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Dispute Settlement Body
22 June 2016

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 22 JUNE 2016

Chairman: Mr. Xavier Carim (South Africa)

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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 reminded delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record". He turned to the first status report under this Agenda item.

A. United States – Anti–dumping measures on certain hot–rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.161)

1.2. The Chairman drew attention to document WT/DS184/15/Add.161, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 9 June 2016, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that his country thanked the United States for its statement and its status report submitted on 9 June 2016. Japan wished to refer to its previous statements that this issue should be resolved as soon as possible.

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

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.136)

1.6. The Chairman drew attention to document WT/DS160/24/Add.136, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.7. The representative of the United States said that his country had provided a status report in this dispute on 9 June 2016, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

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

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

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.99)

1.10. The Chairman drew attention to document WT/DS291/37/Add.99, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

1.11. The representative of the European Union said that two GMOs[1] had been voted on, with a no opinion result, in the Standing Committee on 25 April and at the Appeal Committee on 2 June 2016. It was now for the European Commission to decide on the approval. More generally, and as stated many times previously, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

[1] Maize Bt11 × MIR162 × MIR604 × GA21 and cut flowers carnation line SHD-27531-4.

1.12. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. As the United States had noted repeatedly at past meetings of the DSB, EU measures affecting the approval and marketing of biotech products remained of substantial concern to the United States. The situation was only getting worse as the EU continued to delay pending approvals. These delays were having a dramatic impact on trade. For years, the delays had been restricting US exports of key agricultural products to the EU, including corn. Increasingly that year, US soybean exports were being negatively affected. As it had noted at the April and May DSB meetings, the United States had serious concerns with the EU's significant delay in approving the applications of three varieties of biotech soybeans. These varieties were critical for US farmers because they included important technologies that promoted weed control, and the varieties were grown across the United States. The EU's scientific body had concluded extensive scientific reviews of these soybean varieties in June and July of 2015. Those reviews had confirmed that these biotech products were safe for use in the EU. The EU, however, had continued to delay approval of these products, without any legitimate basis. The EU's delays were impacting American and European farmers. European farmers needed US soybeans to feed their livestock. Traders were not entering into contracts for US soybeans due to the EU's failure to approve these products. The United States again asked the EU to ensure that its biotech approval measures were consistent with its obligations under the SPS Agreement.

1.13. The representative of the European Union said that the EU wished to underline that the Commission was proceeding with the authorization of all GMOs that had received a favourable EFSA opinion. The three pending soybeans applications were at the final stage of approval and the Commission was proceeding with the authorization.

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

D. United States – Anti–dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.47)

1.15. The Chairman drew attention to document WT/DS404/11/Add.47, 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.

1.16. The representative of the United States said that his country had provided a status report in this dispute on 9 June 2016, in accordance with Article 21.6 of the DSU. As the United States had noted at past DSB meetings, in February 2012 the US Department of Commerce had modified its procedures in a manner that addressed certain findings in this dispute. The United States would continue to consult with interested parties regarding matters related to the other recommendations and rulings of the DSB.

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

1.18. The representative of the Bolivarian Republic of Venezuela said that his country supported the statement made by Viet Nam. Venezuela took note of the US status report of 9 June 2016, and referred to its previous statements made under this Agenda item. Venezuela reiterated the importance of prompt compliance with the DSB's recommendations and rulings so as to ensure the effective resolution of disputes. Venezuela hoped that this dispute would be resolved soon.

1.19. The representative of Cuba said that her country supported the statement made by Viet Nam. Cuba reiterated the importance of prompt compliance with the DSB's recommendations and rulings in this dispute as well as in other pending disputes, and in particular those where the interests of a developing-country Member were affected. Cuba expressed its concern about the situation of non-compliance with the DSB's recommendations.

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

E. United States – Countervailing duty measures on certain products from China: Status report by the United States (WT/DS437/18/Add.2)

1.21. The Chairman drew attention to document WT/DS437/18/Add.2, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US countervailing duty measures on certain products from China.

1.22. The representative of the United States said that his country had provided a status report in this dispute on 9 June 2016, in accordance with Article 21.6 of the DSU. As detailed in the status report, the United States had taken all necessary actions to bring its measures into compliance with its WTO obligations and had completed its implementation process on 26 May 2016. The scope of this dispute was one of the most extensive in the history of the dispute settlement system. Although the panel and the Appellate Body had rejected many of China's claims, the DSB's recommendations and rulings called for further administrative action with respect to 15 separate countervailing duty (CVD) investigations. The DSB's recommendations had also included one "as such" finding. Through extensive efforts, involving multiple CVD proceedings and multiple distinct issues, the United States had completed the implementation process with respect to all findings in the dispute. The US implementation in this dispute, as that previously announced for the DS436 dispute, further demonstrated the commitment of the United States to comply with WTO findings, contributing to strengthening the dispute settlement system.

1.23. The representative of China said that her country thanked the United States for its status report concerning US implementation of the DSB's recommendations and rulings in this dispute. China wished to make a few brief comments. It was not until 26 May that the USTR had finally finished requesting the USDOC to implement all the Section 129 determinations. The United States had failed to implement the DSB's recommendations and rulings within the reasonable period of time. Implementation within the reasonable period of time was essential for the effective functioning of the dispute settlement system. The United States had violated not only China's substantive right to achieve compliance with the covered agreements, but also a procedural right regarding the reasonable period of time that had been determined through binding arbitration. With regard to the substance of the Section 129 determinations issued by the USDOC, China regretted that those determinations did not bring the United States into compliance with the SCM Agreement. Therefore, on 13 May 2016, China had filed its request for consultations with the United States pursuant to Article 21.5 of the DSU. The parties had held such consultations on 27 May. However, China regretted that the consultation did not address the concerns raised by China in its request with respect to the US implementation measure. China looked forward to the US effective engagement in eliminating the inconsistency of the implementation measures to solve the dispute, so as to avoid any unnecessary further legal actions.

1.24. The representative of the United States said that his country found China's criticism with respect to the time required for implementation to be unwarranted. The scope of this dispute was one of the most extensive in the history of the dispute settlement system. As the United States had noted, the DSB's recommendations and rulings called for further administrative action with respect to 15 separate CVD investigations. That is, the claims here could have been brought in 15 separate disputes. For most of these separate investigations, the recommendations and rulings involved multiple obligations under the SCM Agreement. Through the devotion of administrative resources, the United States had been able to implement all of the DSB's rulings with respect to the majority of the CVD proceedings, as well as the one "as such" finding in this dispute, by the end of the reasonable period of time. Given the tremendous volume of work arising from the extensive scope of this dispute, the remaining proceedings could not be completed by the end of the reasonable period of time. But the United States had nevertheless completed the remaining determinations within less than two months. The United States regretted that China was suggesting that US compliance was inadequate, particularly in light of China's reluctance to

provide necessary information during the course of the compliance proceedings. Contrary to China's view, there was no basis for suggesting that US compliance was inadequate.

1.25. The representative of China said that his country noted that the United States had frequently referred to this dispute as one of the largest disputes in the history of the dispute settlement system, pointing to the fact that the DSB had made findings of inconsistency with respect to 15 countervailing duty determinations. However, the fact was that the DSB's findings related to the USDOC's repeated application of the same unlawful standards and methodologies for evaluating the existence and extent of a subsidy. In that regard, this dispute was not a dispute about 15 distinct CVD determinations. China was concerned that, like the "zeroing" disputes, the DS437 dispute was about the same unlawful standards and methodologies having been applied repeatedly.

1.26. The representative of the United States said that compliance in this dispute did not involve simply revisiting a single issue in 15 proceedings, but rather required the reconsideration of multiple complex issues in each of the proceedings. Moreover, these issues required Commerce to examine the extent of Chinese government involvement across a range of sectors. Commerce's finding pertaining to the use of out-of-country benchmarks provided a clear example of how complex and time-consuming implementation was in this dispute. In response to Commerce's request for information on the input markets in question, China had responded with a submission containing more than 1,400 pages, including a detailed and lengthy econometric study and more than 80 exhibits. The US domestic industry had filed its own competing evidence. Commerce then had to carefully consider all of this evidence in determining how to apply the Appellate Body's findings on this benchmark issue in each of the relevant CVD investigations. This example illustrated just one of the many complex issues that had been addressed in these proceedings.

1.27. The DSB took note of the statements.

F. India – Measures concerning the importation of certain agriculture products: Status report by India (WT/DS430/15)

1.28. The Chairman drew attention to document WT/DS430/15, which contained the status report by India on progress in the implementation of the DSB's recommendations in the case regarding India's measures concerning the importation of certain agricultural products.

1.29. The representative of India said that his country had submitted its status report in this dispute, contained in document WT/DS430/15, on 8 June 2016, in accordance with Article 21.6 of the DSU. India recalled that, on 19 June 2015, the DSB had adopted the recommendations and rulings in this dispute. At the subsequent DSB meeting, India had informed the DSB of its intention to implement the DSB's recommendations and rulings in this dispute. On 8 December 2015, India and the United States had informed the DSB that they had agreed that a reasonable period of time for India to implement the DSB's recommendations and rulings would end on 19 June 2016. Indian authorities had been conferring with interested parties since the adoption of the DSB's rulings and recommendations with the intention to fully comply within the reasonable period of time. Indian authorities had held extensive internal stakeholder consultations in that regard. Based on those consultations and deliberations, India had prepared the draft notification on the proposed measure and had notified the same to the SPS committee (notification G/SPS/N/IND/143 dated 20 April 2016), allowing import of poultry and poultry products into India from countries, zones or compartments free from avian influenza, in accordance with the relevant international standard, i.e. the OIE Terrestrial Code. The draft notification had provided a 60-day time-period for interested parties to provide comments on the draft notification. Further, India in its addendum dated 21 June 2016 had amended item 8 of the aforesaid notification to appropriately reflect the relevant international standard. The draft notification had been issued by the Department of Animal Husbandry, Dairying and Fisheries; Ministry of Agriculture and Farmers Welfare; of the Government of India in exercise of the power conferred by sub-section (1) of Section 3 and Section 3A of the Livestock Act, 1898 (9 of 1898) and in supersession of the notification of the Government of India in the Ministry of Agriculture published in the Gazette of India, Extraordinary, part II, Section 3, sub-section (ii) of number S.O.1663(E) dated 19 July 2011, which was the "measure" in the present dispute.

1.30. The draft notification took into account the findings of the Panel and the Appellate Body in this dispute and provided that the importation of poultry and poultry products shall be allowed from zones/ compartments free from avian influenza virus in accordance with the relevant international standard, i.e. the OIE Terrestrial Code. The draft notification further provided for the process to be followed for recognition of such zones/ compartments in conformity with Chapter 10.4 of the OIE Terrestrial Code and the SPS Agreement. As stated earlier, India had provided a 60-day time-period for Members to comment on the draft notification. Almost at the end of the 60-day time-period, on 10 June, India had received comments from only one Member, namely the United States, on the draft notification. India had taken into consideration the comments made by the United States and the final notification, which would be issued shortly, would appropriately reflect the same. In addition to the draft notification, India had also finalized the guidelines to be followed for recognizing zones or compartments as stated under paragraph 3(i) of the draft notification. The guidelines were currently being vetted by the concerned authorities and would shortly be made available to the interested parties. With the adoption of the new notification superseding the earlier measure, India would fully comply with the DSB's rulings and recommendations in this dispute.

