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Dispute Settlement Body
28 October 2015

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 28 OCTOBER 2015

Chairman: Mr. Harald Neple (Norway)

Prior to the adoption of the Agenda, the item concerning the adoption of the Panel Report in the dispute on: "Argentina – Measures Relating to Trade in Goods and Services" (DS453) was removed from the proposed Agenda following Panama's decision to appeal the Report.

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1.1. The Chairman noted that there were seven sub–items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. He recalled that Article 21.6 required that: "Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and shall remain on the DSB's Agenda until the issue is resolved". Under this Agenda item, he invited delegations to provide up-to–date information about compliance efforts and to focus on new developments, suggestions and ideas on progress towards the resolution of disputes. He reminded delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "Representatives should make

every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record".

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.154)

1.2. The Chairman drew attention to document WT/DS176/11/Add.154, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 15 October 2015, in accordance with Article 21.6 of the DSU. Several bills introduced in the current US Congress would repeal Section 211. Other bills would modify Section 211. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings and resolve this matter with the European Union.

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

1.5. The representative of Cuba said that her country noted that the US status report before the DSB at the present meeting did not provide any new information or any indication regarding efforts towards compliance with the DSB's recommendations and rulings in this dispute. Cuba recalled that in 2002, the DSB had found that Section 211 violated the national and most-favoured-nation treatment obligations under the TRIPS Agreement and the Paris Convention. Cuba noted that more than 13 years had passed but, due to the lack of compliance, this dispute remained under the surveillance of the DSB and was on the Agenda of the DSB's regular meetings. Cuba was concerned that Section 211, which was part of the legislation governing the illegal economic, commercial and financial embargo against Cuba, remained intact and in force, preventing the recognition of Cuban trademarks and patents by the US courts and constituted a major obstacle for the external sector of the Cuban economy. In Cuba's view, the embargo was at the root of the unjustified and protracted US non-compliance in this dispute. In view of the continuation of the embargo, Cuba had, on 27 October 2015, submitted to the UN General Assembly the draft resolution entitled "Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States of America Against Cuba". The resolution was, once again, almost unanimously endorsed by the international community, with 191 countries voting in favour. While welcoming the restoration of diplomatic relations between Cuba and the United States and recognizing the desire expressed by the US President to work towards lifting the embargo, the resolution expressed concern that after the adoption of 23 consecutive resolutions on the subject, the economic, commercial and financial embargo against Cuba remained in force. Cuba urged the United States to respect the will of the international community, as illustrated by the vote of the 191 UN member States, almost all of which were also WTO Members that supported the end of the embargo. Cuba urged the United States to comply with its legal obligations by promptly adopting appropriate legislative measures to put an end to this non-compliance. Such non-compliance undermined the credibility of the WTO dispute settlement system. Cuba thanked those Members that, each month, spoke in favour of resolving this dispute. Cuba also thanked those Members that, each year at the UN General Assembly, voted in favour of removing the unfair and illegal embargo against Cuba.

1.6. The representative of Zimbabwe said that his country welcomed the statement made by the United States. Zimbabwe, once again, regretted that there was no progress regarding the implementation in this dispute. The US failure to comply with the DSB's recommendations and rulings in this dispute undermined the integrity of the dispute settlement system and was detrimental to the interests of a developing-country Member. In that regard, Zimbabwe joined the previous speakers in supporting Cuba and urged the United States to comply with the DSB's rulings and recommendations.

1.7. The representative of Jamaica said that her country thanked Cuba, the United States and the EU for their statements, updates and the status report under this Agenda item. Jamaica noted that the circumstances of this dispute had not changed and that no progress had been reported since

the previous DSB meeting. As at previous DSB meetings, and as other delegations had expressed, Jamaica was concerned about the continued US failure to implement the DSB's recommendations adopted in 2002 regarding Section 211. The protracted failure by the United States to take the necessary steps to comply with its obligations under the DSU provisions was incompatible with the requirement for prompt implementation of the DSB decisions. This was of particular concern in cases such as this where the failure to meet an obligation had a negative impact on the economic interests of a developing-country Member. Jamaica reiterated its deep concern about the systemic implications of any disregard for DSB decisions. Such disregard could undermine the overall integrity of the dispute settlement system, which remained a key pillar of the WTO. Jamaica believed that after 13 years and 9 months since the adoption of the DSB's recommendations, it was more than reasonable for Members to expect that this matter would be resolved and removed from the DSB's Agenda.

