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Dispute Settlement Body
20 July 2015

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 20 JULY 2015

Chairman: Mr. Harald Neple (Norway)

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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.151)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.151)

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.126)

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F. European Communities – Measures prohibiting the importation and marketing of seal products: Status report by the European Union (WT/DS400/16/Add.4 – WT/DS401/17/Add.4)

1.1. The Chairman noted that there were six 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 further 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.151)

1.2. The Chairman drew attention to document WT/DS176/11/Add.151, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning 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 9 July 2015, in accordance with Article 21.6 of the DSU. Several bills introduced in the current US Congress would repeal Section 211. Other previously introduced legislation would modify Section 211. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings and resolve this matter with the European Union.

1.4. The representative of the European Union said that the EU thanked the United States for its most recent status report and statement made at the present meeting. The EU hoped that the US authorities would resolve this matter very soon.

1.5. The representative of Cuba said that his country noted that the United States had submitted its 151st status report which, unfortunately, was the same as the previous status reports, with no new information on progress towards a solution to this long-standing dispute. Cuba noted that, at each regular DSB meeting, the US status report stated that: "On 2 February 2002, the Dispute Settlement Body adopted its recommendations and rulings in "United States – Section 211 Omnibus Appropriations Act of 1998". The status report also acknowledged that "[a]t the following DSB meeting, the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in connection with this matter". However, 13 years later, this situation of non-compliance continued. The United States had unjustifiably disregarded the DSB's recommendations and rulings to bring Section 211 into conformity with the TRIPS Agreement and the Paris Convention. Cuba had, over the years, denounced Section 211, which violated Cuban patents and trademarks in the United States and legitimized the theft of the Havana Club rum trademark. Cuba had always respected its obligations under international industrial property legislation without the slightest discrimination. Cuba had ensured that more than 5,000 US trademarks and patents benefitted from registration in Cuba. On 1 July 2015, the President of the State Council and the Council of Ministers of the Republic of Cuba, Army General Raúl Castro Ruz, and the US President, Barack Obama, had exchanged letters confirming their decision to re-establish diplomatic relations between the two countries and to open permanent diplomatic missions in their respective capitals as from 20 July 2015. In his letter to the US President, the Cuban President had stated the following: "In making this decision, Cuba is encouraged by the reciprocal intention to develop respectful and cooperative relations between our two peoples and governments. Cuba is likewise inspired by the principles and purposes enshrined in the United Nations Charter and International Law, namely, sovereign equality, the settlement of disputes by peaceful means, to refrain from any threat or use of force against the territorial integrity or the political independence of any State, non-interference in matters which are within the domestic jurisdiction of States, the development of friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, and cooperation in solving international problems and in promoting and encouraging respect for human rights and for fundamental freedoms for all". Cuba, once again, urged the United States to repeal Section 211 and to end the economic, commercial and financial embargo against Cuba.

1.6. The representative of Mexico said that since the circumstances of this dispute had not changed, Mexico wished to refer to its statements made under this Agenda item at previous DSB meetings.

1.7. The representative of Jamaica said that her country thanked Cuba, the United States and the EU for their statements, updates and the status report under this Agenda item. Jamaica noted that the circumstances of this dispute had not changed and that no progress had been reported since the previous DSB meeting. As at previous DSB meetings, Jamaica expressed its concern about the continued US failure to implement the DSB's recommendations adopted in 2002 regarding Section 211. The protracted failure by the United States to take the necessary steps to comply with its obligations under the DSU provisions was incompatible with the requirement for prompt implementation of the DSB's decisions. This was of particular concern in cases such as this where the failure to meet an obligation had a negative impact on the economic interests of a developing-country Member. Jamaica reiterated its deep concern about the systemic implications

of any disregard for DSB decisions. Such disregard could undermine the overall integrity of the dispute settlement system, which remained a key pillar of the WTO. Jamaica believed that after 13 years since the adoption of the DSB's recommendations, it was more than reasonable for Members to expect that this matter would be resolved and finally removed from the DSB's Agenda.

1.8. The representative of the Plurinational State of Bolivia said that, for the past 12 years, the United States continued to submit the same status report, which did not contain any information on progress in this dispute. Bolivia, once again, expressed its concern about the US failure to comply with the DSB's recommendations and rulings. The US failure to comply in this dispute undermined the credibility and integrity of the multilateral system as a whole, and affected the interests of a developing-country Member. Bolivia, once again, urged the United States to comply with the DSB's recommendations and rulings and to remove the restrictions imposed by Section 211. Bolivia supported the concerns expressed by Cuba at the present meeting.

1.9. The representative of the Russian Federation said that his country regretted that it had to, once again, express its concern about the lack of progress in this long-standing dispute. The lack of compliance in this dispute attracted the attention of Members as it was an example of non-compliance with, and disregard for, the DSB's recommendations and rulings. 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 of the WTO system. As it had previously stated, Russia urged the parties to this dispute to address the outstanding issues and to resolve this dispute as soon as possible.

1.10. The representative of Nicaragua said that his country supported the statement made by Cuba. Nicaragua reiterated its concern about the continued US lack of compliance with the DSB's recommendations and rulings in this dispute. Nicaragua noted that the 151st US status report did not contained any information on progress towards resolving this 13 year old dispute. As many delegations had pointed out in previous DSB meetings, the US failure to comply undermined the economic interests of a developing-country Member and the integrity of the dispute settlement system, a key pillar of the WTO. Nicaragua joined other Members in urging the United States to take the necessary measures to promptly implement the DSB's rulings and recommendations.

1.11. The representative of Uruguay said that her country thanked the United States and Cuba for the information provided. Uruguay noted that the situation remained the same. In that regard, Uruguay reiterated its statements made under this Agenda item at previous DSB meetings. Uruguay regretted that the non-compliance in this dispute negatively affected the parties to the dispute and the dispute settlement system.

1.12. The representative of India said that his country noted the status report submitted by the United States and its statement made at the present meeting. India also thanked Cuba for its statement and noted that the United States had not reported any progress. India, once again, was compelled to stress that the principle of prompt compliance was missing in this dispute. India joined the previous speakers in renewing its systemic concerns about the continuation of non-compliance. In India's view, such non-compliance undermined the confidence the Members reposed in a predictable, rules-based multilateral system, especially in the context of a developing-country Member seeking compliance. Continued non-compliance by Members eroded the credibility of the WTO dispute settlement system. India urged the United States to report compliance to the DSB without further delay.

1.13. The representative of Trinidad and Tobago said that his country thanked the United States for its status report and Cuba for its statement. Trinidad and Tobago regretted that, after 13 years, this matter had not yet been resolved. In that regard, his country supported the call for prompt compliance with the DSB's rulings and recommendations concerning Section 211, pursuant to Article 21.1 of the DSU. Non-compliance with the DSB's rulings and recommendations negatively affected all Members, in particular a small country like Cuba. In addition, the slow pace of progress in this dispute eroded the confidence Members had in the multilateral trading system. Trinidad and Tobago, once again, supported the call for prompt compliance with the DSB's rulings and recommendations.

1.14. The representative of Argentina said that his country thanked the United States for its status report. Argentina, once again, regretted that the US status report did not contain any new

information on progress in this dispute. In that regard, Argentina reiterated that this lack of progress was inconsistent with the principle of effective and prompt implementation of the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Argentina, therefore, supported Cuba as well as the previous speakers and urged the parties to this dispute, the EU and the United States, and in particular the United States, to promptly adopt the necessary measures to finally resolve this dispute.

1.15. The representative of Peru said that his country thanked the United States for its status report and Cuba for its statement. Peru noted that there was no progress in this dispute. Peru reiterated the importance of promptly implementing the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were concerned. Peru supported the previous speakers who had expressed concern that no tangible progress had been made in implementing the DSB's recommendations and rulings in this dispute.

1.16. The representative of El Salvador said that her country thanked the United States for its status report and Cuba for its statement made at the present meeting. El Salvador, like other delegations, noted with concern the lack of compliance in this dispute, which affected the interests of a small and vulnerable developing-country Member and the multilateral trading system. El Salvador urged the United States to promptly comply with the DSB's recommendations and rulings so as to resolve this dispute.

1.17. The representative of China said that her country thanked the United States for its status report and its 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, in particular since the interests of a developing-country Member were affected. China urged the United States to implement the DSB's rulings and recommendations without any further delay.

1.18. The representative of Brazil said that his country thanked the United States for its status report in this dispute. Brazil regretted that the US status report did not contain any information on progress in this dispute. Brazil shared the concerns expressed by the EU, Cuba and other delegations regarding the lack of compliance in this dispute. In light of new political developments with Cuba, Brazil urged the United States to adopt meaningful measures towards compliance. Such compliance would certainly strengthen the multilateral rules.