1.31. The representative of the United States said that his country took note of India's statement in its status report that it "has taken all steps required to comply with the findings and recommendations of the DSB in this dispute."[2] The United States was not in a position to accept that assertion. The United States had been unable to verify India's claim that it had promulgated a new draft notification. India had not done so at the time that it had circulated its communication claiming compliance. Given that India had not notified a final replacement measure to the SPS Committee, the United States did not see how India could claim to be currently in compliance. To the extent India was claiming that the proposed measure it had notified to the WTO SPS Committee would bring India into compliance once it entered into force, the United States had serious concerns, both on substance and procedure. Substantively, the United States noted that the proposed measure appeared to retain many of the features of India's prior measure that the DSB had found to be inconsistent with India's obligations under the SPS Agreement. For example, the proposed measure appeared to impose import prohibitions on account of avian influenza outbreaks, contrary to the DSB's findings on the OIE Terrestrial Code;[3] and the proposed measure appeared more trade restrictive than measures based on international guidelines, contrary to the DSB's findings that international standards met India's level of protection.[4] Procedurally, the DSB had found that India had breached its obligations under Annex B by failing to ensure that its existing measure was notified so that amendments could be introduced and comments could be taken into account.[5] The notification stated the final measure would go into force the day following the close of the period to submit comments. Regrettably, this suggested India did not intend to take into account any comments submitted, nor to leave open the possibility of amending the proposed measure in response to the comments. The United States had asked India for any risk assessment on which its proposed measure was based, but India had not provided any, or even indicated that such a risk assessment existed. Moreover, the status report and the notification of the proposed measure omitted information as to how India had addressed certain other DSB findings, such as the need to ensure its AI measure did not unjustifiably discriminate against imports in light of the conditions prevailing within India. The United States did not see how India had addressed the problems found by the DSB with its import restrictions and the United States would continue to review India's actions and consider how best to address its concerns.

1.32. The DSB took note of the statements.

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

A. Statements by the European Union and Japan

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

[2] WT/DS430/15 (second to last sentence).
[3] "India – Agricultural Products", para. 7.270.
[4] "India – Agricultural Products" (AB), para. 5.232.
[5] "India – Agricultural Products", paras. 7.790, 8.1 c. xi.

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

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

2.4. The representative of Brazil said that her country thanked the EU and Japan for keeping this item on the DSB's Agenda. Brazil, as one of the parties to this dispute, wished to refer to its statement made under this Agenda item at the 23 May 2016 DSB meeting.

2.5. The representative of Canada said that his country wished to refer to its previous statements made under this Agenda item. Canada's position on this matter had not changed.

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

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

2.8. The DSB took note of the statements.

3 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. Statement by the United States

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

3.2. The representative of the United States said that the DSB had adopted its recommendations and rulings in this dispute in August 2012, and the reasonable period of time had expired in July 2013. As the United States had noted at past meetings of the DSB, China's sole domestic supplier continued to maintain control of the domestic electronic payment services ("EPS") market. In accord with its WTO obligations, China must adopt measures necessary and take the required steps to allow the operation of foreign EPS suppliers in China. The United States took note that earlier that month, nearly four years after the DSB had adopted its recommendations and rulings in this dispute, China had issued a regulation that appeared to set out a licensing application process for electronic payment service suppliers to obtain authorization to do business in the Chinese market. The United States was in the process of reviewing these regulations, with a view

to determining whether the regulations would allow for the approval of foreign EPS suppliers without further delays.

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

3.4. The DSB took note of the statements.

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

A. Statement by India

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

4.2. The representative of India said that, at the previous DSB meeting, India had expressed its serious objection that the item regarding the surveillance of implementation of the recommendations adopted by the DSB in relation to the dispute: "United States - Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India" (DS436) did not appear on the Agenda. India, once again, was disappointed that the United States had not submitted a status report in this dispute as the United States had not fully complied with the DSB's rulings and recommendations. The inclusion by India of the item on the Agenda of the present meeting was welcomed but not the ideal procedure. As it had been pointed out by India at the DSB meeting held on 23 May 2016, the United States had not submitted a status report in accordance with its binding obligation under the last sentence of Article 21.6 of the DSU. India was surprised that such a status report had not been submitted despite the lack of even a claim of full compliance in this dispute. The issue of the non-submission of the status report was important since there had been a domestic law in this dispute that had been found to be inconsistent with a covered agreement. That law continued to remain on the statute book of the United States. The United States had made no efforts to repeal or amend 19 USC 1677(7)(G)(iii) of its domestic law so as to bring it into conformity with Articles 15.1, 15.2, 15.3 and 15.5 of the SCM Agreement, in flagrant disregard of the DSB's recommendations. While the United States might have taken some steps with regard to the CVD determinations or "as applied" claims, it was abundantly clear that no steps had been taken to address the "as such" claims by either repealing or modifying the law. India questioned whether it was the US position that there was no step required to be taken with respect to the WTO-inconsistent US domestic law. In India's view, this was not a minor procedural issue but a serious systemic issue. Ignoring this aspect would render Article 21.6 of the DSU ineffective and would seriously undermine the surveillance mechanism under the DSU. The indifference to this aspect was a cause of concern for the integrity and effectiveness of the WTO dispute settlement system. India reiterated that the recently issued findings of the USDOC and USITC, purportedly issued to remove the inconsistencies noted by the Panel and Appellate Body Reports in the DS436 dispute, were also not in full conformity with the covered agreements. While it would consider and pursue appropriate legal remedies in this respect, India urged the United States to accord more serious consideration to implementing the DSB's recommendations and to clarify its position, through a status report, on the issue of inconsistency of its law. India reiterated that the issue of the US implementation of the DSB's recommendations in the DS436 dispute was not resolved because the United States had not fully complied with the DSB's recommendations in the DS436 dispute. India urged the United States to submit status reports as per Article 21.6 of the DSU as well as to fully comply with the DSB's rulings and recommendations in this dispute.

4.3. The representative of the United States said that, as had been described at the meeting of the DSB on 22 April 2016, the United States had completed implementation with respect to the DSB's recommendations and rulings in this dispute. Specifically, on 7 March 2016, the US

International Trade Commission had issued a new CVD injury determination rendering the findings with respect to injury in the underlying CVD proceeding on hot-rolled steel from India consistent with the DSB's recommendations in this dispute. On 14 April 2016, the US Department of Commerce had issued a new CVD determination rendering its determination with respect to subsidization and the calculation of countervailing duty rates consistent with the DSB's recommendations in this dispute. On 18 April 2016, the US Trade Representative had proceeded to complete this implementation process by directing Commerce to implement its new determinations pursuant to section 129(b)(4) of the Uruguay Round Agreements Act. The United States did not understand the concern India now raised with respect to a finding on one provision of US law, Section 1677(7)(G)(i)(III) of the Trade Act of 1930. As the United States had explained to India previously, no further US action was needed with respect to this finding. The provision of US law at issue was not applied in the underlying investigation, and therefore had no bearing on compliance with respect to the countervailing duty at issue in this dispute. Indeed, to the United States' knowledge, this provision of US law had never been used in any investigation. With respect to any future investigations, the statutory provision related to a decision by the administering authority to self-initiate a CVD investigation on the same day as an AD petition was filed by an industry, or vice versa. Under US law, Commerce had discretion to decide the timing when it would self-initiate an investigation. Having never been triggered before, it was not now the intention of the United States to exercise the discretion on timing provided under US law differently. That is, the Department of Commerce had confirmed its commitment to exercise its discretion with respect to section 702(a) of the Tariff Act of 1930 pertaining to countervailing duty investigations and section 732(a) of that Act pertaining to anti-dumping duty investigations in a manner that was consistent with the international obligations of the United States. Given that the United States had fully complied in this dispute, the United States was not required to submit further status reports in this matter.

4.4. The representative of India said that his country thanked the United States for the clarification regarding the domestic law and its non-utilization. India found it interesting to note that the United States had adopted a different standard for implementing the DSB's rulings and recommendations in another dispute before the DSB at the present meeting. Item 1A of the Agenda of the present meeting demonstrated that point. It related to a dispute of over a decade with Japan that involved both "as applied" and "as such" findings in the context of anti-dumping. While the United States had claimed compliance in respect of the USDOC determinations, it had continued submitting status reports to the DSB for over 13 years with respect to the US anti-dumping duty statute. Therefore, the United States had not "fully" complied with the DSB's recommendations and rulings. This did not warrant, and rightly so, the removal of the item from the DSB's Agenda. Another recent dispute that may be relevant to highlight in the present context was "United States – Section 211 Omnibus Appropriations Act of 1998" (the Havana Club dispute) that had been under the DSB's surveillance until 25 January 2016. The United States, pursuant to that meeting, had stopped providing status reports on the matter. However, it was important to note that the complainant in that dispute, the European Union, had stated at the 25 January 2016 DSB meeting that the EU had not considered the matter to have been resolved within the meaning of Article 21.6 of the DSU. In order to resolve the matter, it had stated that the United States would have to repeal Section 211. Further, although the matter had not been resolved, in view of the positive developments, and for the time being, the EU had not considered it necessary for the United States to provide monthly reports or the submission of a status report for inclusion on the Agenda of regular DSB meetings. However, the EU reserved all its rights in relation to this issue. The issue of non-utilization of the law was irrelevant in the context of implementation of the DSB's rulings and recommendations. India urged the United States to submit status reports pursuant to Article 21.6 of the DSU.

4.5. The representative of the European Union said that the EU understood that, at its April meeting, the DSB had "agreed to revert to this matter at its next regular meeting". Therefore, the EU had expected this dispute to be included on the Agenda of the following meeting, under Agenda item 1. The EU wished to stress the importance of obligations set out in Article 21.6 of the DSU. That being said, the EU did not take a position on compliance in this dispute, and understood that there was a disagreement between the parties regarding this matter as well as on the issue as to whether the United States had actually claimed full compliance at the April 2016 DSB meeting.

4.6. The representative of the United States said that, with regard to the other disputes referenced by India, the United States noted that the present dispute was differently situated. As it had explained at the April DSB meeting and again at the present meeting, the United States had completed implementation with respect to the DSB's recommendations and rulings in this dispute.

4.7. The DSB took note of the statements.

5 CHINA – ANTI-DUMPING AND COUNTERVAILING DUTY MEASURES ON BROILER PRODUCTS FROM THE UNITED STATES

A. Recourse to Article 21.5 of the DSU by the United States: Request for the establishment of a panel (WT/DS427/11 and WT/DS427/11/Corr.1)

5.1. The Chairman drew attention to the communication from the United States contained in documents WT/DS427/11 and Corr.1 and he invited the representative of the United States to speak.

5.2. The representative of the United States said that, on 25 September 2013, the DSB had adopted its recommendations and rulings in this dispute. Members would recall the DSB's findings that China's anti-dumping and countervailing duty measures on US broiler products had breached a number of China's obligations under the Anti-Dumping and SCM Agreements. The United States and China had agreed that the reasonable period of time for China to implement the findings would be 9 months and 14 days from the adoption of the panel report, thus expiring on 9 July 2014. On or about that date, China's Ministry of Commerce (MOFCOM) had issued a re-determination that continued the imposition of anti-dumping and countervailing duties on imports of US broiler products. The United States considered that China had failed to bring its measures into conformity with the covered agreements, and the United States was accordingly seeking recourse to Article 21.5 of the DSU. It appeared, as had been detailed in the US Panel Request, that MOFCOM's re-determination was inconsistent with a number of China's obligations under the Anti-Dumping and SCM Agreements. For example: (i) MOFCOM's analysis of the alleged price effects of imports under investigation and the findings of adverse impact by imports on the domestic industry had not involved an objective examination of the record and had not been based on positive evidence; (ii) MOFCOM's determination that subject imports were causing injury to the domestic industry had not been based on an examination of all relevant evidence, including that subject import volume did not increase at the expense of the domestic industry and that a large portion of subject imports consisted of products that could not have been injurious, and was based on MOFCOM's flawed price and impact analyses; (iii) MOFCOM had not provided interested parties timely opportunities to see all non-confidential information or provide notice of the information it required; (iv) MOFCOM had failed to inform interested parties of the essential facts under consideration which formed its basis to apply anti-dumping and countervailing duties; (v) MOFCOM had failed to set forth sufficient detail in its findings and conclusions on material issues of law and fact; and (vi) MOFCOM had failed to properly calculate the purported anti-dumping margins for US producers and exporters by acting inconsistently with a number of obligations, including those relating to the cost of production methodologies it employed, the use of facts available, and the calculation of rates for producers not under examination. Many of these issues had been raised in prior WTO disputes concerning the use of trade remedy measures by China, and had been found to be inconsistent with China's obligations. For these reasons, the United States sought recourse to Article 21.5 of the DSU and requested that the DSB refer the matter set out in the US panel request to the original Panel, wherever possible. Pursuant to the agreement on procedures between China and the United States, China would not object to the referral to the original panel at the present meeting.