1.8. The representative of Bolivarian Republic of Venezuela said that her country supported the statement made by Cuba. Venezuela noted that the credibility of the WTO dispute settlement system depended on the prompt implementation of the DSB's recommendations and rulings. Prompt compliance with the DSB's recommendations or rulings was essential to ensure the effective resolution of disputes to the benefit of all Members. As Venezuela had stated at previous DSB meetings, the US status report did not provide any new information or any indication about developments or actions that would be taken in order to comply with the DSB's recommendations and rulings in this dispute. Venezuela emphasised that the US status report did not meet the obligation stipulated in Article 21.6 of the DSU, which was to report on progress made in relation to the dispute at hand and not merely to reiterate lack of progress towards a solution, or simply to repeat the information submitted previously. Venezuela supported the statements made by previous speakers about the systemic implications of this continued failure to comply, which not only undermined Members' confidence in a system of rules and procedures, but also undermined the dispute settlement system as a whole, and set a negative precedent for the credibility of the DSB and the multilateral trading system. In Venezuela's view, the US failure to comply in this dispute once again reflected the US intention to maintain the economic, commercial and financial embargo imposed illegally on Cuba. On 27 October 2015, this embargo had once again been condemned by the UN General Assembly as being in violation of international law. Venezuela, once again, urged the United States to comply with the DSB's recommendations and rulings and to repeal Section 211.

1.9. The representative of Uruguay said that his country thanked the United States for its status report in this dispute. Uruguay noted that the US status report did not contain any new information on progress. In Uruguay's view, the continued non–compliance in this dispute undermined the credibility of the system and had a negative impact on Members. Uruguay hoped that the matter would be resolved as soon as possible and hoped that the new bilateral relationships between the United States and Cuba would contribute towards resolving this dispute.

1.10. The representative of Argentina said that his country thanked the United States for its status report and other delegations for their statements made at the present meeting. Argentina, once again, regretted that no progress had been made in this dispute. Argentina reiterated the importance of respecting the principle of prompt compliance, in particular since the interests of a developing–country Member, Cuba, were concerned. Argentina urged both parties to the dispute, and in particular the United States, to promptly find a solution that would resolve this long-standing dispute.

1.11. The representative of India said that, like the previous speakers, his country noted that no substantial progress had been reported in this dispute. India was, therefore, compelled to stress that the principle of prompt compliance was missing in this dispute. India renewed its systemic concerns about the continuation of non–compliance, especially in the context of a developing-country Member seeking compliance. Continued non–compliance by Members eroded the confidence and the credibility of the WTO dispute settlement system. India urged the United States to report compliance in this regard without further delay.

1.12. The representative of Ecuador said that her country supported the statement made by Cuba. Ecuador, once again, recalled that Article 21 of the DSU referred specifically to prompt compliance with the DSB's recommendations and rulings, in particular since the interests of a developing–country Member were concerned. Ecuador urged the United States to step up its

efforts and promptly comply with the DSB's recommendations and rulings and to repeal Section 211.

1.13. The representative of El Salvador said that her country thanked the United States for its status report and Cuba for its statement made at the present meeting. El Salvador urged the parties to this dispute to find a prompt solution to this long–standing dispute.

1.14. The representative of Nicaragua said that his country supported the statement made by Cuba. Nicaragua reiterated its concern about the continued lack of compliance by the United States with the DSB's recommendations and rulings in this dispute. In Nicaragua's view, and as many delegations had pointed out at previous DSB meetings, the US failure to comply affected the economic interests of a developing-country Member with a small economy and undermined the smooth functioning of the DSB. Nicaragua joined other Members in urging the United States to take the necessary measures to promptly implement the DSB's recommendations and rulings.

1.15. The representative of Paraguay said that his country supported the statement made by Cuba and urged the parties to this dispute to find a solution as soon as possible.