1.19. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Cuba. Venezuela noted with concern that the 151st US status report did not report on any progress in complying with the DSB's recommendations and rulings because Section 211 still remained in force. Venezuela recalled that the dispute settlement system was one of the main achievements of the multilateral trading system. In Venezuela's view, the prolonged situation of non-compliance in this dispute undermined the credibility and integrity of the multilateral trading system as a whole and its ability to resolve disputes. Non-compliance in this dispute also set a negative precedent that may affect other Members, in particular, developing-country Members. Venezuela joined previous speakers in expressing concerns about the systemic implications of this prolonged situation of non-compliance, which undermined the confidence Members placed in the dispute settlement system. Venezuela urged the United States to comply with the DSB's recommendations and rulings, to repeal Section 211, and to report at the next DSB meeting on the measures it would take to resolve this dispute.

1.20. The representative of Ecuador said that his country supported the statement made by Cuba. Ecuador, once again, recalled that Article 21.1 of the DSU referred specifically to the prompt and effective compliance with the DSB's recommendations and rulings, in particular, since the interests of a developing-country member were concerned. Ecuador hoped that the United States would step up its current work and efforts and promptly comply with the DSB's recommendations and rulings. In Ecuador's view, this dispute was an example of some shortcomings of the WTO dispute settlement system.

1.21. The representative of Viet Nam said that her country thanked the United States, the EU and Cuba for their statements. Viet Nam noted that this matter had not been resolved for more than a decade. Viet Nam shared the concerns expressed by Cuba and previous speakers about the lack of compliance by the United States in this dispute. In that regard, Viet Nam urged the United States to step up its efforts and to fully comply with the DSB's recommendations and rulings.

1.22. The representative of Angola said that his country thanked the United States for its status report regarding Section 211. Angola supported the statement made by Cuba regarding the lack of progress in this dispute. Angola noted that there had been no progress over the past few years. As it had pointed out in its statements made at previous DSB meetings, Angola had noted the intentions expressed by the United States and hoped that the measures the United States had taken thus far could result in the prompt resolution of this dispute which had lasted for more than 13 years. Angola was concerned about the non-compliance in this dispute, which affected the economic interests of Cuba, a small and vulnerable developing-country Member and had negative consequences for the dispute settlement system. Angola called on the parties to this dispute to find a fair and appropriate solution to this dispute so as to safeguard the credibility of the dispute settlement system and the confidence Members reposed in that system. Angola, once again, urged the United States to show its commitment to the system by complying with the DSB's recommendations and rulings and promptly resolving this dispute.

1.23. The DSB took note of the statements and agreed to revert to this matter at its next regular 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.151)

1.24. The Chairman drew attention to document WT/DS184/15/Add.151, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.25. The representative of the United States said that his country had provided a status report in this dispute on 9 July 2015, 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.

1.26. The representative of Japan said that his country thanked the United States for its statement and its status report submitted on 9 July 2015. Japan, once again, requested that this long-standing dispute be resolved as soon as possible.

1.27. 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.126)

1.28. The Chairman drew attention to document WT/DS160/24/Add.126, 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.

1.29. The representative of the United States said that his country had provided a status report in this dispute on 9 July 2015, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the EU, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

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

1.31. 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.89)

1.32. The Chairman drew attention to document WT/DS291/37/Add.89, 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.

1.33. The representative of the European Union said that, in recent meetings, the EU had already reported on authorization decisions and other actions towards approval decisions taken up to May 2015. 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.

1.34. 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 noted that dozens of biotech applications remained pending in the EU approval system. One of these applications had been pending for well over a decade. The ongoing backlog and delays remained a serious impediment to trade in biotech products. The United States was further concerned about an EU proposal for major change in the EU approval measures. If adopted, that measure would result in even greater disruptions in trade in agricultural products. As the United States had previously stated, the EU Commission had proposed to adopt an amendment to EU biotech approval measures that would allow individual EU member States to ban the use of biotech products within their territory, even where the EU had approved the product based on a scientific risk assessment. The United States was concerned about the relationship of such a proposal to the EU's obligations under the SPS Agreement. Additionally, the United States noted that one or more EU member State bans would serve as a major impediment to the movement and use of biotech products throughout the entirety of the EU. The United States urged the EU to ensure that its biotech approval measures operated in accordance with the EU's own laws and regulations and its obligations under the SPS Agreement. To the extent that the EU considered revisions to its biotech approval measures, the EU should ensure that these revisions were consistent with the EU's WTO obligations and should notify these revisions to the SPS Committee pursuant to Article 7 of the SPS Agreement.

1.35. The representative of the European Union said that the new proposal was not related to the implementation of the adopted DSB's recommendations and rulings and it, therefore, fell outside the remit of the responsibilities of the DSB under Article 21.6 DSU. There was no basis for a discussion in the DSB on the consistency of the EU proposal with WTO obligations. Whether or not any given legislative initiative or any measure adopted by a Member State of the EU complied with EU Internal Market rules was an internal matter of the EU. The WTO was not a forum to discuss issues of compatibility with domestic law.

1.36. 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.37)

1.37. The Chairman drew attention to document WT/DS404/11/Add.37, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain shrimp from Viet Nam.

1.38. The representative of the United States said that his country had provided a status report in this dispute on 9 July 2015, 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.

1.39. The representative of Viet Nam said that her country thanked the United States for its status report and the statements made at the present meeting. As Members would recall from the

previous DSB meetings, Viet Nam considered that, those actions which the Panel in the DS404 dispute had found to be WTO-inconsistent should be addressed in the context of US implementation in the DS429 dispute. Specifically, the WTO-inconsistent margins of dumping found in each of the reviews at issue in the DS404 dispute must be revised based on a WTO-consistent methodology in order for the United States to take the WTO-consistent remedial action required by the DS429 dispute. This review would serve: (i) specifically to conduct a re-determination of the sunset review on frozen warm water shrimp from Viet Nam and (ii) to re-examine individual company requests for revocations based on the sustained absence of dumping. Viet Nam believed that the United States was prepared to fully implement the DS404 dispute in this context and looked forward to being able to address the DSB after the expiry of the reasonable period of time for implementation in the DS429 dispute and announce that the DS404 dispute had been fully implemented.

1.40. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Viet Nam and took note of the US status report. Venezuela noted the importance of prompt implementation of the DSB's recommendations and rulings. Failure to do so undermined the system and its ability to resolve disputes. Venezuela called on the United States to take the necessary measures to resolve this dispute.

1.41. The representative of Cuba said that her country had noted the statements made and urged the United States to take the necessary measures to meet its obligations and to resolve this matter.

1.42. The representative of Nicaragua said that his country supported the statement made by Viet Nam and thanked the United States for its status report and its statement. Nicaragua urged the United States to undertake the necessary measures in order to comply with the DSB's recommendations and rulings and to resolve this matter.

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

F. European Communities – Measures prohibiting the importation and marketing of seal products: Status report by the European Union (WT/DS400/16/Add.4 – WT/DS401/17/Add.4)

1.44. The Chairman drew attention to document WT/DS400/16/Add.4 – WT/DS401/17/Add.4, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning the EU measures prohibiting the importation and marketing of seal products.

1.45. The representative of the European Union said that the EU continued to work on the implementation of the DSB's recommendations and rulings in this dispute and was making its best efforts to complete the implementation before the expiry of the agreed reasonable period of time on 18 October 2015. As already reported at the previous DSB meetings, the European Commission had submitted a proposal to the Council and the European Parliament for amending those aspects of EC Regulation No. 1007/2009 on trade in seal products that had been found to be discriminatory. In particular, it proposed to remove the exception for maritime resource management hunts and provided for certain modifications to the exception of indigenous communities. The EU was expecting the proposal to be adopted by the legislators in the course of September 2015 and was working in parallel on replacing the current Commission regulation No. 737/2010 with a new one. In addition and as already reported in previous DSB meetings, the EU was confident that the very constructive cooperation with Canada on the access of Canadian Inuit products to the EU market would soon result in the setting up of the necessary attestation system for Canadian Inuit to start using the IC exception.

1.46. The representative of Canada said that her country thanked the European Union for its fifth status report regarding the implementation of the DSB's recommendations and rulings in this dispute. As previously indicated in its statements made at the May and June DSB meetings, Canada continued to engage with the EU to operationalize the indigenous communities exemption, with the objective of ensuring practical market access for Canadian Aboriginal seal products. Canada had also submitted a formal application for the Nunavut Territorial Government, one of

Canada's northern territories, to become a Recognised Body under the existing EU seal regulations. Canada understood that the review process was nearing completion and that a decision would be taken very soon. Canada was hopeful that Nunavut could secure Recognised Body status in the very near future. Canada had also been following closely the debate concerning amendments to the EU Seal Regime. Canada expected that any such amendments would be implemented consistently with the DSB's recommendations and rulings and in a manner that did not adversely affect Inuit and other indigenous communities, in particular in light of the ongoing Nunavut application. Canada reiterated that Canada's seal harvests were humane, sustainable and well-regulated activities that provided an important source of food and income for coastal and Inuit communities.

