly brought out the issues involved in this respect. At that meeting, Japan had stated that these procedural arrangements would certainly have implications for the time-frame of dispute settlement proceedings; but nonetheless, it had been and would provide a practical way forward by providing legal certainty at this very critical stage in a dispute. And this practical arrangement made sense for the following reasons: (i) to review complex issues of compliance through adjudicative process and multilateral decision by the DSB; (ii) to secure the parties' rights to appeal; and (iii) to provide a basis for the work of the arbitrator under Article 22.6 of the DSU. India agreed with Japan's assessment. The EU had also supported this sequencing in their statement made at the same DSB meeting. The EU had stated that, in cases of disagreement about the existence or consistency with WTO rules of compliance measures, concessions or other obligations could be suspended under the DSU once there was a multilateral determination on the alleged compliance action. The EU trusted that India and the United States would ensure that the DSU procedures, with regard to compliance and suspension of obligations in this dispute, could be conducted efficiently and in the correct sequence. India agreed with the EU on its assessment. India, once again urged the United States to enter into a sequencing agreement in this dispute and to suspend the arbitration proceedings so as to avoid inefficient and avoidable legal uncertainties. India had brought its measure at issue into conformity and therefore, the US request for suspension of concessions had no legal basis. Not adhering to the sequence disrupted the legal certainty of the DSU.

5.7. The representative of the European Union said that the EU wished to refer to its statement made at the previous DSB meeting. The EU continued to hope that India and the United States would ensure that the DSU procedures with regard to compliance and suspension of obligations in this dispute could be conducted efficiently and in the correct sequence. The EU would continue to follow the developments in this dispute very closely.

5.8. The representative of the United States said that, under Article 22.6 of the DSU, the negative consensus rule applied within 30 days of the end of the period for compliance. By submitting the Article 22.2 request, the United States had preserved its negative consensus rights. Taking this step was neither surprising nor unusual. Similar actions had been taken in other disputes. The United States noted that as of the end of the reasonable period of time, and indeed as of the time of the US request under Article 22.2 of the DSU, India had not even been claiming that the measures that were the subject of the DSB's recommendations and rulings had been withdrawn or modified. As it had noted, the United States remained prepared to engage with the Government of India to facilitate its coming into compliance with the DSB's recommendations and rulings in this dispute. With regard to India's suggestion that the United States should have entered into a sequencing agreement, there was nothing in the DSU that required Members to enter into such agreements. Members had found it appropriate to do so in many circumstances. But India had taken no steps to address the DSB's recommendations as of the time when the United States had taken procedural action to preserve its rights under Article 22 of the DSU. India also suggested that the United States should have initiated a proceeding under Article 21.5 of the DSU. Members had often agreed, through sequencing agreements or otherwise, to conduct proceedings in such an order, but as Members were well aware, this was not required under the DSU.

[8] Recourse to Article 22.6 by India, WT/DS430/17 dated 19 July 2016.
[9] Recourse to Article 21.5 of the DSU by the United States, WT/DS381/32, page 3.

5.9. The representative of India said that his country wished to respond to the statement made by the United States regarding the initiation of Article 22.2 of the DSU. It was true that, initially, India had not notified its measure. Subsequently, however, on 8 July 2016, India had notified the measure. India thus claimed full compliance. The circumstances now were changed from the date on which the United States had requested suspension. The issue was not whether India was in compliance at that point of time, but what were the developments subsequently. It was in that light that India sought the request for concession to be suspended and a proper sequence be followed. India would continue to discuss this matter with the United States bilaterally.

5.10. The representative of Brazil said that his delegation wished to make a statement with regard the procedural matter under consideration. He recalled that Members had discussed the issue of the proper sequence between Articles 21.5 and 22.6 of the DSU for many years and had developed practical arrangements for sequencing agreements. Many Members considered that a party could not proceed to a retaliation request before there was a multilateral determination of compliance under Article 21.5 of the DSU. However, now it seemed that Members were entering a new phase of uncertainty with regard to the sequencing agreements. In Brazil's view, it was important for Members to monitor any new developments, regarding this matter, which had been discussed for many years in the context of the DSU negotiations.

5.11. The DSB took note of the statements.

6 COLOMBIA – MEASURES CONCERNING IMPORTED SPIRITS

A. Request for the establishment of a panel by the European Union (WT/DS502/6)

6.1. The Chairman drew attention to the communication from the European Union contained in document WT/DS502/6 and he invited the representative of the European Union to speak.

6.2. The representative of the European Union said that the EU was requesting the establishment of a panel concerning Colombia's discriminatory treatment of imported spirits. This request followed the EU efforts to find a solution with Colombia over a long period of time and in multiple fora, including through a bilateral trade agreement signed in 2012, where this issue had been specifically addressed. Consultations had been held in March 2016 in Bogota, however a solution had not yet been found. While the EU recognized Colombia's efforts to bring about reform in the spirits regime since the initiation of this dispute, and welcomed the constructive process that resulted from those consultations, the EU spirits continued to be discriminated in the Colombian market. This was the case despite multiple assurances that the discrimination would be eliminated. While remaining supportive of the ongoing legislative process in Colombia, the EU could no longer wait and had no choice but to request the establishment of a panel at the present meeting. Notwithstanding, the EU encouraged the Colombian government to continue its good efforts towards the long-awaited reform of the spirits regime so that EU spirits were no longer discriminated in the Colombian market.