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

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

1.18. The representative of Brazil said that her country thanked the United States for its status report which confirmed that no concretes changes had been made in this dispute. Brazil shared the concerns expressed by other delegations regarding the lack of compliance in this dispute. Brazil invited the parties to the dispute, as well as the United States and Cuba, in light of their recent and positive bilateral developments, to cooperate in an effort to finding a solution to this dispute.

1.19. The representative of the Plurinational State of Bolivia said that, for the past 13 years, Members had witnessed the United States submit the same status report, which did not contain any information on progress in this dispute. Bolivia, once again, expressed its concern about the systemic effects of non–compliance with the DSB's recommendations and rulings. The failure to comply in this dispute undermined the credibility of the multilateral trading system. Bolivia urged the United States to comply with the DSB's recommendations and rulings and to remove the restrictions imposed under Section 211. Bolivia supported the concerns raised by Cuba at the present meeting.

1.20. The representative of Trinidad and Tobago said that his country thanked the United States for its status report and the EU and Cuba for their statements. Trinidad and Tobago wished to refer to all its statements made at previous DSB meetings under this Agenda item. Non–compliance with the DSB's rulings and recommendations negatively affected all Members and in particular Cuba, a small island developing-country Member. As the WTO was a custodian of the multilateral trading system, Trinidad and Tobago called for prompt compliance with the DSB's rulings and recommendations regarding Section 211, pursuant to Article 21.1 of the DSU.

1.21. The representative of Peru said that his country joined other delegations that had expressed their concerns about the continued non–compliance with the DSB's recommendations and rulings in this dispute, which affected the interests of a developing–country Member.

1.22. The representative of Viet Nam said that her country thanked the United States for its status report. Viet Nam noted that the US status report did not provide information on progress in

this dispute and that this matter had remained unresolved for more than a decade. Viet Nam urged the United States to promptly comply with the DSB's recommendations and rulings.

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

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

B. United States – Anti–dumping measures on certain hot–rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.154)

1.25. The Chairman drew attention to document WT/DS184/15/Add.154, 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.

1.26. The representative of the United States said that his country had provided a status report in this dispute on 15 October 2015, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot–rolled steel anti–dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.27. The representative of Japan said that his country thanked the United States for its statement and status report submitted on 15 October 2015. Japan referred to its previous statements that this issue should be resolved as soon as possible.

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

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.129)

1.29. The Chairman drew attention to document WT/DS160/24/Add.129, 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.

1.30. The representative of the United States said that his country had provided a status report in this dispute on 15 October 2015, 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.

1.31. The representative of the European Union said that the EU thanked the United States for the 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.

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

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.92)

1.33. The Chairman drew attention to document WT/DS291/37/Add.92, 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.

1.34. The representative of the European Union said that, in recent meetings, the EU had already reported on authorization decisions and other actions towards approval decisions taken up to September 2015. A draft decision authorising the placing on the market of a GM maize (for food and feed use) had been voted in the Standing Committee on 19 October 2015.[1] The result was "no opinion". Therefore, the draft decision would be sent to the Appeal Committee. More generally, and as stated many times before, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.35. 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 since the adoption of the DSB's recommendations and rulings in this dispute, the United States remained concerned with the EU's measures affecting the approval and marketing of biotech products. Dozens of biotech applications remained pending in the EU approval system. One of these applications had been pending for well over a decade. The ongoing backlog and delays remained a serious impediment to trade in biotech products. Further, even when the EU did approve a biotech product, the approval may not apply within one or more EU member states. Instead, EU member states had banned such products, and had done so without any apparent scientific justification. Instead of taking steps to address this problem, the EU Commission had proposed an amendment to EU biotech approval regulations that would facilitate the adoption of additional EU member state bans on biotech products approved at the EU–level. The United States was concerned about the relationship of such a proposal to the EU's obligations under the SPS Agreement, and about the negative impacts of this proposal with respect to the movement and use of biotech products throughout the entirety of the EU. The United States urged the EU to ensure that its biotech approval measures were consistent with its obligations under the SPS Agreement. To the extent that the EU considered revisions to its biotech approval regulations, the EU should ensure that any revisions were consistent with its WTO obligations and should notify these revisions to the SPS Committee pursuant to Article 7 of the SPS Agreement.