1.47. The representative of Norway said that his country thanked the EU for its fifth status report concerning the implementation of the DSB's recommendations and rulings in this dispute. Norway continued to follow with interest the legislative process in the EU, including the proposal for an amendment of the Basic Seal Regulation. Norway noted that the EU had informed the DSB that a new implementing regulation would need to be adopted to reflect the amendment. In that regard, Norway wished to reiterate its position that Norway's seal hunt was well-regulated, conducted in a humane manner and contributed to the sustainable management of its living marine resources. The fact that this had not been taken into account by the EU in the proposed amendment was disappointing. Norway would continue to monitor the legislative process, and expected that the EU would fully implement the DSB's recommendations and rulings within the agreed reasonable period of time.

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

2 INDIA – MEASURES CONCERNING THE IMPORTATION OF CERTAIN AGRICULTURAL PRODUCTS

A. Implementation of the recommendations of the DSB

2.1. The Chairman recalled that, in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes for the benefit of all Members. In that respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 19 June 2015, the DSB had adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, pertaining to the dispute on: "India – Measures Concerning the Importation of Certain Agricultural Products". As Members were aware, the 30-day time-period in this dispute had expired on 19 July 2015 and, on 13 July 2015, India had informed the DSB in writing of its intentions in respect of implementing the recommendations and rulings of the DSB. The relevant communication was contained in document WT/DS430/12. He invited the representative of India to make a statement.

2.2. The representative of India said that, on 19 June 2015, the DSB had adopted the Reports of the Panel and the Appellate Body in the dispute: "India – Measures Concerning the Importation of Certain Agricultural Products from the United States" (DS430). In this dispute, the 30-day period of time referred to in Article 21.3 of the DSU had expired before the next regularly scheduled DSB meeting. In those circumstances, the United States had agreed with India that it was appropriate for India to inform the DSB of India's intentions by letter, rather than at a special meeting. Accordingly, on 13 July 2015, India had informed the DSB by letter that it intended to implement the recommendations and rulings of the DSB in a manner that respected its WTO obligations. As India had noted in its letter, it would need a reasonable period of time in which to implement the DSB's recommendations and rulings. In accordance with Article 21.3(b) of the DSU, India would seek to reach agreement with the United States on the period of time for implementation. India looked forward to working with the United States on reaching a mutually acceptable reasonable period of time.

2.3. The representative of the United States said that his country thanked India for its communication of 13 July 2015, and its statement made at the present meeting, indicating that it

intended to implement the DSB's recommendations and rulings in this dispute, and that it would need a reasonable period of time for implementation. The WTO-inconsistent measures in this dispute continued to be of significant concern to the United States. The United States therefore looked forward to India moving promptly to bring its measures into compliance with its obligations. The United States stood ready to discuss with India, under Article 21.3(b) of the DSU, a reasonable period of time for implementation of the DSB's recommendations and rulings.

2.4. The DSB took note of the statements, and of the information provided by India regarding its intentions in respect of implementing the DSB's recommendations.

3 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

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

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

3.3. 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 stated at previous DSB meetings, Japan was of the view that the United States was under an obligation to provide the DSB with a status report in this dispute in accordance with Article 21.6 of the DSU.

3.4. The representative of India said that his country shared the concerns raised by the EU and Japan. The WTO-inconsistent disbursements continued unabated to the US domestic industry. The latest data available[1] in the Annual Report of the US Customs and Border Protection for the fiscal year 2014 indicated that about US$70 million were disbursed to the US domestic industry. India was of the view that this item should continue to remain on the DSB's Agenda until such time that full compliance was achieved in this dispute.

3.5. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. Brazil, as one of the parties to these disputes, was of the view that the United States was under an obligation to discontinue any disbursements made pursuant to the Byrd Amendment. The fact that disbursements currently made were related to investigations initiated before the repeal of the Act in February 2006 did not mean that they were excluded from compliance obligations. Since the DSB had confirmed the illegal nature of the disbursements under the Byrd Amendment more than 10 years ago, any disbursement to petitioners must be discontinued, only then would compliance be achieved in this dispute.

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

3.7. The representatives 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, was 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, over seven and a half 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

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

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 were 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.

3.8. The DSB took note of the statements.

4 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. Statement by the United States

4.1. The Chairman said that this item was on the Agenda of the present meeting at the request of the United States. He then invited the representative of the United States to speak.

4.2. The representative of the United States said that his country reiterated its serious concerns regarding China's failure to bring its measures into conformity with its WTO obligations, despite numerous interactions between the United States and China in the DSB and elsewhere. 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 noted that the People's Bank of China had issued draft regulations earlier that month setting forth some procedures for EPS suppliers to follow when seeking a license. The United States was currently reviewing those draft regulations. To date, the China Banking Regulatory Commission had not issued any draft or final regulations implementing the State Council's April 2015 decision. As a result, one Chinese enterprise continued to be the only EPS supplier able to operate in the domestic market. As required under its WTO obligations, China must still adopt the implementing regulations necessary for allowing the operation of foreign EPS suppliers in China. The United States continued to look forward to the prompt issuance of all measures necessary to permit foreign EPS suppliers to do business in China.

4.3. 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 under this Agenda item at previous DBS meetings. China reiterated that it had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute.

4.4. The DSB took note of the statements.

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

A. Statement by the Philippines

5.1. The Chairman said that his item was on the Agenda of the present meeting at the request of the Philippines. He then invited the representative of the Philippines to speak.

5.2. The representative of the Philippines said that Thailand had repeatedly informed the DSB that it had done all it was required to do in order to secure full compliance with the DSB's recommendations and rulings in this dispute. Nonetheless, a series of outstanding compliance issues remained. As at previous DSB meetings, the Philippines wished to highlight two of these issues due to their particular systemic impact on the DSB's rulings and the Customs Valuation Agreement overall.

5.3. First, the Philippines remained deeply concerned about the Thai Attorney General's decision to prosecute an importer of Philippine cigarettes for alleged under-declaration of customs value. The WTO panel had ruled that Thailand enjoyed no legitimate grounds to reject the customs values

that Thailand now sought to criminalize. In addition, Thai Custom's Board of Appeal (or "BoA") had explicitly accepted those customs values, in a ruling heralded by Thailand itself as a measure taken to comply. Thailand's actions with the criminal prosecution directly undermined the implementation obligation placed on it by the DSB's recommendations and rulings. In systemic terms, there could be no doubt that the disciplines of the Customs Valuation Agreement applied whenever a WTO Member engaged in the customs valuation of goods, including in the enforcement of domestic Customs provisions. Despite this evident WTO-inconsistency, Thailand had explained in its DSB statements over the last four months that it "will take steps to ensure" the WTO-consistency of the criminal prosecution. While it appreciated the sentiment behind these repeated statements, the Philippines had yet to receive an explanation about precisely what steps Thailand would take to ensure the WTO-consistency of the criminal prosecution and asked Thailand to deliver expeditiously on its assurance, particularly in light of what the Philippines understood to be a meeting to which the Thai public prosecutor had summoned the importer later that month.

5.4. Second, the Philippines was also deeply concerned about a separate Thai BoA ruling rejecting transaction value for 210 entries from Indonesia that were covered by the DSB's rulings and recommendations in the original proceedings in this dispute. Thailand had submitted the BoA ruling as a declared measure taken to comply. However, 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 customs valuation of related party transactions. In addition, as explained at previous DSB meetings, the position that Thai Customs had recently taken in pending domestic judicial proceedings concerning the BoA ruling was disturbing. Thai Customs had explicitly advised the Thai court that it did not need to follow the WTO ruling because it supposedly bound only the Philippines, as the party that had brought the dispute, and not Thailand. The Philippines reiterated its appeal to Thailand to rise to its role as a responsible and important WTO Member, and to prove that its commitment to full compliance was real. If this was not possible, the Philippines reserved its right to return to dispute settlement procedures.

5.5. The DSB took note of the statement.

6 UNITED STATES – CERTAIN COUNTRY OF ORIGIN LABELLING (COOL) REQUIREMENTS

A. Communication from the European Union (WT/DS386/38)

6.1. The Chairman said that this item was on the Agenda of the present meeting at the request of the European Union. In connection with this Agenda item, he drew attention to a communication from the European Union contained in document WT/DS386/38, and invited the representative of the European Union to speak.