6.3. The representative of Colombia said that, with respect to the measures concerning imported spirits, his country regretted the EU's request for the establishment of a panel to examine this matter. During the consultations, the Colombian Government had addressed the different representations made by the EU. While not accepting that Colombia had acted inconsistently with its WTO commitments, Colombia had explained that its Congress was working hard on the adoption of new legislation. In particular, Colombia had noted that, on 4 November 2015, the Colombian Government had submitted a Bill to its Congress concerning the reform of the spirits regime. The Third Committee of the Cámara de Representantes, the lower house in Congress, had voted in favour of this initiative in the first reading of the Bill on 16 December 2015. Following the consultations, work on the legislation continued. On 17 May 2016, on the second reading of the Bill, the Plenary of the Cámara de Representantes had voted in favour of the bill, thus referring it to the Senate for consideration. On 15 June 2016, the Third Committee of the Senate had approved the Bill, in its third reading, and had referred it to the Plenary Session of the Senate for a fourth and final reading. Unfortunately, due to the types of minor delays that frequently took place in a legislative process, Colombia was unable to complete it before the end of the legislative session on 20 June 2016. The delays had not reflected any lack of effort on the part of the Colombian Government. Steady progress had been and continued to be made. Furthermore, the EU had been kept informed of the legislative developments as they had occurred. The Congress

had just reconvened its parliamentary activities after the summer recess. Colombia expected that the introduction of the Bill to the Plenary Session of the Senate and the fourth reading of the Bill would take place shortly. After the Bill had been approved in the fourth reading, the final step in the process would be the conciliation of the versions of the Bill approved by the Cámara de Representantes and the Senate. Colombia expected this process to be completed by mid-to-late September 2016. In view of these developments, the EU's request for the establishment of the panel was premature and did not contribute to achieving a positive solution to the dispute. This action by the EU could derail or further delay the process in Congress by undermining the political support for the bill. Given how close Colombia was to the end of the process, this risk was, in Colombia's view, undesirable. Colombia nonetheless stood ready to continue working closely with the EU to complete the legislative process. For these reasons, Colombia was not in a position to agree to the EU's request for the establishment of a panel at the present meeting.

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

7 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/575)

7.1. The Chairman drew attention to document WT/DSB/W/575, which contained two additional names proposed by the Republic of Moldova and Switzerland for inclusion on the Indicative List of Governmental and Non-Governmental Panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/575.

7.2. The DSB so agreed.

8 APPELLATE BODY MATTERS

8.1. The Chairman said that he wished to remind delegations that as agreed by the DSB at its meeting on 21 July 2016, the deadline for nominations of candidates to fill the vacancy left by the non-reappointment of one Appellate Body member was Wednesday, 14 September 2016 by 6 pm. He noted that no new nominations had been submitted thus far. He also wished to remind delegations that, as agreed at the previous DSB meeting, should any of the candidates nominated for the 2016 process which had been initiated in January 2016 wish to participate in the new selection process, the Member who had nominated that candidate should inform the Selection Committee of the candidate's intentions to participate in the new selection process. This should be done by sending a letter to him as the Chair of the DSB in care of the Council and TNC Division with the request that this information be forwarded to the members of the Selection Committee. Such letters would then be circulated to all delegations as addenda to the original Job documents containing the CV of a candidate submitted for the previous process. He further wished to remind delegations that, starting on 26 September 2016, he would convene the first Dedicated Session for a focused discussion by Members on any issue that had been raised in respect of Appellate Body reappointments, including whether to modify the rules governing reappointments. He recalled that the purpose of these Dedicated Sessions was to discuss issues relating to reappointment only, with particular attention paid to assuring the independence and impartiality of the Appellate Body, and not to discuss any other issues including those raised in the DSU negotiations. In that regard, if there was any interest by delegations to share their views on how these Dedicated Sessions should be conducted, he would make himself available for consultations ahead of the first Dedicated Session. Delegations should contact the Secretariat as soon as possible if they wished to take up that offer.