5.3. The representative of China said that her country had received the US request for consultations in this dispute on 10 May 2016. China had engaged constructively and in good faith in the consultations held on 25 May (Beijing time) through video conference. China was disappointed that the United States requested a panel to be established under Article 21.5 of the DSU. As it had informed the DSB in July 2014, in order to implement the DSB's recommendations and rulings in this dispute, China had conducted reinvestigation on broiler products from the United States and had announced the determination of reinvestigation before the expiry of the reasonable period of time. China believed that its challenged measures were fully in compliance with the WTO rules. Pursuant to the Agreed Procedures under Articles 21 and 22 of the DSU

between China and the United States, China accepted the establishment of an Article 21.5 panel at the present meeting.

5.4. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by the United States in documents WT/DS427/11 and Corr.1. The Panel would have standard terms of reference.

5.5. The representatives of Canada, the European Union and Japan reserved their third-party rights to participate in the Panel's proceedings.

6 UNITED STATES – MEASURES CONCERNING THE IMPORTATION, MARKETING AND SALE OF TUNA AND TUNA PRODUCTS

A. Second recourse to Article 21.5 of the DSU by Mexico: Request for the establishment of a panel (WT/DS381/38)

6.1. The Chairman drew attention to the communication from Mexico contained in document WT/DS381/38 and he invited the representative of Mexico to speak.

6.2. The representative of Mexico said that for almost 30 years, Mexican tuna products had been prevented from entering the US market despite Mexico repeatedly demonstrating that the US measures on labelling tuna as "dolphin-safe" were discriminatory. The measures continued to fail to comply with WTO rules, without regard for the true impact on dolphins of fishing methods other than those used by the Mexican tuna fleet. In October 2008, Mexico had initiated proceedings against the US measures. After approximately eight years of contention, the United States had still not brought its measures into conformity. This impinges on the "prompt settlement" of disputes and "prompt compliance" with the DSB rulings and recommendations under Articles 3.3 and 21.1 of the DSU. Mexico recalled that on 23 March 2016, the United States had published a notice in its Federal Register revising the implementing regulations (the 2016 Rule), providing Mexico with one day's notice of this – in other words without giving proper notice. Mexico believed that this measure failed to comply with the US obligations and did not resolve the tuna dispute. Instead, it preserved the status quo of discrimination against Mexican exports.

6.3. On 11 April 2016, the United States, without first requesting consultations with Mexico, requested the establishment of a panel pursuant to Article 21.5 of the DSU in order to determine the consistency of the revised Tuna measure. The Panel had been established at the 9 May 2016 DSB meeting had been constituted on 27 May 2016. On 13 May 2016, Mexico had requested consultations with the United States. However, these consultations had not settled the dispute. Consequently, on 9 June 2016 Mexico had requested the establishment of a panel pursuant to Article 21.5 of the DSU (WT/DS381/38). This was Mexico's second recourse to this Article in this dispute. Therefore, in accordance with Article 9.3 of the DSU, Mexico was requesting the establishment of a panel and noted that since these two complaints related to the same issue, "to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized".

6.4. The representative of the United States said that his country did not object to Mexico's panel request. Indeed, its only wish was that Mexico had requested this panel several months ago. As it had discussed several times, the United States had amended the US dolphin safe labeling measure in a manner that directly addressed the DSB's recommendations and rulings, and brought the United States into compliance with its WTO obligations. The United States had discussed the rule with Mexico on a number of occasions and had expected that, if Mexico disagreed that the measure brought the United States into compliance, Mexico would refer the matter to a compliance panel. However, for several months, Mexico had indicated that it was not prepared to refer the matter of compliance back to a compliance panel. To the contrary, Mexico had insisted that the arbitration under Article 22.6 of the DSU to review Mexico's request for authorization to suspend concessions must move forward immediately and at the DSB meeting on 23 March 2016, Mexico had said that it considered that the US compliance action was not "legally pertinent" for the arbitration. In short, Mexico had sought to avoid the fact that the United States had now changed its measure to come into compliance with its WTO obligations and instead proceeded as though the measure at issue were unchanged. As a result, in April, the United States had taken the unusual step of requesting that the DSB establish a compliance panel pursuant to Article 21.5 of

the DSU to confirm that the United States had brought its measure into compliance with the DSB's recommendations and rulings. That panel had been established at the DSB meeting on 9 May 2016. As it had consistently stated, the United States desired to bring this dispute to a close as soon as possible and surely did not seek further delay. The United States therefore looked forward to moving forward promptly with the compliance review pursuant to Article 21.5 of the DSU and to more cooperation on procedural matters going forward. To be clear, most Mexican tuna was not eligible for the dolphin-safe label because of the manner in which most Mexican vessels had chosen to fish for tuna. The fleets of other nations had abandoned the practice, but those Mexican vessels had chosen to employ a method of fishing, setting on dolphins, that was recognized to pose a particular risk to dolphins. Mexico's preferred fishing method involved deliberately chasing dolphins and capturing them. In so doing, it may result in dolphins being killed or seriously injured, separating dolphin calves from their mothers, reducing reproduction rates, and other harms. Simply put, tuna caught using this damaging fishing method was clearly not "dolphin safe," and it would be misleading to consumers to claim that it was. As such, denying eligibility to the "dolphin safe" label to tuna product produced in a manner that by its very nature was harmful to dolphins was not discriminatory and was not inconsistent with the WTO Agreement.

6.5. The representative of Mexico said that his delegation had not intended to intervene at this point, but felt compelled to do so in order to clarify certain issues in response to the US statement. The United States had stated that Mexico should have requested the panel "several months ago". However, the US measure had been published on 23 March 2016, which was four months ago – the same four months during which Mexico had waited for the ruling in the arbitration proceedings under Article 22.6 of the DSU. As the complainant, Mexico would have liked it if the haste suggested by the United States had also been in October 2008, almost eight years ago. With regard to the correct sequencing of Article 21.5 proceedings and Article 22.6 arbitration, Mexico's position on this matter was reflected in the minutes of the 22 April 2016 DSB meeting (WT/DSB/M/377). Mexico's position on this matter was also reflected in the minutes of the 9 May 2016 DSB meeting (WT/DSB/M/378). Therefore, there was no need to reiterate Mexico's position at the present meeting.

6.6. Regarding the substantive comments on labelling, Mexico wished to draw Members' attention to footnote 804 of the Appellate Body's report in the Article 21.5 proceedings, circulated on 20 November 2015, which referred to evidence presented by Mexico on the subject of dolphin mortalities caused by fishing methods other than purse seine nets and in other areas outside the Eastern Tropical Pacific Ocean. He did not wish to read the entire quote, but would only highlight a few excerpts. For example: in certain oceans more than 2,000 dolphins were killed; in others 10,000 cetaceans lost their lives. In some parts of the Pacific Ocean, 18,000 dolphins were killed and etc. The aim of the tuna measure was a zero-tolerance approach to dolphin mortalities which meant "none". According to the aforementioned footnote, the evidence was clear: outside the Eastern Tropical Pacific Ocean and with different fishing methods, dolphins were killed and still the United States granted the label.

6.7. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by Mexico in document WT/DS381/38. The Panel would have standard terms of reference.

6.8. The representatives of Australia, Brazil, Canada, China, Guatemala, the European Union, Japan, Korea, New Zealand and Norway reserved their third-party rights to participate in the Panel's proceedings.

7 KOREA – ANTI-DUMPING DUTIES ON PNEUMATIC VALVES FROM JAPAN

A. Request for the establishment of a panel by Japan (WT/DS504/2)

7.1. The Chairman drew attention to the communication from Japan contained in document WT/DS504/2, and he invited the representative of Japan to speak.

7.2. The representative of Japan said that this dispute concerned Korea's measures imposing antidumping duties on imports of pneumatic valves originating from Japan. Japan considered Korea's measures to be inconsistent with Korea's obligations under the GATT 1994 and the AntiDumping Agreement, as explained in Japan's panel request. In particular, Japan considered

that Korea's injury and causation analyses, including its analyses of the volume of imports under investigation, the effects of imports under investigation on prices and the impact of the imports under investigation on the domestic industry, as well as the alleged demonstration of a causal relationship between the imports under investigation and the alleged injury to the domestic industry including non-attribution analysis, did not involve an objective examination on the basis of all relevant positive evidence and thus were not consistent with the obligations set forth in Articles 3.1, 3.2, 3.4 and 3.5 of the Anti-Dumping Agreement. Japan also considered that Korea had failed to make an objective examination based on positive evidence in defining the domestic industry as required under Articles 3.1 and 4.1 of the Anti-Dumping Agreement. Furthermore, Japan considered that Korea had failed to follow several procedural obligations set forth in Articles 6.5, 6.5.1, 6.9, 12.2 and 12.2.2 of the Anti-Dumping Agreement. Japan had requested consultations on 15 March 2016 and had entered into consultations with Korea on 28 April with a view to reaching a mutually satisfactory solution. Unfortunately, the parties had been unable to resolve the differences. Japan therefore requested, pursuant to Article 6 of the DSU, that a panel be established to examine the matter as set out in its panel request with standard terms of reference in accordance with Article 7.1 of the DSU.

7.3. The representative of Korea said that his country regretted that Japan had chosen to request the establishment of a panel with regard to this matter. As referred to in Japan's request for the establishment of a panel, Korea and Japan had held consultations in April 2016 with a view to reaching mutually agreeable results. However, both sides had failed to resolve the dispute. Pneumatic valves at issue were one of the most important products for manufacturing-based economies, such as Korea, with great impact on a wide range of industries. During recent years, the amount of dumped imports of pneumatic transmission valves from Japan had rapidly increased in the Korean valve market. Thus, the Korea Trade Commission had conducted analyses on these increases and their market share. The analyses had been based on an objective examination over a sufficient period of time pursuant to the Anti-Dumping Agreement. The Anti-Dumping Agreement provided that Members had the right to take anti-dumping measures necessary for the protection of a domestic industry injured from significant increase of dumped imports. Korea had done so in response to pneumatic valves from Japan, based on the Korea Trade Commission's objective examination. Moreover, Korea had made the final report of essential facts publicly available to the interested parties according to Article 6 of the Anti-Dumping Agreement prior to imposing anti-dumping duties on pneumatic valves from Japan. Korea had also engaged constructively with Japan on this matter, and had diligently responded to Japan's requests for information in detail. Korea believed it had adopted and implemented its measures in a transparent and non-discriminatory manner, and in full compliance with its WTO obligations. Korea, therefore, was not in a position to agree to the establishment of a panel at the present meeting.

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

8 UNITED STATES – COUNTERVAILING MEASURES ON SUPERCALENDERED PAPER FROM CANADA

A. Request for the establishment of a panel by Canada (WT/DS505/2)

8.1. The Chairman drew attention to the communication from Canada contained in document WT/DS505/2, and he invited the representative of Canada to speak.