6.2. The representative of the European Union said that the EU referred to its communication on this matter and wished to express its views on the document of 23 June 2015 concerning certain procedural developments in the "US-COOL" dispute. That document stated that Mexico's request under Article 22.2 of the DSU had been referred to arbitration even if the DSB meeting originally planned to make this referral on 29 June 2015 had been cancelled. In the EU's view, it was clear from Article 22.6 of the DSU, that it was the DSB that had the power to refer this matter to arbitration. The EU considered that there were good reasons why the referral to arbitration of an Article 22.2 of the DSU request to the DSB was done by the DSB. First, this procedure reflected the fact that, under Article 22 of the DSU, the authority for binding dispute settlement flowed from Members acting together, through the DSB, by negative consensus, just as in the case of original panels or compliance panels. Second, this procedure ensured that other Members were fully informed in a timely manner of the scope and nature of the arbitration panel proceedings in the same way that Members were informed of panel requests leading to the establishment by the DSB of panels in original or compliance panel proceedings. Third, this procedure ensured that Members had an opportunity to "express their views", in exactly the same way that they may express their views when an original or compliance panel was established by the DSB or when an original or compliance panel or Appellate Body report was adopted by the DSB. Such views were then recorded in the minutes of the DSB meetings. Fourth, this procedure ensured that Members had an opportunity to consider whether to seek to participate in the proceedings. That could be a matter of particular interest if there was a significant risk that an arbitration panel might seek to consider matters of compliance, which would not be within its jurisdiction. The EU, therefore, recalled that Members were free to bilaterally agree to surrender their DSU rights, but they were

not free to unilaterally diminish or condition, in any way, the DSU rights of other Members. Since the opportunity to express its views was lost when the scheduled DSB meeting was cancelled, the EU had inscribed this item on the Agenda of the present meeting and had circulated the communication referred to under this Agenda item.

6.3. The representative of the United States said that his country thanked the EU for inscribing this item and circulating documentation so as to permit Members to reflect on the issue to be discussed and be prepared to contribute to the discussion at the present meeting. The United States also noted that it was appropriate for the Secretariat, at the request of the EU, to circulate the EU's communication as part of the document series for the dispute DS386, to which the EU's comments related. As it had noted previously, the United States had disagreed with a former view held by the EU that it was not appropriate to circulate a Member's communication expressing its views in relation to a dispute in a DS document series.[2] Therefore, once again, the United States welcomed the change in the EU's position on this systemic issue, and agreed with its current approach, which conformed with the approach of numerous other WTO Members as well.[3] The United States and the European Union cooperated on a great number of procedural and substantive issues in the WTO, including importantly in the area of dispute settlement, and the United States greatly valued that cooperation. But on the issue raised by the EU for discussion at the present meeting, the United States respectfully but firmly had to disagree. It was evident to the United States that a plain reading of the relevant DSU text did not permit the meaning asserted by the EU, a view the United States would shortly elaborate. To find that meaning in text that indicated its opposite would, with the best of intentions, amount to amending the DSU. Pursuant to Article X:8 of the Marrakesh Agreement, this, of course, could not be done without the approval, by consensus, of WTO Members in the Ministerial Conference. Furthermore, there did not appear to be any serious question whether a DSB meeting and decision were needed in order to refer a matter to arbitration under Article 22.6 of the DSU.[4] The DSB's minutes and past experience showed that matters had been referred to arbitration in the past without any DSB action or any DSB item arising under the agenda.[5] The DSU text demonstrated why it had already been established that this was the correct reading of Article 22.6. Following a request by a Member under Article 22.2 of the DSU for authorization to suspend concessions or related obligations, the text of the second sentence of Article 22.6 stated plainly: "If the Member concerned objects to the level of suspension proposed, the matter shall be referred to arbitration". Thus, the text established that referral of the matter to arbitration resulted as a consequence "if the Member concerned objects" much as, under the second sentence of Article 16.4, an appeal of a panel report resulted as a consequence "if a party has notified its decision to appeal". Members would note that Article 22.6 of the DSU specifically referred in the first sentence to a decision by the DSB and furthermore provided that any such decision is by negative consensus. The decision by negative consensus was a departure from Article 2.4 of the DSU, which required that decisions by the DSB shall be by positive consensus of WTO Members.

6.4. The second sentence of Article 22.6 of the DSU, by contrast, did not contain any reference to a decision by the DSB. Nor did it prescribe any departure from the DSU requirement that any DSB decision was to be taken by a positive consensus. The absence in the second sentence of a reference to a DSB decision that was present in the first sentence should be given meaning. It further demonstrated that the referral of the matter to arbitration did not require a decision by the DSB. Instead, the referral occurred by virtue of the objection of the Member concerned. Against this setting, the EU suggested that Article 22.6 of the DSU should be read as though it contained the words "by a decision of the Dispute Settlement Body unless the DSB decides by consensus not to do so". However, those words simply did not appear in Article 22.6 of the DSU. Panels and the Appellate Body had repeatedly explained that, consistent with the text-based approach reflected in customary rules of interpretation, and to avoid adding to or diminishing the rights and obligations of Members contrary to Articles 3.2 and 19.2 of the DSU, it was not a correct legal interpretation to read into a WTO provision words that were not there. The EU argued that "the phrase 'shall be

[2] See WT/DSB/M/342, paragraph 5.17, and WT/DSB/M/254, paragraphs 74, 77, and 86.

[3] See, e.g., WT/DS245/19 (Statement by Japan), WT/DS296/9 (Statement by Korea), WT/DS320/17 (Communication by the European Union), WT/DS322/16 (Communication by the United States), and WT/DS406/15 (Communication by the European Union).

[4] Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU").

[5] See, e.g., WT/DSB/M/233, paragraphs 1-5 (noting agreement of parties matter had already been referred to arbitration by filing of objection), WT/DSB/M/245, p.2 (noting agreement of parties matter had already been referred to arbitration by filing of objection; request for authorization withdrawn from DSB agenda).

established' in Article 6 of the DSU meant that the panel was established by the DSB, just as the phrase 'shall be adopted' in Articles 16.4 and 17.14 of the DSU means that panel and Appellate Body reports are adopted by the DSB". However, these selective, partial quotations were misleading at best and actually undermined the EU's reading of Article 22.6 of the DSU. Although the EU quoted the phrase "shall be established" in Article 6.1 of the DSU, it neglected to point to other text in that very provision that spoke to establishment of the panel by the DSB. Indeed, Article 6.1 of the DSU explicitly provided that "a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel". Article 6.1 of the DSU thus clearly referred to a DSB meeting and decision, just as plainly as the second sentence of Article 22.6 of the DSU did not. Similarly, the phrase "shall be adopted" in Articles 16.4 and 17.14 of the DSU did not mean that there was a DSB decision, standing alone. Rather, Article 16.4 of the DSU explicitly provided that: "the report shall be adopted at a DSB meeting unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a party has notified its decision to appeal, the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal". Article 17.14 of the DSU expressly provided that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report".

6.5. The language of Articles 16.4 and 17.14 of the DSU clearly referred to a decision by the DSB, and even a meeting of the DSB. It would be incorrect to ignore, and omit this language when quoting, the parts of these Articles directly relevant to the legal issue presented when relying on those Articles. In one further instance of reading into a WTO provision text that was not there, the United States also noted that the EU in its communication referred to the arbitrator as an "arbitration panel". This was inaccurate and again contrary to the text of the DSU. The DSU, particularly in Article 22.7, was clear that the body conducting the arbitration was an "arbitrator". The term "arbitration panel" was nowhere found in Article 22.6 or 22.7, or anywhere else in the DSU. With regard to the EU's comments on third party participation, there was no basis in the agreed text of the DSU for a Member who was not a party to the dispute to assert DSU rights to participate as a third party in an Article 22.6 arbitration. Articles 22.6 and 22.7 of the DSU made no reference at all to participation as of right by third parties. This was in clear contrast to Articles 10.2 and 10.3 of the DSU providing rights at the panel stage and Article 17.4 of the DSU providing rights at the appeal stage. In fact, this was an issue that had also already been addressed in past arbitrations. The United States was not aware of any arbitrator that had agreed with the EU's views. Indeed, past arbitrators had found that Article 10 of the DSU did not apply to arbitrations under Article 22.6, and had denied the assertion of third-party rights under the DSU in Article 22.6 arbitrations. The United States, once again, thanked the EU for its communication and for the opportunity to engage with the interpretive issues raised there. This discussion may facilitate reflection and discussion by Members on the DSU, as well as ways in which Members might enhance its operation and effectiveness. But the United States considered such enhancements to be ones to be discussed and agreed by Members, and the United States would not view it as positive or sustainable for the WTO for Members' agreed rules to be amended otherwise.

6.6. The representative of Mexico said that his country wished to express its views on the European Union's communication (WT/DS386/38) in connection with the initiation of the arbitration proceedings under Article 22.6 of the DSU in the "US-COOL" dispute (Recourse to Article 22.6 of the DSU by the United States – DS386).