1.36. The representative of the European Union said that the EU wished to stress that the new proposal was not related to the implementation of the adopted DSB's recommendations and rulings, and therefore it fell outside the DSB's responsibilities under Article 21.6 of the DSU. There was no basis for a discussion in the DSB on the consistency of the proposal with WTO obligations. The EU also noted that the proposal was notified to the TBT Committee in May 2015. Comments were received on that proposal from several WTO Members and the EU was currently reviewing them.

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

E. United States – Anti–dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.40)

1.38. The Chairman drew attention to document WT/DS404/11/Add.40, 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.

1.39. The representative of the United States said that his country had provided a status report in this dispute on 15 October 2015, in accordance with Article 21.6 of the DSU. As the United States had noted at past DSB meetings, in February 2012, the US Department of Commerce had modified its procedures in a manner that addressed certain findings in this dispute. The United States would continue to consult with interested parties as it worked to address the other recommendations and rulings of the DSB.

1.40. The representative of Viet Nam said that her country thanked the United States for its statement and the status report on this dispute. As Members would recall from the previous DSB

[1] NK603 x T25 maize.

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

1.41. The representative of the Bolivarian Republic of Venezuela said that his country fully supported the statement made by Viet Nam and noted the US status report. Venezuela strongly emphasized the importance of prompt and effective compliance with the DSB recommendations. As stated on previous occasions, protracted failure to comply undermined Members' confidence in the rules-based system and set a negative precedent for the credibility of the DSB to resolve disputes. Venezuela urged the United States to take the necessary steps to end to this situation of non-compliance and to report at the next DSB meeting on the measures and actions that it intended to take to resolve this matter.

1.42. The representative of Cuba said that her country supported the statement made by Viet Nam. Cuba, once again, urged the United States to promptly comply in this dispute so that a solution could be found within the reasonable period of time, as indicated by Viet Nam.

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

F. European Communities – Measures prohibiting the importation and marketing of seal products: Status report by the European Union (WT/DS400/16/Add.7 – WT/DS401/17/Add.7)

1.44. The Chairman drew attention to document WT/DS400/16/Add.7 – WT/DS401/17/Add.7, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning the EU measures prohibiting the importation and marketing of seal products.

1.45. The representative of the European Union said that the EU was pleased to inform the DSB that it had taken all measures necessary to comply with the DSB's recommendations and rulings in this dispute before the expiry of the agreed reasonable period of time on 18 October 2015. As stated in its most recent status report of 15 October 2015, the EU had addressed the concerns that had been raised by the Panel and the Appellate Body by modifying its trade in seal products regime. On 6 October 2015, a modification of the Basic Regulation had been adopted and had entered into force on 10 October 2015. The modified conditions were applicable since 18 October 2015. On 13 October 2015, the European Commission had adopted a new implementing regulation, laying down detailed rules for the implementation of the Basic Regulation. This Regulation replaced the old Commission Regulation No. 737/2010 and provided rules for the implementation of the EU seal regime, in particular its exceptions for products derived from hunts conducted by Inuit and other indigenous communities (Inuit exception). This Regulation had entered into force on 16 October 2015 and was also applicable since 16 October 2015. Regulation (EU) 2015/1775 modified the existing Basic Regulation by fully removing the exception for maritime resource management hunts and by amending the Inuit exception in order to address the concerns that had been expressed by the Appellate Body. The modifications relating to the Inuit exception ensured that a meaningful Inuit exception remained, while strengthening coherence with the objective of the regulation by explicitly adding animal welfare considerations as a condition for the use of the exception. In addition, the regulation now provided the European Commission with the possibility to act in cases of circumvention. The Regulation empowered the European Commission to prohibit the placing on the market (or limit the quantity that may be placed on the market) of seal products if the seal hunt was conducted primarily for commercial reasons. In addition, and as reported at the previous DSB meetings, on 30 July 2015, an attestation system for Canadian Inuit was put in place through a Decision by the European Commission. This was the result of very constructive cooperation with Canadian

authorities, and provided the basis for Canadian Inuit to start using the IC exception. With those measures, the EU was of the view that it had brought itself fully into compliance with its WTO obligations in this dispute. In the EU's view, having fully implemented the DSB's rulings and recommendations, this was the last status report in this dispute and consequently there was no need for the DSB to revert to this matter at its next meeting.