8.2. The representative of Canada said that, on 19 March 2015, the United States Department of Commerce had announced the initiation of an investigation into the alleged subsidization of supercalendered paper from Canada. The Department of Commerce had made its preliminary and final determinations on 28 July and 14 October 2015, respectively. These determinations had resulted in the imposition of countervailing duties of up to 20.18% on imports of supercalendered paper from Canada. As outlined in its request for the establishment of a panel, contained in the background documentation submitted for this item, Canada considered that the US measures were inconsistent with its obligations under the SCM Agreement and the GATT 1994. In particular, Canada considered that the United States had acted inconsistently with its obligations under these Agreements by improperly initiating an investigation, improperly conducting the underlying investigation, improperly determining countervailing duty rates, and improperly initiating investigations against new subsidy allegations in the expedited reviews. Canada also considered that the ongoing US conduct of applying adverse facts available to information discovered during verification was inconsistent with the obligations in these Agreements. The duties imposed as a

result of US countervailing measures were having a negative impact on producers of supercalendered paper in various Canadian provinces. Canada had held consultations with the United States on these measures on 4 May 2015. Unfortunately, the parties had been unable to resolve their differences. Consequently, Canada was, at the present meeting, requesting that a panel be established to examine this matter with standard terms of reference. Canada remained open to continuing its dialogue with the United States in a manner that would address Canada's concerns.

8.3. The representative of the United States said that his country was disappointed that Canada had chosen to request the establishment of a panel with regard to this matter. The underlying trade issue here was that Canada had decided to provide massive subsidies to a new Canadian paper factory that clearly had been established for the purpose of selling into the US market. These subsidies and the resulting low-priced exports had harmed US workers and companies. For more than two years, the United States had asked Canada to address the harm caused by Canadian subsidies, but Canada had refused. It was ironic now for Canada to invoke WTO dispute settlement to challenge a legitimate US response to the trade problem caused by Canada's own policy choices. Further, without prejudice to whether each item in Canada's panel request was a measure, the United States had explained to Canada that the measures identified in Canada's request were fully consistent with US obligations under the WTO Agreement. For those reasons, the United States was not in a position to agree to the establishment of a panel at the present meeting.

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

9 COLOMBIA – MEASURES RELATING TO THE IMPORTATION OF TEXTILES, APPAREL AND FOOTWEAR

A. Report of the Appellate Body (WT/DS461/AB/R and WT/DS461/AB/R/Add.1) and Report of the Panel (WT/DS461/R and WT/DS461/R/Add.1)

9.1. The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS461/9 transmitting the Appellate Body Report in the dispute: "Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear", which had been circulated on 7 June 2016 in documents WT/DS461/AB/R and Add.1. He reminded delegations that the Appellate Body Report and the Panel Report pertaining to this dispute had been circulated as unrestricted documents. As Members were aware, Article 17.14 of the DSU required that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report".

9.2. The representative of Panama said that her country thanked the Appellate Body, the members of the Panel and the Secretariat for their work and for assisting the parties in these proceedings. Panama welcomed the recent Appellate Body Report in this dispute, which confirmed the Panel's decision that the compound tariff imposed by Colombia on textiles, apparel and footwear was inconsistent with Article II of the GATT and exceeded Colombia's bound tariff rates in the instances set out by the Panel. This decision reaffirmed Panama's confidence in the WTO dispute settlement system. Panama also welcomed the Appellate Body's confirmation that the measure was not justified under the exceptions of public morals and necessity. Nonetheless, Panama wished to express some systemic concerns regarding the Appellate Body's reasoning in some cases, which could be misinterpreted as a relaxation of the disciplines of Article XX of the GATT 1994, in particular where a respondent alleged that a measure had been implemented in order to protect "public morals". Panama believed that a simple claim that a measure had been designed to tackle a problem of public morals, or the consideration of the possibility that certain practices covered by the measure could relate to the objective of public morals, were not sufficient to assume that a respondent had demonstrated that the measure was designed to achieve the alleged objective. Such an interpretation would partially shift the burden of proof onto the complainant, above all, and in all cases potentially covered by the measure. This could lead to abuses through the introduction of trade restrictive measures, which violated the basic principles of the WTO. Besides that clarification, Panama agreed with the recommendations of the Panel and the Appellate Body Reports and hoped that Colombia would bring its measure into conformity with WTO law as soon as possible, as required under Article 21.1 of the DSU. Taking into account that

under Colombian law, the compound tariff should expire on 30 July 2016, Panama hoped that Colombia would take advantage of this situation to inform the next DSB meeting on 21 July 2016 that it would comply with the DSB's rulings and recommendations by 31 July 2016.

9.3. The representative of Colombia said that his country thanked the Appellate Body and the Panel for their respective Reports, as well as the relevant Secretariats for their support during these proceedings. The proceedings had focused on a problem which was increasingly serious for Colombia and many other Members - the use of foreign trade operations to launder assets and finance terrorism. Illicit trade was a transnational problem and the most effective way of combatting this scourge, as Colombia had repeatedly stated, was through cooperation between countries. The burden of combatting illicit trade could not fall solely on the importing country, especially because this type of operation was dependent upon the complicity of exporters and weak supervision in countries in which this trade originated or through which it transited. The problem, in this particular dispute, was the use of apparel and footwear imports at artificially low prices to launder assets. The contested measure sought to discourage these imports, thereby reducing opportunities to launder illicit money. Both the Panel and the Appellate Body had found that, in the case of Colombia, combatting money laundering was an important political objective directed at protecting public morals, a situation that reflected societal interests that could be described as vital and important in the highest degree for Members. The Appellate Body Report in this dispute made substantive modification to the Panel's analysis, which underlined the value of the appeal proceedings.

9.4. At first, the Appellate Body had accepted Colombia's argument that the Panel had made an error under Article 11 of the DSU, using false logic in its analysis of the arguments presented by Colombia with regard to Article II of the GATT 1994.[6] Nevertheless, Colombia regretted that the Appellate Body had not accepted its argument that Article II did not cover illicit trade. As Colombia had explained before the Panel and the Appellate Body, with regard to investment, several courts had clearly ruled that bilateral or regional investment agreements did not cover foreign investment with illicit origins or objectives. Colombia believed that it would be inconsistent if this had been any different in the WTO; or if the covered agreements could be used to protect trade practices, the origins and objectives of which not only violated the law, but also threatened global peace and security (e.g. money laundering or financing terrorism). In spite of the above, it must be highlighted that the Appellate Body had "remark[ed] that [its] analysis … should not be understood to suggest that Members cannot adopt measures seeking to combat money laundering" and clearly had established "[a] Members' right to adopt and pursue measures seeking to address concerns relating to money laundering" in accordance with the general exceptions contained in Article XX of the GATT 1994.[1] The Appellate Body had also accepted Colombia's arguments and had reversed the Panel's findings under Article XX(a) and (d) of the GATT 1994. The Appellate Body had corrected the excessively rigorous standard applied by the Panel. After having examined the Colombian measure under the correct standard, the Appellate Body had confirmed Colombia's claim that the compound tariff was capable of combating money laundering, such that there was a relationship between that measure and the protection of public morals. It had also determined that the compound tariff was capable of securing compliance with Article 323 of Colombia's Criminal Code, such that there was a relationship between that measure and securing compliance with this provision.

9.5. In its "necessity" analysis, the Appellate Body had determined that Colombia's measure was not only capable of contributing to its objective, but also contributed to the objective of combatting money laundering, as had been shown by the Panel and reiterated by the Appellate Body. This finding was supported by, among other things, the Panel's findings that: "it cannot be ruled out that the importation of goods at prices below the thresholds established in Decree No. 456 could, in practice, reflect "artificially low" prices that do not reflect market conditions"; "the information available suggests that the undervaluation of imports is, in fact, one of the methods used for money laundering detected by the Colombian authorities"; "since the compound tariff entered into force, Colombian imports of the products in question have declined and average import prices have increased"; and, "the compound tariff could reduce the incentives for importing textile products, apparel and footwear at prices below the thresholds laid down in Decree No. 456". On that basis, the Appellate Body had concluded that, "… some goods priced at or below the thresholds could be imported into Colombia at artificially low prices for money laundering purposes, and would thus be subject to the disincentive created by the higher specific duties that

[6] Appellate Body Report, "Colombia – Textiles", para. 5.47.

apply to these goods. Therefore, we consider that these findings establish the Panel's recognition that there may be at least some contribution by the measure to the objective of combatting money laundering.[7]"

9.6. Unfortunately, the Appellate Body had concluded that Colombia had not successfully demonstrated that the compound tariff was a "necessary" measure. Elements of this final part of the analysis of "necessity" were of concern to Colombia and should also be of concern to other Members. The Appellate Body had ruled against Colombia on the issue of "necessity" because it had not found "sufficient clarity" in the Panel's reasoning regarding the degree of the measure's contribution and the degree of the measure's trade-restrictiveness, and as such "a proper weighing and balancing that could yield a conclusion that the measure is 'necessary' could not be conducted[8]." Colombia found it extremely worrying that the Panel's lack of clarity on the degree of contribution and the degree of restrictiveness would lead to a ruling against the regulating country in the appeal. If "a proper weighing and balancing" had not been possible in the first instance, and Panama had not succeeded in demonstrating the existence of an alternative measure achieving the same objective whilst being less restrictive on trade, the suitable result should have been for the Appellate Body to rule in favour of the "necessity" of the measure. Finally, Colombia also regretted that the Panel's findings in relation to the first paragraph of Article XX had not been declared moot by the Appellate Body. This analysis by the Panel contained countless errors. Nonetheless, Colombia understood that by abstaining from taking a stance on this part of the Report, the Appellate Body had made it clear that it did not concur with the Panel's assessment. Without prejudice to the above comments, in accordance with the procedures and timelines established in the DSU, Colombia intended to implement the DSB's recommendations and rulings in this dispute. The implementation of these recommendations and rulings would require rigorous analysis and administrative coordination from the Colombian State in order to bring the disputed measure into conformity with the obligations under the GATT 1994.

9.7. The DSB took note of the statements and adopted the Appellate Body Report contained in documents WT/DS461/AB/R and Add.1 and the Panel Report contained in documents WT/DS461/R and Add.1, as modified by the Appellate Body Report.

10 PRACTICES AND PROCEDURES IN THE CONDUCT OF WTO DISPUTES

A. Statement by Canada

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

10.2. The representative of Canada said that, as delegations were aware, the dispute settlement system was straining under the increasing demand and complexity of the disputes brought before it. Members had been discussing these challenges for several years now. DSB delegates were also aware that after almost 20 years of discussion in the DSB in Special Session, Members had not managed to reach agreement on even the most modest changes to the DSU to improve and clarify the operation of the system. Most of the proposals discussed in the Special Session would do nothing to alleviate the current strain on the system, and in fact many of them would probably exacerbate these strains. But Members' inability to reach consensus in the Special Session on any reforms did not bode well for Members' ability to reach consensus on the kinds of responses that were now required to address the workload challenges. One of the main achievements of the Uruguay Round was indeed to codify the dispute settlement procedures in a binding treaty instrument and to create the DSB to administer the rules and procedures. These developments were in large part responsible for the extraordinary success of the system, especially in delivering the security and predictability of dispute settlement in the WTO. While this success was remarkable and unparalleled, perhaps one of the unintended consequences of making the dispute settlement rules both treaty-based and subject to multilateral consensus decision-making was that it had limited the opportunity for the rules and procedures to evolve organically in response to experience, the changing nature of disputes, and the changing expectations of Members, as they apparently used to do under the GATT dispute settlement system. The Secretariat did its best to propose new ideas for incremental change through ad hoc modifications to the Working Procedures in specific disputes. But Members also knew that it was difficult to implement new ideas this way

[7] Appellate Body Report, "Colombia – Textiles", para. 5.106.
[8] Appellate Body Report, "Colombia – Textiles", para. 5.116.

because in every dispute, at least one of the parties would always have the incentive to disagree with procedural innovations that might result in streamlining the process to the benefit of the other party.