6.7. First, Mexico noted that Article 22.6 of the DSU in its relevant part provided that: "…if the Member concerned objects to the level of suspension proposed … the matter shall be referred to arbitration". Mexico observed that it was not clear from paragraph 6 of Article 22 of the DSU who should refer the matter to arbitration, unlike in the case of establishment of panels under Article 6.1 of the DSU, which provided that: "a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item of the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel". In Mexico's view, the DSU did not make it clear who should refer a matter to arbitration and when a matter should be referred to arbitration. Mexico noted that, in fact, there was no homogenous practice regarding this issue. Thus, there was ambiguity as to who would refer a matter to arbitration and when this should be done. Mexico understood that the EU had a view on this matter, but this view was not shared by all Members, which was reflected by the existence of different practices. Mexico had

reviewed the previous reports of arbitrators pursuant to Article 22.6 proceedings and had found the following: (i) the DSB had expressly referred matters to arbitration in seven cases[6] (the EU had participated in those cases and therefore they reflected its position); (ii) it was ambiguous in 11 other cases[7] as to who referred matters to arbitration, since the language: "the matter is referred to arbitration", in passive voice, was used (the majority of these cases involved the United States and thus reflected the US position); and (iii) in the "US – COOL" (DS384) dispute initiated by Canada, the Chairman of the DSB had stated that: "the DSB takes note of the statements and the issues raised by the United States in document WT/DS384/36 has been referred to arbitration as required under Article 22.6 of the DSU…". The Chair's statement, which had been made at the DSB meeting held on 17 June 2015, preserved the ambiguity.

6.8. Second, Mexico also noted that there was a precedent similar to the "US – COOL" (DS386) dispute in the "US – Zeroing" (Japan – DS322) dispute. At the beginning of the DSB meeting, the matter related to arbitration was removed from the agenda at the request of Japan. Thus the DSB had not legally made a decision.[8]

6.9. Third, Mexico noted that all Members had been informed of developments in the "US - COOL" (DS386) dispute through the following DSB documents: (i) communication from Mexico requesting authorization from the DSB to suspend concessions (WT/DS386/35); (ii) communication from the Unites States objecting to the level of nullification and impairment (WT/DS386/36); and (iii) note by the Secretariat relating to the constitution of the arbitrator (WT/DS386/37).

6.10. Fourth, Mexico also noted that the arbitration proceeding under Article 22.6 of the DSU was different from other procedures. Therefore treating them similarly would lead to a false interpretation, since there are differences, for example: (i) Article 22.6 of the DSU does not expressively provide for participation of third parties, unlike the other proceedings; (ii) Article 22.6 of the DSU does not provide for an appeal, unlike the other proceedings. As a precedent for a form of referral not involving the participation of the DSB was the appellate procedure, wherein the DSB only had to be notified of the initiation of the appeal. If other proceedings were to be taken as examples suggesting a way forward, indeed the appellate procedure was a good example. This was the case in the present dispute, once the DSB received the communications (documents WT/DS386/35, WT/DS386/36 and WT/DS386/37).

6.11. Fifth, Mexico noted that the DSU in several Articles (Articles 3.3 and 21.1) referred to "prompt compliance", in this sense the lack of a DSB meeting contributed to prompt settlement of the dispute. In addition, the proceedings followed by Mexico and the United States in this case had made it possible to avoid holding a special DSB meeting, which would have been unnecessary.

6.12. Finally, Mexico had noted the intention of the EU of not intervening further in these proceedings and shared the view that Members should have an opportunity to express their views on matters relating to the DSB.

6.13. The representative of Canada said that his country thanked the EU for bringing this matter to the attention of the DSB. Canada agreed in part with the EU, in that requests for authorization to suspend concessions, and objections to such requests, should at least be considered by the DSB in the course of a meeting in order for the referral to arbitration to occur. This was what had happened on 17 June 2015 when Canada made its request for authorization to suspend

[6] WT/DS27/ARB/ECU, WT/DS27ARB, WT/DS26/ARB, WT/DS48/ARB, WT/DS46/ARB, WT/DS108/ARB and WT/DS285/ARB.

[7] WT/DS217/ARB/BRA, WT/DS217/ARB/EEC, WT/DS217/ARB/IND, WT/DS217/ARB/JPN, WT/DS217/ARB/KOR, WT/DS217/ARB/CHL, WT/DS234/ARB/CAN, WT/DS234/ARB/MEX, WT/DS222/ARB, WT/DS136/ARB and WT/DS267/ARB/1.

[8] See document WT/DSB/M/245:

"The representative of Japan said that, in light of the action taken by the United States, as reflected in WT/DS322/25, and the consequent referral to arbitration, pursuant to Article 22.6 of the DSU, the DSB was not in a position to grant authorization pursuant to Article 22.6 of the DSU and, therefore, the Agenda could be adopted without sub-items 4(a) and 4(b). …

The representative of the United States said that his country agreed with Japan that the DSB was not in a position to grant authorization pursuant to Article 22.6 of the DSU and, therefore, the Agenda could be adopted without sub-items 4(a) and 4(b). …

The DSB took note of the statements and the shared understanding between the parties concerning the referral to arbitration, and adopted the agenda with the changes as proposed." (Emphasis added.)

concessions in the DS384 dispute, which had been referred to arbitration following the US objection at that meeting. The fact that this was not done in the DS386 dispute should not be seen as a precedent to be repeated in future disputes.

6.14. The representative of Japan said that the EU's communication had raised a number of issues of law and dispute settlement practices regarding the DSU provisions, which provided the procedural rules for one of the critical stages in the dispute settlement process. At the outset, Japan understood that the purpose of the communication was not to call into question the validity, legitimacy or legality of the previous Article 22.6 arbitrations, the referrals of the matters to which were not subject to the DSB's decisions. If this understanding was not correct, Japan reserved its right to make further responses to such an assertion by the EU. The EU argued that under the second sentence of Article 22.6 of the DSU, the DSB "refers the matter to arbitration, unless the DSB decides by consensus not to do so". The EU appeared to suggest the interpretation that read into (or added at the end of) the second sentence the phrase "by the DSB, unless the DSB decides by consensus not to do so". However, such language was simply not there. To support its view, the EU referred to several texts in Article 22.6 of the DSU. The EU appeared to posit that the first and second sentences were linked together by the word "however", and since both the first and second sentences referred to a complainant's request for DSB's authorization (presumably as a condition) and in the first sentence it was the complainant's request that triggered the DSB's granting of authorization subject to the negative consensus rule, it should be concluded that the referral to arbitration was also subject to a DSB decision by negative consensus. Japan noted, however, that the granting of authorization and the referral to arbitration were two related but distinct acts and under the second sentence it was not the complainant's request, but the respondent's objection to the request, that could lead to the subsequent legal event or consequence (i.e. the referral to arbitration). Thus it was equally plausible to read that under Article 22.6 of the DSU, only the complainant's request was subject to the DSB's decision and it was the respondent that referred the matter to arbitration by objecting to the complainant's request.

6.15. Japan said that the EU also referred to the last sentence of Article 22.7 of the DSU but Japan was not certain how this provision could support the EU's position. This sentence referred to the DSB's granting of authorization to the request by the complainant by negative consensus, but not to any other actions by the DSB. The sentence also provided "[t]he DSB shall be informed promptly of the decision of the arbitrator". This suggested that the decision of the arbitrator was not subject to the DSB's adoption. But Japan then wondered why, under the EU's theory, the initiation of arbitration was subject to the DSB's decision but its outcome was not, unlike in the case of panels. The EU argued that "under Article 22 of the DSU, the authority for binding dispute settlement flowed from the Members acting together, through the DSB". This was true to some extent, but the ultimate "authority for binding dispute settlement flows from" the text of the DSU as having been acted and agreed on by WTO Members together. Article 2.1 of the DSU expressly granted to the DSB "the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements". For the DSB to exercise all of these authorities, the DSU further provided, in express terms, the negative consensus rule of decision-making in Articles 6.1, 16.4, 17.14, 22.6 and 22.7 where the DSB's specific actions were required. However, the referral of arbitration under Article 22.6 was none of these express authorities granted to the DSB under Article 2.1 of the DSU, which were in turn expressly linked to the negative consensus rule. Any other actions by the DSB were regulated by the general decision-making rule under Article 2.4 of the DSU.