1.46. The representative of Canada said that his country thanked the EU for its eighth status report regarding the implementation of the DSB's recommendations and rulings in this dispute. In the course of the 16 months that the EU had been provided to bring itself into compliance, Canada had repeatedly indicated that the measures taken by the EU, once implemented, must result in an Indigenous Communities exemption that provided effective market access for seal products derived from seals harvested by Canadian indigenous communities. As part of the measures taken by the EU, the amendments conditioned the indigenous community exemption on the hunt being conducted in a manner "which has due regard to animal welfare, taking into consideration the traditional way of life of the community and the subsistence purpose of the hunt". Inuit sealers had a long tradition of respect for animal welfare in their hunting practices. This was a fundamental part of their culture. The EU Seal Regime, once implemented, must fully consider and reflect these traditions. Since the conclusion of the agreement between Canada and the EU on a Joint Statement on "Access to the EU of Seal Products from Indigenous Communities of Canada", Canada had actively engaged with the EU to operationalize the indigenous communities' exemption, with the objective of ensuring practical market access for Canadian Aboriginal seal products. Canada was therefore pleased that the Commission had adopted, on 26 October 2015, a decision recognizing the Government of Nunavut as an attestation body under the EU's amended Seal Regime. Canada trusted that, with this certifying mechanism in place, along with the implementation of Article 5a of the new Basic Regulation committing the EU to inform the public to raise awareness of the provisions of the new EU Seal Regime, the Inuit would benefit from a more positive perception by the EU consumers of the Canadian Inuit seal products put on the EU market and, consequently, of an increased trade in such products. Canada wished to reiterate that Canada's seal harvests were humane, sustainable and well–regulated activities that provided an important source of food and income for coastal and Inuit communities.

1.47. The representative of Norway said that his country thanked the EU for its status report in this dispute. Norway recognized the efforts made by the EU to implement the DSB's recommendations and rulings within the agreed time. Norway noted that the EU considered that the adoption of the modifications and measures referred to in the status report ensured the full implementation. Norway noted that none of the modifications made by the EU would have any effect regarding seal products exported from Norway. Furthermore, Norway observed that none of the modifications addressed animal welfare concerns objectively and in a non–discriminatory manner. As mentioned previously, the Norwegian seal hunt was well-regulated, conducted in a humane manner and contributed to the sustainable management of Norway's living marine resources. On that basis, Norway was still assessing the modifications and measures referred to in the status report, including the Inuit exception and the attestation mechanism.

1.48. The DSB took note of the statements.

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

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

1.50. The representative of the United States said that his country had provided a status report in this dispute on 15 October 2015, in accordance with Article 21.6 of the DSU. On 5 October 2015, pursuant to section 129(b)(2) of the Uruguay Round Agreements Act ("URAA"), the US Trade Representative had requested the Department of Commerce to issue a determination in the underlying proceeding that was not inconsistent with the findings of the Panel and the Appellate Body in this dispute. Also, on 5 October 2015, pursuant to Section 129(a)(1) of the URAA, the US Trade Representative requested the International Trade Commission to issue an advisory report on whether US law permitted the Commission to take steps in connection with the underlying proceeding that would render its determination subject to the DSB's recommendations not

inconsistent with the WTO's findings. The United States would continue to consult with interested parties as it worked to address the recommendations and rulings of the DSB.

1.51. The representative of India said that his country thanked the United States for its status report in this dispute submitted in accordance with Article 21.6 of the DSU. This dispute pertained to a number of determinations made by the US Department of Commerce, which had imposed countervailing duties on India's exports of hot rolled carbon steel flat products which had been found to be inconsistent with US obligations under the SCM Agreement. India welcomed the statement made by the United States at the present meeting that the US authorities were conferring with interested parties and working to implement the DSB's recommendations and rulings. India further noted that the USTR had requested the Secretary of Commerce to issue a redetermination that would render the determinations by the Department of Commerce subject to the DSB's recommendations not inconsistent with the WTO's findings. India welcomed the recent initiative by the United States to review the earlier administrative reviews for the product in light of the WTO ruling. India looked forward to the full implementation of the DSB's recommendations and rulings in this dispute by the expiry of the reasonable period of time on 19 March 2016.