10.3. Therefore, in response to both the workload challenges that were causing delays, and taking into account the deadlock in efforts to modify formally the DSU, Canada was, at the present meeting, proposing a different approach to developing new practices and procedures in the conduct of WTO disputes. Canada's approach was to create an informal framework for the development of procedural innovation that could take place both outside the bilateral context of specific disputes, and outside the multilateral context of discussions of changes to the DSU that would be binding on all Members. Using this framework, groups of Members would commit to trying out new ideas only with other Members who were also prepared to try them out. By agreeing to these changes outside of specific disputes, the pressure and opportunity to seek litigation advantage in a specific dispute was minimized. Anything these willing Members agreed to do in disputes with each other would not be binding on Members who were not yet comfortable trying the new approaches. If certain practices did not work, or were not as beneficial as originally envisaged, they could simply be abandoned by those who had proposed and had experimented with them. On the other hand, if they did work, in the longer run it would build confidence in their feasibility, could be expanded to other Members, and could eventually facilitate the codification in the DSU, once agreed by all Members. In the room documents Canada had circulated, and that were available at the back of the room, Canada had set out both the framework and a few examples of the kinds of ideas that could be pursued in this way. Regarding the framework, Room Document number 1 contained a draft "Statement on a Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes". Canada, along with any Member that wanted to support this initiative, would formally deliver a final and joint version of that Statement at the July 2016 DSB meeting. The delivery of the Statement itself brought into existence an informal mechanism. The "mechanism" was essentially an invitation to develop novel practices in cooperation with other Members, to document these practices, and to share these documented practices with other Members simply by circulating them as addenda to the Statement. Participation in the mechanism was essentially about learning from the circulated practices and procedures of other Members and also circulating practices and procedures for the benefit of others. The Statement, at paragraph 6, invited the circulation of documented practices and procedures in at least three different formats.

10.4. First, paragraph 6(a) invited the circulation via this mechanism of agreements between Members that set out their intentions to follow certain practices and procedures in their future disputes. These types of agreements would introduce more predictability than that which resulted through the use of ad-hoc dispute-specific procedural agreements, and would minimize the scope for opportunistic litigation tactics in specific disputes. Second, paragraph 6(b) invited the circulation via this mechanism of bilateral agreements made in specific disputes to bring to the attention of other Members models and examples of how to proceed in certain circumstances. The most prominent examples of this thus far were the so-called Sequencing Agreements, and Canada would circulate at least one example of a Sequencing Agreement at the launch of the mechanism. Third, paragraph 6(c) invited the circulation via this mechanism of sample, model or proposed practices and procedures for the purpose of raising awareness among other Members of new ideas for further discussion. Canada would also circulate at least one example under this category upon the launch of the mechanism. Regarding the four documents containing procedural agreements included in the package of room documents, these were examples of the types of agreements that would fall under paragraph 6(a) of the Statement. Canada hoped to be in a position to circulate, along with a certain number of co-signatories, final versions of at least some of these documents at the same time that the final Statement was delivered at the July DSB meeting. Canada would not explain them in detail at the present meeting but would be inviting delegations to join Canada for further discussion of them. The important point for the present meeting was that Canada was not proposing that the documents be agreed by all Members, only that they be agreed by those Members that were prepared to indicate their intention to do the things set out in the documents. More importantly, these documents were provided as examples meant to inspire others to develop additional ideas for novel approaches.

10.5. Canada had put this item on the Agenda of the present meeting to bring this initiative to the attention of the DSB, not to seek Members' agreement or even necessarily to receive comment and reaction at the present meeting. Over the course of the next three weeks, Canada would hold a series of meetings to discuss further both the main Statement and the proposed Practice

Documents. Canada may also circulate additional draft practice documents for consideration. Canada invited any delegation that wished to participate in these discussions to inform Canada before the end of that week, if they had not already done so. Participation in further discussion would be without prejudice to whether a Member ultimately endorsed the final Statement or any of the Practice Documents. Since endorsing the Statement did not create any additional obligations on the Members that endorsed it, Canada was hopeful that it could count on many Members endorsing the Statement in July, and thereby demonstrating their support for a process of experimentation, documentation and sharing of practices and procedures that may allow more organic evolution of the system in response to the changing nature of disputes, and to the current workload challenges. Canada also hoped that Members would seriously consider signing on to some of the proposed Practice Documents and, more importantly, consider working with other Members to come up with ideas for additional practices and procedures, and that could be pursued through the approach Canada had outlined at the present meeting. Canada looked forward to hearing from Members, and to working with others to move this forward.

10.6. The representative of Switzerland said that his country welcomed and firmly supported Canada's initiative to share and identify best practices on dispute settlement. It was also a valuable opportunity for the less-experienced Members to become familiar with the operation of the dispute settlement system, and its unwritten state-of-the-art practices. Switzerland invited all Members to participate in the initiative as confidence-building on practices, and thereby to facilitate the codification of best practices in the DSB Special Session. Any practices that would contribute to easing the workload of the dispute settlement system were particularly welcomed and should be considered with priority. Switzerland expressed its gratitude to Canada for promoting this initiative with great competence, determination and endurance.

10.7. The representative of Australia said that his country welcomed Canada's initiative in the development and circulation of a proposed "Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes". Australia considered that a formal information sharing mechanism through the DSB would serve a useful transparency function for all Members. It would assist less-frequent users of the dispute settlement system to learn from the past practices and experience of more frequent users. The mechanism would also support Members who may wish to develop or experiment with new practices and procedures with the aim of improving the efficiency and operation of the dispute settlement system within the scope of the existing DSU rules. Australia hoped that, over time, such a mechanism would incrementally allow for the evolution of common practices and procedures in WTO dispute settlement. This could assist in the development of more predictable and harmonized dispute settlement practices and reduce procedural delays and disagreements. Australia acknowledged the ongoing efforts of the WTO Secretariat to streamline the dispute settlement processes and make them more efficient. All Members shared a responsibility to continue to work to support and improve the operation of the WTO dispute settlement system, and Australia encouraged all Members to give positive consideration to this proposed mechanism.

10.8. The representative of Chinese Taipei said that Chinese Taipei thanked Canada for its efforts and leadership in the discussions about the potential improvement of dispute settlement practices and procedures. Chinese Taipei believed that the approach proposed by Canada provided a good balance between procedural certainty and flexibility. It also laid the foundation for future discussions. Chinese Taipei, therefore, supported Canada's initiative. Chinese Taipei was willing to engage in discussions about the individual documents and encouraged other Members to give positive considerations to the initiative on these proposals.

10.9. The representative of New Zealand said that her country thanked Canada for its work to date on leading this initiative, and agreed that enhanced transparency and information sharing could have a positive influence on the development of the dispute settlement system. New Zealand noted that the DSU itself reflected a range of practices and procedures that had been developed by parties to resolve disputes under the GATT 1947. In light of that background, and with 20 years of practice now developed under the WTO dispute settlement system, New Zealand was interested to see the extent to which Canada's proposal to record and learn from dispute settlement practices may again be useful. In particular, New Zealand was interested in exploring how Member-led initiatives such as this could assist with relieving the current workload pressures faced by the DSB.

10.10. The representative of Brazil said that his country thanked Canada for the work it had put into this initiative. Brazil was aware of how the ideas, contained in the documents distributed at

the present meeting, had evolved in the countless DSB Special Session meetings and numerous other meetings at the Canadian Mission and elsewhere. Brazil welcomed the efforts and the search, by all users of the dispute settlement system, for better practices and more streamlined and efficient procedures, provided they conformed to the DSU provisions. Brazil would consider carefully each suggestion and make appropriate comments at the next DSB meeting in July.

10.11. The representative of the European Union said that the EU thanked Canada for its efforts in this area and appreciated the energy and time spent on this initiative. The EU would carefully study the documents distributed at the present meeting and may revert to this issue at future DSB meetings.

10.12. The representative of Guatemala said that his country supported the initiative and joined the previous speakers in thanking Canada for its efforts.

10.13. The representative of Chile said that her country thanked Canada for its dedication and efforts in seeking to move ahead with a mechanism that would enable the sharing of practices related to dispute settlement procedures. Chile welcomed Canada's invitation to participate in the discussions. Chile would examine the documents circulated at the present meeting and would closely follow the discussions on this matter.

10.14. The representative of China said that her country thanked Canada for its statement and for the documents it had circulated at the present meeting. Given the importance of prompt and effective settlement of disputes to the well-functioning of the multilateral trading system, China welcomed Canada's initiative to share best practices and procedures in the conduct of disputes. China had participated in some meetings convened by Canada to discuss this issue. China noted that Members had agreed to negotiate to improve and clarify the DSU in the Special Session of the DSB. In China's view, when trying to share practices and procedures in regular DSB meetings, the scope of the discussion should be carefully and appropriately defined. The discussion should focus on what was common in many disputes and on what Members considered to be good practices. The discussion should not duplicate the work of the DSB Special Session. If any proposal or suggestion was shared as a sample or model practice by only one or few Members, China believed that this would cause concerns in the DSB. China welcomed the clarification in paragraph 3 of the draft Statement proposed by Canada. However, in China's view, further assessment was needed on its operation and possible impact on the system. For example, three proposals on the table covered the same issues as those under the DSU negotiations, but Members had not reached agreement on all those issues or all the elements of each issue. In that regard, China was concerned that it was still a question of whether the procedures in such a proposal were "sample" or "model". China hoped that any future discussions on this matter among Members would be inclusive in order to reflect the comments of all Members and to help Members further assess this mechanism.

10.15. The representative of India said that his country thanked Canada for its statement made at the present meeting. India did not intend to offer any detailed comments and noted from Canada's statement the steps sought to address the workload issues. The sharing of experiences on existing dispute settlement procedures would definitely be useful for less-frequent users. India would revert to Canada's ideas in detail in the following days.

10.16. The representative of Mexico said that his country joined the previous speakers in thanking Canada for its efforts. Mexico would examine the documents submitted by Canada and would actively participate in the meetings.

10.17. The representative of Costa Rica said that his country joined the previous speakers in thanking Canada for its initiative. Costa Rica expressed its interest in the initiative and would follow the discussions with interest.

10.18. The representative of Korea said that his country thanked Canada for its tireless efforts which went beyond the call of duty to try to improve the dispute settlement system. Korea would study the proposal carefully and provide its views at the next DSB meeting. Korea looked forward to engaging in the process.

10.19. The representative of Indonesia said that his country thanked Canada for its efforts in the initiative. Indonesia would carefully consider each of the items in the initiative and would revert to it at the next DSB meeting.

10.20. The representative of Argentina said that his country wished to join the previous speakers who thanked Canada for its tireless efforts on this matter. Argentina had participated in the previous meetings in this matter and would carefully examine the documents presented by Canada.

10.21. The representative of Panama said that her country thanked Canada for its initiative and for the circulated documents which, in Panama's view, would contribute to improving the functioning of the dispute settlement system. Panama would continue to examine the documents and would continue to participate actively in discussions on this matter.

10.22. The representative of Nigeria said that his country thanked Canada for the initiative and appreciated the series of meetings and consultations that it had organised and to which the African Group had been invited. Nigeria noted Canada's statement and would refer Canada's proposal to the African Group for careful consideration. The African Group was always open to a wellfunctioning dispute settlement system and was concerned about the workload issue of the Appellate Body. The main issue for the African Group was access to the dispute settlement system, an issue that was still being discussed in the DSB Special Session. In Nigeria's view, trying to simplify the procedures as proposed in some of the proposals could go a long way in addressing some of the immediate challenges facing the dispute settlement system.

10.23. The representative of the United States said that his country thanked Canada for providing copies of its proposals and for being willing to work with Members. The United States had some questions and was still reviewing those documents.

10.24. The representative of Viet Nam said that her country thanked Canada for its initiative. Viet Nam expressed its interest in joining Canada and other Members in the process of improving and streamlining the dispute settlement system.

10.25. The representative of Singapore said that his country thanked Canada for its initiative. Singapore was studying the different documents that had been circulated and hoped to participate actively in the discussions that followed.