6.16. Japan further stated that the EU argued that the procedure it suggested "ensures that other Members are fully informed in a timely manner of the scope and nature of the arbitration [] procedures". However, the "scope and nature" of arbitration would be, as had always been, fully informed in a timely manner by the complainant's request for authorization and the respondent's objection letter circulated to all WTO Members, not by the DSB meeting or its decision and with or without the EU's suggested procedure. The EU also suggested that its suggested procedure "ensures that Members have an opportunity to 'express their views' in exactly the same way" as they did in the case of the panel establishment or the adoption of reports by panel and/or the Appellate Body. However, as the EU did, Members always had an opportunity to express their views at the DSB if they so wished. Japan recognized the importance of ensuring transparency and an opportunity for Members to express their views in WTO dispute settlement. To this end, disputing Members may be encouraged to maintain the complainant's request for DSB's

authorization as an item on the Agenda of a DSB meeting. But this was an issue separate from the interpretive issues raised by the EU and proposed in its communication. One of the main features of the DSU, which had made the past 20 years of operation of the dispute settlement system successful, was the procedural automaticity built into the system and the automaticity in the process under Article 22.6 of the DSU was a critical part thereof. Whatever the proper interpretation of that provision should be, such interpretation should in no way undermine this essential feature of the DSU.

6.17. The representative of Argentina said that the EU's communication, circulated in document WT/DS386/38, addressed the issue of systemic importance. This issue related to the interpretation of Article 22.6 of the DSU and how to interpret referral to arbitration in respect of the suspension of concessions initiated under Article 22.2 of the DSU. The EU's communication put forward an interpretation according to which a referral of an objection to the level of suspension requested by a Member in a dispute under Article 22.2 of the DSU required the DSB's action in order to be effective. However, Argentina did not agree with that interpretation. Article 22.6 of the DSU consisted of four sentences, whose provisions laid down clear and precise rules of procedure and time-frames for both parties to the dispute and the DSB. Of these four sentences, only the first referred to the DSB, restricting its role exclusively to authorizing the requested suspension of concessions or obligations and specifying the time-frame within which it was to communicate its decision. The other three sentences did not require the intervention of the DSB, nor did they stipulate a DSB role other than the authorization to suspend concessions. In particular, the second sentence of Article 22.6 of the DSU prescribed that if the affected Member objected to the level of concessions (or claimed that the set principles and procedures had not been followed) "the matter shall be referred to arbitration". Neither the text of Article 22 nor any other DSU provision contained a specific clause requiring the DSB to intervene when arbitration was sought in respect of the level of suspension of concessions or obligations. Furthermore, in Argentina's view, it could not be deduced that the DSB's action should be inferred from other provisions of Article 22 of the DSU. The DSB's role at each stage and the role conferred upon it by the Membership at each of these stages were specifically set out in the DSU provisions, and there was nothing to suggest that the DSB's action was required in arbitration under Article 22.6 of the DSU. If that had been so, their intent would have been expressly reflected in the letter of the relevant provision. This was the traditional interpretation of a large number of Members, including Argentina. His country had acted according to this interpretation of the provision in question in a specific dispute in connection with document WT/DS268/25 (2007) when the United States had objected to the level of suspension of concessions requested by Argentina and the matter was referred to arbitration. The interpretation proposed by some Members, including the EU, not only had no basis in the text of the DSU, but also had systemic consequences that not only stemmed from an overly broad interpretation of the DSU obligations, incorporating terms that did not appear in the text, but also related to the consensus required for every DSB action. This consensus requirement was expressly stipulated in the DSU through precise and specific provisions regulating this crucial aspect of the functioning of the dispute settlement mechanism.

6.18. The representative of Chinese Taipei said that his delegation thanked the EU for its communication which pointed out some interesting issues. Chinese Taipei agreed with the EU that Article 22.6 arbitration proceedings, by their nature, should be open to comments and participation of third parties. This was also a topic of interest to Chinese Taipei in the context of the DSU negotiations. However, as several Members had mentioned, Chinese Taipei found it difficult to fully share the EU's views in respect of the interpretation of the DSU provisions. Chinese Taipei noted that Article 22.6 of the DSU did not empower the DSB to make decisions on the referral to arbitration. In that regard, the EU's analogy between Article 6.1 of the DSU regarding the establishment of a panel and Article 22.6 referral to arbitration may not be appropriate. The former required a DSB decision, but the latter did not. Chinese Taipei also noted that Article 22.6 of the DSU did not explicitly require a Member concerned to present its objection to the level of suspension at a DSB meeting. It was different from the notification of compliance intention under Article 21.3 of the DSU or the submission of status reports under Article 21.6 of the DSU. On the other hand, Chinese Taipei was of the view that the arbitration proceedings under Article 22.6 of the DSU, by their nature, were more similar to the appeal notification proceedings under Article 16.4 of the DSU. Once an interested party notified the DSB of its intention (i.e. objection to suspension level, or decision to appeal), the DSB was then prevented from making decisions (i.e. authorization to suspension, or adoption of panel report), and the following proceedings would then commence (i.e. arbitration, or appellate review). Chinese Taipei noted that under the current practice of appeal-notification proceedings, once the DSB received an appeal

notice from a party, the DSB was then not required to discuss the adoption of the panel report at its meeting. Other Members had no way to comment on the appeal unless they participated in the appellate review as third parties. By the same token, in the present dispute, the practice of referring to arbitration without a DSB meeting, in Chinese Taipei's view, may not be flawed under the current dispute settlement system. Having said that, Chinese Taipei agreed with the EU that Article 22.6 arbitration should be open to other Members to express their views. To that extent, Chinese Taipei believed that systematic issues existed in such proceedings and third-party participation would be helpful. Chinese Taipei expressed its readiness to discuss this matter further.

6.19. The representative of Brazil said that his country thanked the EU for placing this matter on the Agenda of the present meeting in order for Members to express their views on this important procedural issue. In Brazil's view, there were good arguments on both sides. As indicated by several delegations, Article 22.6 of the DSU was an important step in the dispute settlement process – the authorization to retaliate – a real outcome in several disputes. It was therefore important to consider whether the referral of the matter to arbitration should be subject to a procedure which would be less transparent than the procedure applied with respect to panel establishment or adoption of panel or Appellate Body reports. Brazil believed that all Members had an interest in hearing the reasons, arguments and counter-arguments put forward by the parties to the dispute in relation to compliance and retaliation, which takes place during the DSB meetings. In Brazil's view, given the fact that there was no consistent practice regarding referrals of a matter to arbitration, Members should consider with caution the consequences of one interpretation or another. One question that Members could ask was whether the DSB would be in a better position to fulfil its functions if it followed one practice over the other. This important issue should be taken into account in the present analysis since all Members wished to hear views, receive information and to have an opportunity to make comments on such an important step in the dispute settlement process. Brazil said Members should ponder on what would be the consequences of leaning towards a more automatic procedure of Article 22.6 of the DSU or the less automatic alternative, one that would enable Members to fully participate in the discussions and understand the developments at this important stage of the dispute.

6.20. The representative of Norway said that his country noted with interest the views expressed by other Members under this Agenda item. Without prejudice to its position on this issue, Norway wished to stress a point of systemic importance to it. The wording "shall be referred" meant that it was not possible to block the referral to arbitration when the conditions of the second sentence of Article 22.6 of the DSU had been fulfilled. The question therefore arose as to what the role of the DSB should be in this regard. The possibility of having the DSB address the issue for transparency reasons without neither taking "action" nor "deciding" anything, as Canada may have seemed to suggest, was an alternative that could be worth exploring further. From Norway's point of view, it was crucial to have a well-functioning dispute settlement system where all stages of a dispute could operate in an efficient and effective manner in order to ensure full implementation of the DSB's rulings and recommendations.

6.21. The DSB took note of the statements.

7 EUROPEAN UNION AND ITS MEMBER STATES – CERTAIN MEASURES RELATING TO THE ENERGY SECTOR

A. Request for the establishment of a panel by the Russian Federation (WT/DS476/2)

7.1. The Chairman recalled that the DSB had considered this matter at its meeting on 19 June 2015 and had agreed to revert to it. He drew attention to the communication from the Russian Federation contained in document WT/DS476/2, and invited the representative of the Russian Federation to speak.

7.2. The representative of the Russian Federation said that, once again, his country requested the establishment of a panel to examine this dispute with standard terms of reference contained in Article 7.1 of the DSU. This request followed Russia's efforts to find a solution with the EU, including through formal WTO consultations held in June and July 2014. Unfortunately, the matter had not been resolved during those consultations and the measures were still in place. Russia considered that the measures in question had been adopted and were applied by the EU in

violation of numerous provisions of the WTO Agreements. In that regard, Russia had no choice but to request the establishment of a WTO panel to examine this matter.