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

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

A. Statements by the European Union and Japan

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

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

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

2.4. The representative of India said that his country shared the concerns expressed by the EU and Japan. The WTO-inconsistent disbursements continued unabated to the US domestic industry. As it had stated at the previous DSB meeting, the latest data available[2] for the fiscal year 2014 indicated that about US$70 million were disbursed to the US domestic industry. India was of the view that this item should continue to remain on the DSB's Agenda until such time that full compliance was achieved in this dispute.

2.5. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. Brazil, like other delegations, was of the view that the United States was under an obligation to provide status reports in this dispute. Brazil noted that disbursements continued to be made under the Byrd Amendment. Brazil, a party to this dispute, was of the view that the United States was under obligation to discontinue those disbursements. Although the United States alleged that the Act had been repealed in 2006 and, therefore, that compliance had been achieved, disbursements related to investigations initiated before the repeal of the Act in February 2006 were not discontinued. In Brazil's view, this seemed to reflect a misunderstanding of the principle of non–retroactivity. Since the DSB had confirmed the illegal nature of the disbursements under the Byrd Amendment more than 10 years ago, any disbursements to petitioners must be discontinued. Only then would compliance be achieved in this dispute.

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

2.6. The representative of Canada said that his country thanked the EU and Japan for putting this item on the DSB's Agenda. Canada fully shared their points of view according to which the Byrd Amendment must be under the surveillance of the DSB until the United States were to repeal it.

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

2.8. The representative of the United States said that, as the United States had noted at previous DSB meetings, the Deficit Reduction Act, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000, was enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that the EU, Japan, and other Members had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, over 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's recommendations and rulings, regardless of whether the complaining party disagreed about compliance.

2.9. The DSB took note of the statements.

3 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. Statement by the United States

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

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

3.3. The representative of China said that his country regretted that the United States had, once again, brought this matter before the DSB. China referred to its statements made at previous DSB meetings under this Agenda item and emphasized that it had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute. China hoped that the United States would reconsider the systemic implications of its position. With regard to the regulation referred to by the United States, China reiterated that the regulation was not relevant

to the implementation of the DSB's recommendations and rulings in this dispute. In China's view, the DSB was not the appropriate forum to discuss that regulation.

3.4. The DSB took note of the statements.

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

A. Statement by the Philippines

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

4.2. The representative of the Philippines said that his country remained concerned about a series of outstanding compliance issues that remained despite Thailand's repeated statements that it had done all it was required to do to secure full compliance with the DSB's recommendations and rulings in this dispute. As at previous DSB meetings, the Philippines wished to highlight two issues, which had systemic impact for the DSB's rulings and the Customs Valuation Agreement. First, the Philippines remained deeply concerned about the Thai Attorney General's decision to prosecute an importer of Philippine cigarettes for alleged under-declaration of customs value. The WTO panel had ruled that Thailand had no legitimate grounds to reject the customs values that Thailand now sought to criminalize. In addition, the Thai Customs Board of Appeals ("BoA") had explicitly accepted those customs values, in a ruling announced by Thailand itself as a measure taken to comply. Thailand's actions with the criminal prosecution directly undermined the implementation obligation placed on it by the DSB's recommendations and rulings. In systemic terms, there could be no doubt that the disciplines of the Customs Valuation Agreement applied whenever a WTO Member engaged in the customs valuation of goods, including in the enforcement of domestic Customs provisions. Despite this evident WTO-inconsistency, Thailand had explained in its statements made at previous DSB meetings that it "will take steps to ensure" the WTO-consistency of the criminal prosecution. While it appreciated the sentiment behind these repeated statements, the Philippines still had not received an explanation about precisely what steps Thailand would take to ensure the WTO-consistency of the criminal prosecution. The Philippines requested Thailand to deliver expeditiously on its assurances. Second, the Philippines was also concerned about a separate Thai BoA ruling rejecting transaction value for 210 entries from Indonesia that were covered by the DSB's rulings and recommendations in the original proceedings in this dispute. Thailand had submitted the BoA ruling as a declared measure taken to comply. However, as the Philippines had previously noted, the ruling was riddled with WTO-inconsistencies, and set out a methodology that perpetuated Thailand's application of WTO-inconsistent conduct with respect to customs valuation of related party transactions. In addition, as it had been explained at previous DSB meetings, the position that Thai Customs had taken in pending domestic judicial proceedings concerning the BoA ruling was disturbing. Thai Customs had explicitly advised the Thai court that they did not need to follow the WTO ruling because it supposedly bound only the Philippines, as the party that had brought the dispute, and did not bind Thailand. The Philippines reiterated its appeal to Thailand to rise to its role as a responsible and important WTO Member and to prove that its commitment to full compliance was real. If this was not possible, the Philippines reserved its right to revert to dispute settlement proceedings.