10.26. The representative of Honduras said that her country thanked Canada for the documents and the highly valuable initiative. Honduras would transmit these documents to capital and was ready to work further on the initiative.

10.27. The representative of Uruguay said that his country thanked Canada for its initiative. In Uruguay's view, the circulated documents constituted an important contribution to the Uruguay expressed its readiness to work on the basis of those documents.

10.28. The representative of Norway said that her country thanked Canada for its initiative and looked forward to continued engagement in the discussions.

10.29. The representative of Peru said that his country thanked Canada for its efforts on its initiative. Peru would closely examine Canada's initiative in order to provide its view on this matter.

10.30. The representative of Japan said that his country thanked Canada and wished to engage in future discussions on this matter.

10.31. The representative of Hong Kong, China said that Hong Kong, China thanked Canada for its initiative and for the documents circulated. Hong Kong, China would carefully consider the documents and stood ready to participate in further discussions.

10.32. The representative of Colombia said that his country thanked Canada for its efforts on the initiative. Colombia would closely examine the documents and would revert to this matter at the next DSB meeting.

10.33. The representative of Ukraine said that his country joined the previous speakers in welcoming Canada's initiative. Ukraine expressed its willingness to participate in the discussions.

10.34. The DSB took note of the statements.

11 STATEMENT BY THE CHAIRMAN REGARDING THE CONSULTATIONS ON APPELLATE BODY MATTERS

11.1. The Chairman said that, following up on his announcement at the previous DSB meeting, he had held informal consultations with Members on Appellate Body matters on 8 and 9 June 2016. He thanked the 14 delegations that had taken up the offer to meet with him, and said that he had found the exchange of views to be very useful. In those consultations, he had asked delegations for their assessment of the current situation in the Appellate Body and had asked them to address two questions. First, he had asked delegations what they thought would be the best approach to fill the Appellate Body vacancies as soon as possible, against the background of a growing workload in the Appellate Body. He had also asked delegations that, in light of the views expressed at the previous DSB meeting, whether they thought Members should and could make changes to the way they dealt with reappointments in the Appellate Body in future. He said that it was not possible to provide a full account of the views that had been expressed. He would therefore draw them together by offering his assessment of where things stood on those questions. He said that he was making his assessment on his own responsibility and without prejudice to any Member's position on the serious and delicate matters under consideration. His assessment was that Members were not yet in a position to move forward towards filling either of the two current vacancies in the Appellate Body. First, there was no agreement amongst Members to take any action to fill the vacancy created by the non-reappointment of the one Appellate Body member. Such agreement would be needed before Members could consider and decide on the process they would have to undertake to fill that vacancy.

11.2. Second, while the decision to appoint a new Appellate Body member was formally separate from the question of reappointment, the consultations had also revealed that the two current vacancies may need to be considered together. With regard to the issue of whether Members should and could adjust the way they dealt with reappointments in the future, he said that, in broaching that question, many delegations had reiterated strongly held views, many of which had already been raised at the previous DSB meeting. He would therefore not repeat those views, as the full spectrum of views was on record. Having listened closely to delegations, it appeared that Members were open to a discussion on the issues and options that had been raised. He had heard suggestions that the best way to proceed would be to initiate a dedicated process to discuss all these matters, if Members were to agree. That concluded his statement on where things stood with regard to matters related to the Appellate Body that should be further considered by the DSB. In his view, if Members were to take the process forward in July, they would need to intensify their discussions on these matters with a view to putting themselves in a position to take decisions at the July DSB meeting. In that regard, delegations should bear in mind that the Agenda for the July DSB meeting would be closed on 8 July. He said that he remained available to listen to any views and suggestions that delegations may have regarding these matters.

11.3. The representative of Korea, speaking on behalf of Brazil, Canada, the European Union, Guatemala, India, Indonesia, Israel, Jamaica, Korea, Mexico, Morocco, Sri Lanka, Switzerland, Thailand and Viet Nam said that, the mentioned countries strongly supported the rules-based multilateral trading system and reiterated their serious concerns about the recent decision by a Member regarding reappointment to the Appellate Body. Dispute settlement was the central pillar of the multilateral trading system. The impartiality and independence of the Appellate Body was crucial to ensuring the proper functioning and credibility of the WTO dispute settlement mechanism and, in fact, of the entire multilateral trading system. While the mentioned countries recognized that a Member may disagree with reappointment, they were deeply worried that the reasons provided by a Member for disagreeing with the reappointment were undercutting a basic premise that the rules-based WTO system was built upon: Members' trust. In particular, they wished to express grave concerns that linking reappointment of an Appellate Body member with rulings in specific cases was tantamount to interfering with the Appellate Body's deliberations and thus risked undermining its impartiality and independence. Moreover, singling out one Appellate Body member for criticisms directed at the Appellate Body reports was unjustifiable. The reports were those of the Appellate Body and not of an individual Appellate Body member. These concerns had been pointed out in unison by the sitting and former members of the Appellate Body. The

mentioned countries agreed that such actions risked creating a dangerous precedent and should not be repeated. They were also mindful of growing concerns over the possibility of a prolonged vacancy in the Appellate Body. In that regard, they supported the Chairman's efforts to find a solution in a balanced way. They looked forward to working with all Members to find a constructive path that addressed the systemic concerns raised by Members, bearing in mind the critical role that dispute settlement played in safeguarding the multilateral trading system. The group of countries reaffirmed their trust and confidence in the Appellate Body.

11.4. The representative of Korea said that his country's concern, first and foremost, was about a large and influential WTO Member imposing its own views on the system, and the manner in which it did so. Whatever concern it wanted to address should have been voiced through earnest deliberations among Members, rather than the way it was dealt with. A leading Member of the WTO and the dispute settlement system was expected to set an example by acting responsibly and constructively. Creating a systemic problem that was more serious and fundamental than the one it was trying to fix was not an appropriate exercise of this important responsibility. In its statement at the 23 May 2016 DSB meeting, the United States had pointed to four Appellate Body reports, none of which it had objected to its adoption, in order to justify its unilateral approach. Korea did not wish to engage in details of the disputes at the present meeting beyond what was necessary to demonstrate a single point, namely that there could be, and in fact were, two sides to the story.

11.5. First, regarding the dispute: "Argentina – Measures Relating to Trade in Goods and Services" (DS453), it was stated that in the Appellate Body Report "more than two-thirds of the Appellate Body's analysis – 46 pages – is in the nature of *obiter dicta*". What the Member neglected to mention was that Panama had actually appealed the Panel's interpretation and application of several key provisions of the GATS, including "treatment no less favourable", the legal matter in question analysed in the Appellate Body Report. Article 17.6 of the DSU directed the Appellate Body to review "issues of law covered in the panel report and legal interpretations developed by the panel". Article 17.12 of the DSU required the Appellate Body to address each of the issues raised in the appeal. The Appellate Body's interpretation of the GATS provisions including the "treatment no less favourable" requirement was a legal interpretation developed by the panel. Korea expected that there were Members who would have questioned why the Appellate Body had not addressed the matter, had the Appellate Body not done so. In fact, at the DSB meeting on 9 May 2016 where the Appellate Body Report had been adopted, the usefulness of the Appellate Body's ruling had been acknowledged by a Member as follows: "[R]egarding the 'treatment no less favourable' standard to be applied under GATS Articles II:1 and XVII, we welcome the Appellate Body's clarification, at paragraph 6.111, that the analysis should assess whether the measure at issue modifies the conditions of competition to the detriment of like services or service suppliers in question…". Moreover, Article 3.2 of the DSU made it clear that the dispute settlement mechanism served to "clarify the existing provisions of [the covered] agreements". Clarification of the agreements could be helpful in providing guidance to Members, traders and future panels. It may, contrary to what one Member implied, actually lessen the Appellate Body's workload by promoting the predictability of the agreements and lowering the desire or the need to re-litigate the same legal issues.

11.6. Second, regarding the dispute: "India – Measures Concerning the Importation of Certain Agricultural Products" (DS430), it had been stated that "the appellate report engaged in a lengthy abstract discussion of a provision of the SPS Agreement without ever tying that discussion to an issue on appeal". The "abstract discussion" that was being criticized was the Appellate Body's overview of Article 6 of the SPS Agreement.[9] In this dispute, India had specifically appealed the issue of the relationship between Articles 6.1 and 6.3 of the SPS Agreement.[10] The Appellate Body's transgression, according to one Member, was that it looked more broadly at Article 6 before turning to the specific interpretative issue raised by India. Why? The following was the Appellate Body's reasoning for doing so: "Before addressing this interpretative issue [raised by India], we seek to situate the relationship between Articles 6.1 and 6.3 within the broader scheme of Article 6. We think it useful to begin by considering the content and structure of Article 6 as a whole, and the relationship among its three paragraphs".[11] "[T]he considerations above show the existence of important common elements throughout Article 6, which reveal the interlinkages that

[9] Statement by the United States at the Meeting of the WTO Dispute Settlement Body, 19 June 2015.
[10] Notification of an Appeal by India, para. 11.d.
[11] Report of the Appellate Body, para. 5.129

exist among the paragraphs of this provision."[12] The argument the United States had presented before the Panel was: "Each of the three paragraphs under Article 6 should be read together. That is, each paragraph provides context for the other, and Article 6 must be read so that it works as a coherent whole, while the language in each of the three paragraphs is respected".[13] Korea would let these words speak for themselves.

11.7. Third, regarding the dispute: "United States – Countervailing Duty Measures on Certain Products from China"(DS437), it had been stated that the "approach [in the appellate report] suggests that panels and the Appellate Body are to conduct independent investigations and apply new legal standards, regardless of what either party actually argues to the panel or Appellate Body". This vague criticism avoided mentioning that the Appellate Body had in fact declined to complete the analysis with respect to many claims because it did not consider that "the participants ha[d] addressed sufficiently … the issues that [the AB] might need to examine if [it] were to complete the legal analysis".[14] With respect to a limited number of other claims, the Appellate Body had completed the analysis on the basis of undisputed facts and the factual findings of the Panel. The Appellate Body had sought clarification of undisputed facts at the oral hearing, but Korea failed to see how this amounted to conducting "independent investigations".

11.8. Fourth, regarding the dispute: "United States – Countervailing and Anti-dumping Measures on Certain Products from China"(DS449), it had been claimed that the Appellate Body report "risk[ed] turning the WTO dispute settlement system into one that would substitute the judgment of WTO adjudicators for that of a Member's domestic legal system as to what is lawful under that Member's domestic law". On ascertaining the meaning of domestic law, the United States was certainly entitled to its approach, which was that it should be assessed in accordance with the domestic legal system, including US constitutional principles. On the other hand, the Appellate Body Report took the following view: "[I]n ascertaining the meaning of municipal law, a panel should undertake a holistic assessment of all relevant elements, starting with the text of the law and including, but not limited to, relevant practices of administering agencies…All of these assessments are subject to the circumstances of each case, including the national legal system in which the municipal law operates".[15] Korea believed that this approach was no less valid than the one argued by a Member. The WTO Agreements revealed no preference as to how the meaning of municipal law should be ascertained. Korea failed to see how subjecting the Appellate Body's assessments on the meaning of municipal law "to the circumstances of each case, including the national legal system in which the municipal law operates" was tantamount to "substitut[ing] the judgment of WTO adjudicators for that of a Member's domestic legal system". Moreover, the Appellate Body in this dispute had closely followed the approach that had been laid out repeatedly in previous disputes including the "US – Carbon Steel" dispute (DS213). In stark contrast to the position it said it was taking now, the United States had praised the Appellate Body's ruling of the issues in the DS213 dispute, applauding it as a "model" decision. This demonstrated Korea's point yet again, that views on a legal matter could, and indeed did, vary across different Members, and in this case even for a particular Member. It was telling that the Appellate Body had decided in the end not to complete the legal analysis.