7.3. The representative of the European Union said that the EU noted Russia's second request for the establishment of a panel. The EU was confident that its Third Energy Package was fully consistent with its WTO obligations and was ready to defend its legislation. The EU recalled that at the 19 June 2015 DSB meeting where Russia had presented its first panel request, the EU had already expressed concerns that the request impermissibly expanded the scope of the dispute. Mindful of its duty to engage in WTO dispute settlement procedures in good faith, the EU wished to once again reiterate its concerns. The EU was aware that no precise and exact identity must exist between the measures and claims contained in the request for consultations and the request for the establishment of a panel. However, the EU considered that the panel request expanded manifestly the scope of the dispute, changing the essence of the complaint. Indeed, the request for consultations did not mention some of the key measures identified in sections 2 and 3 of the panel request, concerning respectively "Capacity allocation measures" and "projects of Common Interest". Nor did the request for consultations provide any indication of the claims Russia now made in those two sections. The EU regretted the step taken at the present meeting by Russia to request the establishment of a panel more than a year after the first round of consultations was held. The EU was convinced that the measures were WTO-consistent and was ready to defend them vigorously.

7.4. 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.

7.5. The representatives of Brazil, China, India, Japan, Ukraine and the United States reserved their third-party rights to participate in the Panel's proceedings.

8 EUROPEAN UNION – MEASURES AFFECTING TARIFF CONCESSIONS ON CERTAIN POULTRY MEAT PRODUCTS

A. Request for the establishment of a panel by China (WT/DS492/2)

8.1. The Chairman recalled that the DSB had considered this matter at its meeting on 19 June 2015 and had agreed to revert to it. He drew attention to the communication from China contained in document WT/DS492/2, and invited the representative of China to speak.

8.2. The representative of China said that, regarding the dispute brought by China on the EU's measures affecting the tariff concessions on certain poultry meat products, China had made its first panel request at the DSB meeting on 19 June 2015. Regretfully, at that meeting, China's first panel request had been blocked. At the present meeting, China, for the second time, requested the DSB to establish a panel to examine this dispute. China wished to see the matter proceed expeditiously into the panel stage. As China had explained at the previous DSB meeting, the EU had twice modified its tariff concessions on certain poultry meat products in 2006 and 2009. Tariff rate quotas were instituted as a result. Most Members, including China, were given very limited shares of the tariff rate quotas. This had caused significant damage to the interests of Chinese poultry meat producers and exporters. On 8 April 2015, China had requested consultations with the EU, which had been held in Geneva on 26 May 2015. However, these consultations did not resolve this dispute. China hoped that, by resorting to the WTO dispute settlement proceeding, the EU would adjust its measures and thereby address China's concerns. In that regard, China was also willing to work constructively with the EU with a view to finding a mutually satisfactory solution to this matter, and properly settle the dispute.

8.3. The representative of the European Union said that the EU took note of China's decision to request a WTO panel on the EU's modifications of concessions on certain poultry meat products which had been established in 2007 and 2013 respectively. The modifications were established after the EU had initiated rebinding exercises for its GATT concessions pursuant to Article XXVIII of the GATT 1994 and after negotiations with the substantial suppliers, i.e. Brazil and Thailand. Based on the relevant import statistics, China did not have substantial supplying interest in any of the rebinding exercises under Article XXVIII of the GATT 1994. In the second rebinding exercise, China did not even come forward within the relevant 90-day period to signal its interest as a substantial supplier. The EU had scrupulously followed the procedures of Article XXVIII of the GATT 1994

during both exercises and had explained this to China. The EU had held constructive consultations with China as recently as on 26 May 2015. The EU reaffirmed its commitment to a dialogue with China in order to find an amicable solution. In any event, the EU was convinced that its measures were in conformity with the WTO Agreements and the EU would defend them vigorously before a panel.

8.4. The representative of Brazil said that his country wished to express its concerns about the dispute brought by China against the EU's tariff rate quotas on poultry products. The quotas allocated to Brazil were established after legitimate tariff re-negotiation procedures under Article XXVIII of the GATT 1994. Brazil reaffirmed its confidence that the parties to the dispute would not impinge upon the rights of third parties. Brazil recalled the text of Article 3.5 of the DSU which stated that "all solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements … shall be consistent with those agreements and shall not nullify or impair benefits accruing to any Member under those agreements, nor impede the attainment of any objective of those agreements".

8.5. 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.

8.6. The representatives of Brazil, the Russian Federation and the United States reserved their third-party rights to participate in the Panel's proceedings.

9 EUROPEAN UNION – ANTI-DUMPING MEASURES ON BIODIESEL FROM INDONESIA

A. Request for the establishment of a panel by Indonesia (WT/DS480/2 and Corr.1)

9.1. The Chairman drew attention to the communication from Indonesia contained in document WT/DS480/2 and Corr.1, and invited the representative of Indonesia to speak.

9.2. The representative of Indonesia said that in June 2014, Indonesia had requested consultations with the EU on the matter elaborated in Indonesia's request for consultations and the panel request. Consultations had been held between Indonesia and the EU in July 2014, with a view to reaching a mutually satisfactory solution. Indonesia had conveyed its willingness to find a constructive solution during the consultations, but regretfully the consultations had failed to resolve this dispute. Therefore, for the lack of any other option, Indonesia had, in good faith, recently requested the establishment of a panel as the dispute pertained to a systemic legal issue which was highly important for the continued proper application of the WTO Anti-Dumping Agreement. Certain other WTO Members, notably Argentina and Russia, had also raised concerns in separate disputes against one of the core issues being challenged by Indonesia namely the EU's "cost adjustment" methodology, procedure or practice and the related legal provisions. Additionally, Indonesia was concerned that the practical application of the "cost adjustment" methodology and provisions in the biodiesel investigation against Indonesian imports as well as certain other aspects of the investigation appeared to be in breach of core WTO obligations involving trade in goods. Indonesia, therefore, respectfully requested the DSB to establish a panel in order to examine the measures referred to in Indonesia's panel request.

9.3. The representative of the European Union said that the EU wished to point out that this panel request came almost a year after the consultations had been held with Indonesia. The EU also wished to note that the measures challenged by Indonesia were also subject to a dispute with Argentina (DS473) where the Panel in that dispute was expected to issue its final report to the parties by the end of 2015. Like in the dispute with Argentina, the EU was convinced that the measures identified in the request for consultations fully respected the EU's obligations under the WTO. The EU therefore opposed the establishment of a panel.

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

10 UNITED STATES – ANTI-DUMPING AND COUNTERVAILING MEASURES ON CERTAIN COATED PAPER FROM INDONESIA

A. Request for the establishment of a panel by Indonesia (WT/DS491/2)

10.1. The Chairman drew attention to the communication from Indonesia contained in document WT/DS491/2, and invited the representative of Indonesia to speak.

10.2. The representative of Indonesia said that, on 13 March 2015, Indonesia had requested consultations with the United States regarding the US imposition of anti-dumping and countervailing duties on certain coated paper from Indonesia. As noted in Indonesia's request for consultations, the US dumping, subsidy and threat-of-injury determinations appeared to be inconsistent with the US obligations under the GATT 1994, the Anti-Dumping Agreement and the SCM Agreement. Indonesia and the United States had held consultations on 25 June 2015. Unfortunately, the consultations had not resolved the dispute. Indonesia, therefore, requested the DSB to establish a dispute settlement panel. As set out in Indonesia's request for the establishment of a panel, a number of procedural and substantive deficiencies existed in the coated paper investigation and the US dumping, subsidy, and threat-of-injury determinations, which appeared to be inconsistent with US obligations under the GATT 1994, the Anti-Dumping Agreement, and SCM Agreement. Indonesia also viewed a provision of US law relating to threat-of-injury determinations as inconsistent with its obligations under the GATT 1994, the Anti-Dumping Agreement, and the SCM Agreement. Indonesia requested the DSB to establish a panel to examine the matter set out in Indonesia's panel request, with standard terms of reference.

10.3. The representative of the United States said that his country was disappointed that Indonesia had chosen to request the establishment of a panel. The United States maintained that the measures identified in Indonesia's request were fully WTO-consistent. Indonesia had even brought a claim on a US legal provision that had no bearing on the investigations and orders mentioned in its panel request. At a time when WTO dispute settlement resources were stretched thin, the United States did not think that a panel proceeding would be a productive use of those resources. For those reasons, the United States was not in a position to agree to the establishment of a panel at the present meeting.

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

11 UKRAINE – DEFINITIVE SAFEGUARD MEASURES ON CERTAIN PASSENGER CARS

A. Report of the Panel (WT/DS468/R and Add.1)

11.1. The Chairman recalled that, at its meeting on 26 March 2014, the DSB had established a Panel to examine the complaint by Japan pertaining to this dispute. He said that the Report of the Panel, contained in document WT/DS468/R and Add.1 had been circulated on 26 June 2015 as an unrestricted document. The Panel Report was now before the DSB for adoption at the request of Japan. This adoption procedure was without prejudice to the right of Members to express their views on the Panel Report.