4.3. The representative of Thailand said that his country noted the Philippines's statement. Thailand believed that it had taken all actions necessary to implement the DSB's recommendations and rulings. Thailand wished to refer to its previous statements made under this Agenda item.

4.4. The DSB took note of the statements.

5 UKRAINE – DEFINITIVE SAFEGUARD MEASURES ON CERTAIN PASSENGER CARS

A. Statement by Ukraine on implementation of the recommendations adopted by the DSB

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

5.2. The representative of Ukraine said that his country wished to inform Members of its implementation of the DSB's rulings and recommendations in the dispute: "Ukraine – Definitive Safeguard Measures on Certain Passenger Cars" (DS468). Ukraine noted that the DSB had adopted the Panel Report in this dispute on 20 July 2015. At that DSB meeting and subsequently in a communication of 17 August 2015 (WT/DS468/9), Ukraine had notified the DSB of its intentions to implement the DSB's recommendations and rulings in this dispute in a manner that respected its WTO obligations. He said that on 10 September 2015, the Interdepartmental Commission on International Trade had taken a decision revoking the safeguard measure on imports of passenger cars which became effective from 30 September 2015. In that regard, as of 30 September 2015, the measure had been terminated. Ukraine, therefore, considered that it had fully implemented the DSB's recommendations and rulings in this dispute.

5.3. The representative of Japan said that his country noted Ukraine's statement and its communication (WT/DS468/10) with regard to its implementation of the DSB's recommendations and rulings in this dispute. Japan would continue to monitor Ukraine's implementation. Japan, however, was disappointed that the parties to this dispute had not yet reached an agreement on neither the reasonable period of time to implement nor a sequencing agreement. Japan would continue to work on reaching such agreement and was ready to consult bilaterally with Ukraine, if necessary. Japan requested that Ukraine act in good faith so as to preserve legal stability under the DSU.

5.4. The DSB took note of the statements.

6 INDONESIA – SAFEGUARD ON CERTAIN IRON OR STEEL PRODUCTS

A. Request for the establishment of a panel by Viet Nam (WT/DS496/3)

6.1. The Chairman recalled that the DSB had considered this matter at its meeting on 28 September 2015 and had agreed to revert to it. He drew attention to the communication from Viet Nam contained in document WT/DS496/3, and invited the representative of Viet Nam to speak.