11.9. Finally, Korea noted that it had been stated at the previous DSB meeting that one Member was "concerned about the manner in which [an AB] member has served at oral hearings, including that the questions posed spent a considerable amount of time considering issues not on appeal or not focused on the resolution of the matter between the parties". This attempt to place constraints on Division members' questioning at the oral hearing was deeply troubling. Division members asked questions in order to better understand the issues in their appropriate context, and to provide participants a full opportunity to make their views known. Appellate Body members must be allowed that discretion. Indeed, the Appellate Body's engagement with the issues at oral hearings was often praised by participants and third participants alike. Nor were Appellate Body members prejudging the issues by asking questions. In fact, the Appellate Body made this point clearly at the start of each oral hearing. When the United States asserted that "it is not difficult to ascertain from the questions posed by a member of a division at an oral hearing that the [Division] member is associated with the views expressed in an Appellate Body report related to those questions", the United States was conceding, rather frankly, that it was engaging in speculation.

[12] Report of the Appellate Body, para. 5.141.
[13] Responses of the United States to the Panel's Questions Following the First Panel Meeting, para. 83.
[14] Report of the Appellate Body, para. 4.208.
[15] Report of the Appellate Body, para. 4.101.

What was remarkable was not that a WTO Member was taking positions on legal matters, but that it found it acceptable to impose its own views on the Membership by ousting an adjudicator about whom it had developed a certain impression that the individual in question must take the fall for the Appellate Body's perceived failings. This approach was not only unbecoming of a leader of the multilateral trading system; it was also destabilizing.

11.10. With regard to the next steps, as had been stated in the joint statement, Korea was mindful of the growing concerns over the possibility of a prolonged vacancy in the Appellate Body. However, what was clear was that there existed a fast and systemically appropriate way to avoid an unnecessary vacancy which also prevented long-lasting harm to the system. Despite what Members may have been led to believe, it only took one Member, who actually played a leading role in building the rules-based multilateral trading system from which it continued to benefit, to ensure that the system could continue to function effectively. Korea wished to take the opportunity to express its own continued willingness to consult Members and the DSB Chair in the interest of finding a balanced solution to the current situation.

11.11. The representative of Morocco, speaking on behalf of the African Group, said that the African Group shared the concerns about the effects that the recent decision by a Member regarding reappointment of an Appellate Body may have had on the independence and impartiality of the Appellate Body. Linking reappointment to an Appellate Body member's decision in specific cases risked fundamentally undermining the integrity and the rule of law of the dispute settlement system. Singling out one Appellate Body member for criticisms directed at the Appellate Body for its report was contrary to Article 17 of the DSU, which provided that "[t]he proceedings of the Appellate Body shall be confidential" and "[o]pinions expressed in the [AB] report…shall be anonymous". Besides, Appellate Body rulings were made by the Division as a whole and not by individual members. In addition, to ensure consistency and coherence in decision-making, Divisions that were selected to hear each appeal exchanged views with the other members of the Appellate Body before finalizing their reports. The African Group also shared the concerns about a prolonged vacancy in the Appellate Body and expressed its support to the Chair's efforts to reach an equitable solution. The African Group stressed that this unprecedented situation, if not corrected, risked undermining the trust that Members placed on the WTO dispute settlement system and the entire multilateral trading system. The African Group reaffirmed its confidence in the Appellate Body and its members and looked forward to working with all WTO Members to address these systemic concerns.

11.12. The representative of Peru said that his country believed that the dispute settlement system was a fundamental pillar of the multilateral trading framework. The rules governing the operation of the dispute settlement system were forged with a view to achieving a delicate balance, a key aspect of which was to ensure the smooth functioning and the full operational capacity of the Appellate Body. WTO Members were all responsible for this, and it was their task to ensure the timely appointment and/or reappointment of Appellate Body members. Peru therefore believed that it was essential for the time and energy spent on the current debate to be redirected towards the discussions on restoring the full operational capacity of the Appellate Body, in order for it to address, in a timely manner, the complaints brought before it. In that regard, Peru believed that it was vital to resume, as soon as possible, the process of finding suitable candidates to fill the vacant positions in the Appellate Body. Peru urged Members to be as flexible and pragmatic as possible, and to prioritize the interests of the global trading community represented in this Organization, with a view to selecting the two members yet to be appointed to the Appellate Body as quickly as possible. Nevertheless, in the spirit of paragraph 13 of the Nairobi Declaration, Peru recognized that the growing number of differences and their increasing complexity presented new and greater challenges for the dispute settlement system. Therefore, Peru remained open to participating in any debate aimed at bringing about "improvements and clarifications" of the DSU, in accordance with the Doha Ministerial mandate, in order to address the challenges and to reinforce the system.

11.13. The representative of the Dominican Republic said that his country thanked the Chairman for his report. The Dominican Republic supported the joint statement made by Korea regarding these matters.

11.14. The representative of Oman said that his country noted that this was an important matter that had implications on what was being referred to as the jewel in the crown of the WTO. Oman considered that the dispute settlement system set the WTO apart from other international

organizations and was a crucial component of its success. Oman was a firm believer in the importance of having clear and unambiguous rules that governed the affairs of the WTO, including the appointment of WTO officers in the various WTO bodies. Oman noted that the governing provision in the matter of appointments of persons to the Appellate Body was contained in Article 17.2 of the DSU. That provision provided for the reappointment of a member of the Appellate Body for a second term. As such, it implied that there was no automatic reappointment. The provision, however, was silent regarding the reasons, if any, that a Member could base its objections to reappointment. Oman believed that it was important for the credibility and functioning of the WTO that the Appellate Body remained objective, impartial, and that it enjoyed all the benefits and privileges normally granted to authorities exercising a judicial function. This was not the first time that the reappointment of an Appellate Body member was being objected to. In fact, Oman understood that this had happened once before. In Oman's view, it was high time to act in order to prevent such a situation from recurring and invited Members to consider replacing the two four-year terms of office for Appellate Body members with a single longer term of office.

11.15. The representative of China said that his country thanked the Chairman and the Selection Committee for their efforts regarding the selection process to replace Ms Zhang Yuejiao. Taking into account the concerns about the Appellate Body vacancy and given the Appellate Body workload, China hoped that the Selection Committee and Members would successfully resolve this matter as soon as possible. China shared the views and concerns expressed by many Members with regard to the issue of reappointment. The Appellate Body played a fundamental role under the WTO dispute settlement mechanism, which was an important and central pillar of the multilateral trading system. In order to enhance the security and predictability of the rules of international trade embodied in the WTO Agreements, it was critical to safeguard the independence and impartiality of Appellate Body members. Linking the reappointment of an Appellate Body member to the rulings in specific cases could have serious consequences on the independence and impartiality of Appellate Body members and on the trust and confidence of Members in the Appellate Body. China invited Members to carefully consider the systemic impact of this matter, and urged them to maintain the efficiency, impartiality, stability and predictability of the system. At the same time, China also took note of the increasing concerns over the vacancy in the Appellate Body and its workload, and urged Members to resolve this situation as soon as possible in order to safeguard the smooth operation of the Appellate Body and the dispute settlement system.

11.16. The representative of Turkey said that, although Members seemed to agree that the WTO dispute settlement system was the jewel in the crown, and that they were ready to do their utmost to protect it, unfortunately they had not been able to reappoint one Appellate Body member. Turkey deeply regretted that this impasse continued. Given the current dispute settlement workload, Turkey was concerned that the Appellate Body may not be able to continue to operate with five members only. Turkey had listened to the statements of the previous speakers and shared most of their concerns. As Turkey had stated at the previous DSB meeting, reappointment was not automatic and any Member could break the consensus on reappointment. But such a veto should be based on professional or personal incompetency of Appellate Body members, not on the reports of the Appellate Body, which belonged to not only one Appellate Body member but to all of them. Turkey, therefore, believed that the current reappointment problem should be resolved, in a constructive manner, taking into account the critical role of the Appellate Body for the dispute settlement system.

11.17. The representative of Chile said that her country thanked the Chair for his efforts on this matter and for his report. Chile had listened carefully to the systemic and institutional concerns expressed by Members regarding the need to preserve the independence of the Appellate Body. In Chile's view, such concerns demonstrated the importance of dialogue amongst Members and the importance of maintaining the proper functioning of the dispute settlement system. While the DSU was clear that Members were responsible for the reappointment of Appellate Body members, it did not provide further guidance in that respect. If all Members were concerned about this responsibility, they should look at defining long-term steps to address that concern. Chile stressed that it was important to fill the two Appellate Body vacancies as soon as possible, either together or separately. That process should be guided by pragmatism and should therefore not be linked to more general initiatives relating to the appointment process. The aim would be restore full membership to the Appellate Body as soon as possible. Chile was committed to the dispute settlement system and noted that trust formed the basis for any dispute settlement mechanism. Chile hoped that Members could find a way forward to resolve this issue as soon as possible.

11.18. The representative of Hong Kong, China said that Hong Kong, China thanked the Chairman for his report and his efforts in working towards a solution. Hong Kong, China was disappointed that Members were still unable to reach consensus regarding the reappointment and new appointment of Appellate Body members. Noting that reappointments were not automatic, Hong Kong, China considered that some important systemic issues being raised, such as what considerations should or should not be taken into account for the reappointment of Appellate Body members, warranted more in-depth discussion amongst Members. In due course, Members needed to find, and agree on, a right balance between respecting Members' right to appoint Appellate Body members and ensuring that the Appellate Body could work independently and impartially without undue influence. Regarding the current impasse, Hong Kong, China was concerned that if vacancies were prolonged indefinitely, it would affect the effective operation of the Appellate Body which already had a heavy workload. Within the parameters of the ongoing exercises, Hong Kong, China stood ready to work constructively with the Chairman and other Members to find a satisfactory solution to both the reappointment and new appointment of Appellate Body members as soon as possible.

11.19. The representative of New Zealand said that her country wished to take the opportunity to emphasise the importance of ensuring that the two Appellate Body vacancies were filled as soon as possible. The Appellate Body could not effectively fulfil its function without seven members, and New Zealand was therefore concerned about the practical and systemic implications of the current vacancies. These considerations were of particular importance at a time when the dispute settlement system was experiencing an increased work load pressure. New Zealand noted in particular that consultations to appoint a successor to Ms Zhang had been ongoing for a number of months. New Zealand emphasized the importance of ensuring that this process was not delayed any further. New Zealand urged all Members to work constructively, and to be pragmatic in their approach to these matters in order to find prompt solutions to ensure that both Appellate Body vacancies were filled as soon as possible.

11.20. The representative of Chinese Taipei said that Chinese Taipei thanked the Chairman for his report. Chinese Taipei shared the systemic concerns raised by Korea and other Members in the joint statement made at the present meeting. As Chinese Taipei had stated at the previous DSB meeting, linking reappointment to the Appellate Body's legal views in certain disputes may affect the Appellate Body's authority. Singling out one Appellate Body member for certain legal views in the Appellate Body reports was also undermining the impartiality and independence of the Appellate Body. Chinese Taipei expressed its serious concerns about the prolonged vacancies in the Appellate Body and the potential delays at the appeal stage. In Chinese Taipei's view, the reappointment and the appointment matters should be addressed quickly and pragmatically. Any new vacancies should be filled in a due and efficient process. Chinese Taipei thanked the Chairman for his efforts in these important and complex matters and expressed its readiness to work further with the Chair and Members to find solutions to the current problems. He then referred to an old Chinese proverb that "a bell can only be untied by the person who tied it." Chinese Taipei therefore urged the Members concerned to consider the issues in a well-balanced manner and to work together to find a way forward for the best interest of the Membership. Chinese Taipei placed its utmost trust and confidence in the Appellate Body.