11.2. The representative of Japan said that his country appreciated the time and effort devoted to this dispute by the Panel and the Secretariat. On 26 June 2015, the Panel had circulated its Report in which the Panel provided well-reasoned analysis and had concluded, in no ambiguous terms, that definitive safeguard measures imposed by Ukraine on imports of certain passenger cars were in clear breach of its WTO obligations. Japan welcomed this high-quality Report and requested that the DSB adopt the Report at the present meeting. It had been almost two years since Japan had requested consultation with Ukraine in this dispute on 30 October 2013. Ever since and even before Japan had initiated these proceedings, Japan and other Members had sought for years to resolve this matter with Ukraine through dialogue. The Panel concluded that the safeguard measures at issue manifestly violated a number of procedural and substantive requirements under Article XIX of the GATT 1994 and several provisions of the Safeguard Agreement. In leading up to these conclusions, the Panel provided useful clarifications for the interpretations and application of these provisions including the meaning of the phrase "as a result of unforeseen development and of the effect of the obligations incurred by a Member under this Agreement" in Article XIX of the GATT 1994. For example, the Panel had found that "'unforeseen developments' and the effect of

the GATT 1994 obligations are 'circumstances' that the competent authorities are legally required to demonstrate as a matter of fact, and that such demonstration is to be conducted (i) before a safeguard measure is applied; (ii) through reasoned and adequate explanations; and (iii) in the competent authorities' published report".[9] The Panel had also found that the unforeseen developments and increased imports were two distinct concepts and could not be conflated.[10] The Panel further explained that because it may be unclear "which of several obligations the competent authorities consider to be constraining [Members'] freedom of action", competent authorities must "be clear as to which of the applicable obligations they find to have resulted in imports in increased quantities".[11] Japan considered that these findings provided useful guidance on what was required for the competent authorities to demonstrate as "unforeseen developments" and the effect of the GATT 1994 obligations. Japan expected that these legal requirements would be elaborated further building on these findings. In that respect, Japan recalled that Panels and the Appellate Body had indicated in previous disputes that the "unforeseen developments" were unforeseen events that modified the competitive relationship between imported and domestic products to such a degree as to result in an increase in imports causing or threatening serious injury to the domestic producers.[12]

11.3. The Panel had also elaborated on the three conditions of a safeguard measure, which were: (i) increased imports; (ii) threat of serious injury; and (iii) a causal link between increased imports and serious injury or threat thereof under the Safeguard Agreement. Among others, the Panel had found that the competent authorities needed to set out an explanation concerning the intervening trends in imports[13], and to demonstrate that the increase in imports was sudden enough, sharp enough and significant enough under Article 2.1 of the Safeguard Agreement.[14] The Panel had also clarified the relevant factors to be considered in the "threat of serious injury" analysis under Article 4.2(a) of the Agreement[15], and had found that the competent authorities should have identified and explained, in its published report, causal factors other than increased imports, as well as the particular method used to separate and distinguish such other causal factors with regard to a causal link under Article 4.2(b) of the Agreement.[16] Japan wished to recall the Panel's suggestion pursuant to Article 19.1 of the DSU that "[i]n the light of the nature and number of inconsistencies with the Agreement on Safeguards and the GATT 1994 that we have found in this case, we suggest that Ukraine revoke its safeguard measure on passenger cars".[17] It was now Ukraine's responsibility to take action to bring itself into conformity with the WTO Agreement. Japan urged Ukraine to fully implement the DSB's recommendations and rulings by promptly revoking the safeguard measure at issue, emphasizing that the Panel had taken this extraordinary step to exercise its discretion under the DSU on its own initiative because "the nature and number of inconsistencies" of the measures with the WTO Agreement were so grave that the only way to rectify these inconsistencies was to revoke the measures in their entirety.

11.4. The representative of Ukraine said that his country noted the conclusions made by the Panel in its Report circulated to Members on 26 June 2015. Ukraine thanked the members of the Panel for providing legal clarifications and interpretations in this dispute. Ukraine also thanked the experts and the Secretariat for their efforts in assisting the work of the Panel and the parties to this dispute. This dispute did not only confirm the existing jurisprudence, it also raised a number of complex issues from a systemic point of view. Although Ukraine accepted that some of the disputed issues in this dispute were appropriately ruled upon, some of the findings made by the Panel raised certain concerns to Ukraine. In particular, Ukraine believed that the conclusions reached by the Panel with regard to the existence of the causal link were not properly substantiated and posed a systemic risk to Members. First, the Panel's interpretation of the requirement to establish a coincidence between increase in imports and threat of serious injury under Article 4.2(b), first sentence, of the Agreement on Safeguards involved an additional non-attribution obligation for the national investigating authority in the process of establishing the causal link. Second, the Panel seemed to add unnecessarily a requirement to prove a

[9] Panel Report, "Ukraine – Passenger Cars", paragraph 7.59.
[10] Ibid. paragraphs 7.83-7.84.
[11] Ibid. paragraph 7.96.
[12] Panel Report, "US – Lamb", paragraphs 7.23-7.24; see, also, Appellate Body Report," Korea – Dairy", paragraph 87.
[13] Panel Report, "Ukraine – Passenger Cars", paragraph 7.132.
[14] Ibid. paragraphs 7.141-7.148.
[15] Ibid. paragraph 7.271.
[16] Ibid. paragraphs 7.316-318, 7.332, 7.334.
[17] Ibid. paragraph 8.8.

forward-looking aspect of causality analysis into these obligations in a case that involved a threat of serious injury.

11.5. Finally, Ukraine wished to raise its concerns with regard to the consultations stage of the safeguard investigations. In the present case, Ukraine had remained opened to carrying out discussions and to provide additional information to the interested parties of the investigation, if requested. Ukraine insisted that if Japan had certain issues or difficulties with regard to consultations in the framework of the original investigation, it could request Ukraine to provide any additional information in good faith and pursuant to the existing procedures. Thus, Ukraine did not agree with the conclusions of the Panel with regard to the consultations aspect of the investigation. However, Ukraine had always respected the WTO rules and the adjudication of the DSB and therefore recognized the Panel's authority, and was ready to follow its explanations. Notwithstanding the fact that certain disputed issues had not been appropriately resolved, Ukraine had chosen not to use its right to appeal the recommendations and rulings of the Panel. Ukraine was ready to fully adhere to the Panel's recommendations and to bring the safeguard measures on certain passenger cars into full conformity with Ukraine's obligations under the Agreement on Safeguards and the GATT 1994. Once the recommendations and rulings of the Panel were adopted by the DSB, Ukraine intended to implement them as promptly as possible.

11.6. The representative of the European Union said that the EU thanked the members of the Panel and the Secretariat for their work on this dispute. The EU welcomed the Panel's ruling which was systemically important in that it further clarified the rules on safeguards. The EU believed these were important findings in the context of the many similar measures that had been adopted by WTO Members during the past years in the context of the economic crisis. The EU was of the view that the findings would provide adequate guidance to Members considering adopting in the future these kinds of measures that could have significant impact on their WTO commitments. In light of these clear findings of the Panel, the EU trusted that Ukraine would promptly take the necessary steps to comply with all recommendations and rulings.

11.7. The representative of Japan said that his country noted the statement made by Ukraine at the present meeting. Although it was positive news, Japan wished to request Ukraine to provide further information, including when it could revoke the safeguard measure and when it could inform Japan of concrete dates. Japan stood ready to engage in dialogue with Ukraine in a constructive manner in the coming weeks, with a view to achieving the immediate revocation of the safeguard measure by Ukraine.

11.8. The DSB took note of the statements and adopted the Panel Report contained in WT/DS468/R and Add.1.

12 ARGENTINA - MEASURES AFFECTING THE IMPORTATION OF GOODS

A. Statement by Argentina

12.1. The representative of Argentina, speaking under "Other Business" said that his country wished to draw Members' attention to document WT/DS438/22 - WT/DS444/22 - WT/DS445/23. That document stated that, pursuant to Article 21.3(b) of the DSU, the EU, the United States, Japan and Argentina had agreed on a reasonable period of time for Argentina to implement the DSB's recommendations and rulings in these disputes.

12.2. The DSB took note of the statement.

13 STATEMENT BY THE CHAIRMAN REGARDING SOME MATTERS RELATED TO THE APPELLATE BODY

13.1. The Chairman, speaking under "Other Business", recalled that at the DSB meetings held in April, May and June 2015, he had informed delegations that the first four-year terms of office of Mr. Ujal Singh Bhatia and Mr. Thomas Graham would expire on 10 December 2015 and that both were eligible for reappointment to a second and final term of office, pursuant to Article 17.2 of the DSU. He had also informed delegations that both of them had expressed their willingness to serve for a second four-year term. In light of this, he had announced that he would consult informally with Members and had invited delegations with views on these matters to contact him directly. At

the present meeting, he wished to report that these consultations were still ongoing, and he would again encourage delegations with views on these matters to contact him directly. He reminded delegations that a decision on these matters would have to be taken by the DSB at the latest at its regular meeting scheduled for 25 November 2015.

13.2. The DSB took note of the statement.

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