8.2. The DSB took note of the statement.

9 "CHINA – MEASURES IMPOSING ANTI-DUMPING DUTIES ON HIGH-PERFORMANCE STAINLESS STEEL SEAMLESS TUBES ('HP-SSST') FROM JAPAN" / "CHINA – MEASURES IMPOSING ANTI-DUMPING DUTIES ON HIGH-PERFORMANCE STAINLESS STEEL SEAMLESS TUBES ('HP-SSST') FROM THE EUROPEAN UNION"

A. Statement by China

9.1. The representative of China, speaking under "Other Business", said that, on 28 October 2015, the DSB had adopted the Appellate Body and Panel Reports in the disputes:

"China — Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ('HP-SSST') from Japan" (DS454) and "China — Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes from the European Union" (DS460). On 25 November 2015, China had informed the DSB of its intention to implement the DSB's recommendations and rulings in these disputes. On 19 February 2016, China, Japan and the EU had informed the DSB that they had agreed that the reasonable period of time for China to implement the DSB's recommendations and rulings shall be nine months and 25 days from the date of adoption of the Appellate Body and Panel Reports. Accordingly, the reasonable period of time had expired on 22 August 2016. In order to implement the DSB's recommendations and rulings, the Ministry of Commerce of the People's Republic of China (MOFCOM) had published a notice (Notice (2016) No. 30) and had launched re-investigation into HP-SSST from Japan and the EU. On 22 August 2016, MOFCOM had issued a determination of the re-investigation (Notice (2016) No. 34) and the anti-dumping duties at issue were terminated. Through these efforts, China had fully implemented the DSB's recommendations and rulings in these disputes.

9.2. The representative of Japan said that his country thanked China for its statement regarding the announcement made on 22 August 2016 on China's Ministry of Commerce website. Japan recalled that, on 28 October 2015, the DSB had adopted the recommendations and rulings in this dispute. Subsequently, on 19 February 2016, Japan and China had agreed that the reasonable period would expire on 22 August 2016. On that date, China had made an announcement on China's Ministry of Commerce web site that China had revoked its anti-dumping duties on HP-SSST from Japan and the EU, as had been reported by China at the present meeting. Japan welcomed, and was encouraged by, China's statement that it had taken the necessary actions to implement the DSB's recommendations and rulings by the end of the reasonable period of time and that it had revoked the WTO-inconsistent measures in this dispute. Japan noted that the announcement of 22 August 2016 had also stated that, under China's municipal law, any interested party could seek revocation of this decision by administrative reconsideration, or otherwise, judicial review. Thus, Japan would closely monitor any developments with respect to MOFCOM's decision of 22 August 2016. Japan wished to note that Article 21.6 of the DSU provided that "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 "the Member concerned shall provide the DSB with a status report in writing of its progress in the implementation of the recommendations or rulings". As Japan and China had agreed on the reasonable period of time on 19 February 2016, the six-month period had expired on 19 August 2016. Under those circumstances, Japan believed that China should have submitted a status report and made a statement under the main Agenda item. Japan, once again, thanked China for its statement made at the present meeting.

9.3. The representative of the European Union said that the EU supported the statement made by Japan.

9.4. The representative of China said that his country took note of the statements made by Japan and the EU. He said it was China's obligation to establish and maintain tribunals and procedures for the prompt review of the administrative actions relating to the implementation of laws and regulations as required under the GATT 1994, including the decision on anti-dumping measures. He noted that Japan and the EU had the same obligations. In general, these procedures were irrelevant to the implementation of the DSB's recommendations and rulings. The Notice (2016) No. 34 had taken effect on 22 August 2016 and the anti-dumping duties had been terminated. Therefore, China had fully implemented the DSB's recommendations and rulings in these disputes.

9.5. The DSB took note of the statements.

10 DISPUTE SETTLEMENT WORKLOAD

A. Statement by the Chairman

10.1. The Chairman, speaking under "Other Business", said that he wished to provide information about the Appellate Body's workload, the number of disputes before panels, in the panel queue, and at the panel composition stage, and the ability of the Secretariat to meet expected demand over the coming period. On appeals, the Appellate Body was currently dealing with three

appeals.[10] In addition, two Panel Reports that had been circulated in August[11] and another three Panel Reports that were expected to be circulated in the next three months may also be appealed[12], including the report of the Panel in the extremely complex compliance proceedings in the "EC and Certain Member States – Large Civil Aircraft" (Airbus) dispute. Given the limited number of staff available in the Appellate Body Secretariat, there was soon likely to be a waiting period before appeals could be staffed and Appellate Body members could turn to dealing with them. On panels/arbitrations, currently, there were 17 active panels (including three panels under Article 21.5 of the DSU) that had not yet issued a final report to the parties. He noted that he was counting multiple disputes that were being considered simultaneously by the same panel as one. As of the present day, there were four composed panels awaiting staff to assist them[13], which had been composed after 31 October 2015 when the Director-General had undertaken to staff all panels in the queue at that time. Currently, there were six panels at the composition stage. In addition, two matters had been referred to arbitration under Article 22.6 of the DSU.

10.2. The DSB took note of the statement.

[10] DS456 "India – Solar Cells"; DS464 "US – Washing Machines"; and DS473 "EU – Biodiesel".
[11] DS475 "Russia – Pigs"; DS485 "Russia – Tariff Treatment".
[12] DS316 "EC and Certain Member States – Large Civil Aircraft"; DS471 "US – Anti-Dumping Methodologies" (China); and DS487 "US – Tax Incentives".
[13] DS480 "EU – Biodiesel" (Indonesia); DS427 "China – Broiler Products" (Article 21.5 – United States); DS504 "Korea – Anti-Dumping Duties on Pneumatic Valves from Japan"; and DS505 "US – Supercalendared Paper" (Canada).