11.21. The representative of Australia said that his country thanked the Chairman for his update and for his ongoing efforts to progress these important Appellate Body issues. Australia remained committed to working with all Members to reach a prompt resolution, which would take into account the interests and concerns of all Members. In that regard, Australia had listened carefully and agreed with the views put by many at the present and previous DSB meetings regarding the systemic concerns which the recent reappointment process had raised. Australia suggested that the DSB Chair should begin consulting informally with Members on the range of concerns with a view to finding a path forward. However, having failed to achieve consensus to date, Australia believed that Members should focus their efforts on filling the two Appellate Body vacancies as soon as possible. Filling those vacancies was essential to the efficient and effective functioning of the Appellate Body. Australia wished to see an approach that was pragmatic, efficient, fair and that minimized interruptions to the Appellate Body's capacity to carry out its important duties.

11.22. The representative of Norway said that her country was deeply concerned about the current situation in the Appellate Body since there were two vacancies and no immediate prospects for a solution. This was in addition to the well-known challenges faced by the Appellate Body as a result of its significant workload, and consequent delays in appeals. As had already been stated by several delegations at the present meeting, pragmatism must guide this process. Norway encouraged all Members to show the utmost flexibility in order to fill both vacancies as soon as possible. Norway stood ready to join other Members in any efforts to resolve this matter.

11.23. The representative of Japan said that his country took note of the Chairman's statement reporting on his consultations with Members on the matters related to the appointment of a new Appellate Body member as well as the reappointment of one Appellate Body member. Japan wished to first thank the Chairman for his efforts in this important matter. Given the workload of the Appellate Body, the dispute settlement system could not afford the luxury of having two unfilled vacancies for an extended period of time. The high-quality work and the proper functioning of the Appellate Body depended on the qualities and qualifications of the individuals who served as Appellate Body members. In that regard, Japan, once again wished to emphasize that an individual's quality and qualification should be the guiding principle in the selection and appointment of an Appellate Body member. Japan was ready to engage in the consultations to discuss the systemic issues, once these were initiated. Japan trusted that the Chairman would facilitate the process of discussions so that Members could find the best way forward to resolve the current situation. Japan hoped that Members would cooperate in that regard.

11.24. The representative of Mexico said that his delegation wished to thank the Chairman for his report and the Selection Committee for its work on the AB process. Mexico considered that the Selection Committee had enough candidates to recommend an individual to the DSB to fill the vacancy in the Appellate Body left by Ms Yuejiao Zhang. At the same time, Mexico noted the Guidelines for Appointment of Officers to WTO Bodies and, in particular, the statement by the Chair of the General Council made in July 2012, which read as follows: "The existing guidelines are in general adequate and are reaffirmed. … The selection process should be characterized by transparency, and at the same time, recognize the need to provide the … selection committee … with a certain degree of flexibility ….Second, Members should exercise restraint in blocking consensus on a candidate and should explain to the selection committee the reasons why, if they are doing so".[16]. In Mexico's view, these guidelines which were applicable for the selection of Chairpersons of WTO Bodies, could also be applicable to the AB selection process. The entire Membership must therefore do everything possible to support the Selection Committee in reaching a conclusion as soon as possible. Regarding the vacancy resulting from one Appellate Body member's term of office not being renewed, Mexico believed the DSB must quickly begin the new process to fill the vacancy, so that Members could nominate candidates, and the Selection Committee and Members could interview them. Mexico reiterated its commitment to working together under the Chair's leadership.

11.25. The representative of Zimbabwe said that his country wished to associate itself with the statement made by Morocco on behalf of the African Group. Zimbabwe also shared the concerns that had been raised by other Members. Zimbabwe was deeply concerned about the failure to reach consensus on the reappointment of an Appellate Body member and the singling out of one member of the Appellate Body over the reports of the Appellate Body. This was a worrying development, and it had the potential to undermine the credibility of the dispute settlement mechanism and the multilateral trading system in general. Zimbabwe, therefore, encouraged a constructive engagement among Members to address the concerns that had been raised and also in filling the two vacancies in the Appellate Body.

11.26. The representative of Canada said that his country wished to add its voice to those that had already indicated that, in the absence of a consensus on the reappointment, it was imperative that the DSB move quickly to launch a process to fill this new vacancy. Canada also encouraged the DSB Chair to make a concrete proposal at the July DSB meeting for a new appointment process, alongside the one to fill the existing vacancy for which there was also no consensus on the current candidates. In the interests of restoring the Appellate Body to a full contingent as quickly as possible, Canada hoped that Members would work constructively and pragmatically to ensure that the DSB could act decisively at the July DSB meeting to move the appointments for both vacancies forward. This did not prevent Members from continuing to discuss the implications

[16] WT/GC/M/137, paras. 187 and 188.

of the DSB's failure to reappoint on that occasion, and perhaps also to discuss whether Members wished to modify the rules governing Appellate Body appointments more generally, but that needed to proceed on a separate track.

11.27. The representative of Brazil said that his country thanked the Chairman for his report. As Brazil had stated at the previous DSB meeting, this issue was not simply another regular item on the DSB's Agenda. The joint statement of Members, made by Korea, as well as other statements made at the present meeting, provided ample evidence of the importance Members attached to the independence and impartiality of the Appellate Body and of the serious concerns raised by actions that risked undermining the core of those fundamental principles. In light of the Chairman's report, it seemed that Members had two issues to consider: (i) a procedural issue on how and when to fill the vacancies left open in the Appellate Body, which resulted in a situation of an Appellate Body having to function with only five members; and (ii) a systemic challenge against the very fulcrum that sustained the impartiality and independence of the Appellate Body. Should this fulcrum be removed, the dispute settlement system would not be in a position to properly serve its purpose in a multilateral context. Brazil questioned the purpose of having a fully operational Appellate Body, if its independence was also not fully safeguarded. Brazil also understood from the Chairman's report, that Dedicated Sessions would be held to discuss both issues. Brazil noted that some Members seemed to have focused only on one concern, that the increased number of disputes would have to be dealt with by an Appellate Body reduced to five members. Brazil noted this concern, which it also shared. Brazil was certain that the Membership, in light of the grave concerns expressed in the joint statement about the risks to the independence and impartiality of the Appellate Body, would know how to preserve the integrity of the DSB and would work constructively to address all concerns raised by many Members, and would also resist the temptation to let the systemic implications of the current events simply fade away or to be drowned in the cacophony of divergent voices. The joint statement made at the present meeting was, fortunately, a clear testimony to the harmonious belief of Members in the principles that allowed the Appellate Body to adequately perform what it had been tasked to do. In Brazil's view, it would not be reasonable to conceive a solution for the topical question without also finding an adequate response to the systemic problem. As the reappointment process had unfortunately started to imperil the independence of Appellate Body members, Brazil wished to recall its suggestion, made at the previous DSB meeting, for Members to ponder the idea of a single mandate for Appellate Body members, so as to close the loophole for undue interference and pressure and to ensure an adequate working environment for Appellate Body members. In Brazil's view, the fact that future reappointments might simply not happen should not be discarded. Other suggestions had also been mentioned by other Members, at the present meeting and at the previous meeting and all should be carefully analysed by Members. Brazil hoped that, collectively, Members could endeavour to find a constructive solution to these important systemic concerns.

11.28. The representative of the United States said that his country thanked the Chairman for his continued work in carrying out consultations on these matters. In response to the apparent suggestion that the United States reconsider its position and support the reappointment of Mr. Chang to a second term on the Appellate Body, the US position was clear and would not change. For several years, the United States had been raising with Members its systemic concerns with the operation of the WTO dispute settlement system, and in particular with the adjudicative approach of certain Appellate Body reports. The United States had also noted that these concerns were widely shared in the United States. For example, the recent letter from six former US Trade Representatives reinforced those concerns. The United States had explained in detail how those concerns had informed its decision regarding the reappointment of Mr. Chang. Rather than repeat that explanation at the present meeting, the United States would refer Members to the US statement at the 23 May 2016 meeting of the DSB. The United States would recall, however, the question it had posed to WTO Members at that meeting: if a candidate for appointment to the Appellate Body were to say openly that he or she would issue Appellate Body reports reflecting the systemic concerns the United States had identified, would Members' governments support that candidate for appointment? The United States would think most WTO Members would say no. And a candidate not suitable for appointment was no more suitable for reappointment. The United States continued to appreciate the engagement it had had with delegations and looked

forward to engaging with all Members on the critical issues of how to reinforce the aim and proper adjudicative approach of the dispute settlement system. At the same time, however, the United States considered that the DSB should continue to work to find a consensus on the appointment of persons to fill the two current vacancies on the Appellate Body.

11.29. The DSB took note of the statements.

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

A. Statement by the Philippines

12.1. The representative of the Philippines, speaking under "Other Business", recalled that on 4 May 2016, the Philippines had requested consultations with Thailand regarding the dispute: "Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines" (DS371). The Philippines wished to provide Members with a brief report on those consultations. The parties had held consultations in Bangkok on 2 June 2016. The consultations had been conducted in a positive spirit and had succeeded in clarifying a number of points. Unfortunately, however, Thailand had not been in a position to respond fully to the Philippines' questions at the consultations. Thailand, therefore, had committed to provide the Philippines with specific information in documents pertinent to the dispute. In particular, Thailand had committed to explaining to the Philippines, by 27 June 2016, the specific allegations underlying the criminal charges regarding the declared customs value of imports from the Philippines and to provide copies of the evidence supporting the additional allegations. Thailand had also agreed to provide copies of certain other documents identified in a letter of 8 June 2016, sent by the Philippines to the Permanent Mission of Thailand to the WTO. In return for Thailand's commitment, and in recognition of the constructive relationship between the two countries, the Philippines had agreed to wait until 27 June 2016 before filing a request for the establishment of a panel. The Philippines looked forward to receiving the relevant documents and information from Thailand no later than 27 June 2016.

12.2. The representative of Thailand said that his country took note of the Philippines' statement and would continue to work closely with the Philippines to find a solution to this dispute.

12.3. The DSB took note of the statements.

13 DISPUTE SETTLEMENT WORKLOAD

A. Statement by the Chairman

13.1. The Chairman, speaking under "Other Business", said that he wished to provide information about the Appellate Body's workload, the number of disputes before panels, in the panel queue, and at the panel composition stage, and the ability of the Secretariat to meet expected demand over the coming period. On appeals, the Appellate Body was currently dealing with three appeals.[17] In addition, four panel reports were expected to be circulated in the next three months that may also be appealed[18], including the report of the Panel in the extremely complex compliance proceedings in the "EC and Certain Member States – Large Civil Aircraft" (Airbus) dispute. Given the limited number of staff available in the Appellate Body Secretariat, there was soon likely to be a waiting period before appeals could be staffed and Appellate Body Members could turn to dealing with them. The two vacancies in the Appellate Body were likely to exacerbate this situation. On panels/arbitrations, currently there were 17 active panels (including one panel under Article 21.5 of the DSU) that had not yet issued a final report to the parties. He noted that he was counting multiple disputes that were being considered simultaneously by the same panel as one. For example, the "Australia – Tobacco Plain Packaging" panels, which in fact comprised four active disputes, was counted as a single panel in his report. In addition, he said that he had excluded suspended panels. As of the present day, there were two composed panels awaiting staff to assist them[19], both of which had been composed after 31 October 2015 when the Director-General had undertaken to staff all panels in the queue at that time. Currently, there

[17] DS456 "India – Solar Cells"; DS464 "US – Washing Machines"; and DS473 "EU – Biodiesel".

[18] DS316 "EC and Certain Member States – Large Civil Aircraft"; DS475 "Russia – Pigs"; DS485 "Russia – Tariff Treatment"; and DS471 "US – Anti-dumping Methodologies" (China).

[19] DS480 "EU – Biodiesel" (Indonesia); and DS491 "US – Coated Paper" (Indonesia).

were six panels at the composition stage. In addition, one matter has been referred to arbitration under Article 22.6 of the DSU.

13.2. The DSB took note of the statement.