6.2. The representative of Viet Nam noted that Viet Nam's request for the establishment of a panel in this dispute was before the DSB for the second time. Viet Nam had presented its panel request, for the first time, at the DSB meeting held on 28 September 2015. Viet Nam continued to have serious concerns regarding Indonesia's imposition of a safeguard measure on imports of certain flat-rolled products of iron or non–alloy steel pursuant to a positive finding by Indonesia's investigating authority of threat of serious injury caused by increased imports. The safeguard measure consisted of a specific duty to be applied from 22 July 2014 and subsequently reduced, in accordance with the prescribed time-table. Members had been notified of this measure on 28 July 2014. As it had explained at the previous DSB meeting, prior to the imposition of the safeguard measure, Viet Nam had had a considerable share of the Indonesian market for flat-rolled iron or non–alloy steel products. The imposition of the safeguard measure was significantly affecting Viet Nam's industry. In Viet Nam's view, the safeguard measure was inconsistent with a number of provisions of the GATT 1994 and the Safeguards Agreement. First, Indonesia had failed to provide a reasoned and adequate explanation of the existence of unforeseen developments and of the effect of the GATT 1994 obligations in order to proceed with the imposition of the safeguard at issue. Second, Indonesia had failed to substantiate adequately its finding of serious injury (or threat thereof) caused by increased imports. Third, it had failed to provide a reasoned and adequate explanation of its determination of the causal link between the alleged serious injury (or threat thereof) and increased imports. Fourth, Indonesia had applied a safeguard measure on the basis of a product scope that was different from that on which it had conducted the analysis of imports increase. Furthermore, Indonesia had failed to notify all interested parties of its actions properly and had failed to provide an opportunity to hold consultations prior to the imposition of the safeguard measure. As Viet Nam's efforts to resolve this matter amicably with Indonesia had been futile, Viet Nam reiterated its request to establish a panel with standard terms of reference to address Viet Nam's claims set out in its request for the establishment of a panel. Viet Nam also requested that this matter be examined by the same panel that would examine Chinese Taipei's complaint with regard to the same measure in the DS490 dispute.

6.3. The representative of Indonesia said that her country wished to reiterate that Indonesia and Viet Nam had conducted consultations in this dispute on 28 July 2015 in Bali (Indonesia). Indonesia believed that it had given a clear explanation concerning the legal and factual aspects of the safeguard measure imposed by Indonesia on imports of certain flat–rolled of iron or non–alloy steel products during the consultation in order to resolve any misunderstanding regarding the safeguard measure. Indonesia had also responded to Viet Nam's outstanding questions after the consultation in writing. Despite all efforts by Indonesia to clarify that the safeguard measure was consistent not only with the Safeguard Agreement but also with its domestic safeguard regulation, Indonesia was disappointed that Viet Nam was requesting the establishment of a panel for the second time.

6.4. The representative of Chinese Taipei said that regarding the single panel, as his delegation had stated at the 28 September 2015 meeting, since this dispute related to the same matter as the DS490 dispute, his delegation wished to join Viet Nam's request, pursuant to Article 9.1 of the DSU, that a single panel be established to examine both complaints pertaining to the DS490 and the DS496 disputes.

6.5. The representative of the United States said that his country sought clarification with regard to the reference to Article 9.1 of the DSU. The United States would not consider a decision to establish a single panel under Article 9.1 of the DSU to be appropriate in these circumstances because a panel in the dispute brought by Chinese Taipei had already been established at the previous DSB meeting. In this situation, the United States considered that the parties could seek harmonization pursuant to Article 9.3 of the DSU. The United States therefore sought clarification on what the parties intended.

6.6. The Chairman said that it was his intention to propose that the DSB agree that the request by Viet Nam for the establishment of a panel with standard terms of reference is accepted, and that as provided for in Article 9.1 of the DSU in respect of multiple complainants, the Panel established at the 28 September 2015 DSB meeting to examine the complaint by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu contained in WT/DS490/2 would also examine the complaint by Viet Nam contained in WT/DS496/3.

6.7. The representative of the European Union said that the EU did not wish to comment with regard to the substance. However, following the US statement regarding Article 9 of the DSU, the EU wished to point out that according to the last sentence of Article 9.1 of the DSU "a single Panel should be established to examine such complaints whenever feasible". In the EU's view, there was some latitude in this sentence and since not much had happened under the previously established panel to examine the DS490 dispute, it was feasible to establish a single panel at this point. In that respect, Members should also take into account the current workload and act in a manner that would facilitate the resolution of disputes in an expeditious manner as possible.

6.8. The Chairman said that he wished to add that it was his understanding that the parties to the disputes were in agreement that the single panel be established to examine both complainants.

6.9. The representative of the United States said that his country did not want to stand in the way of the agreement of the parties, but it disagreed that a decision under Article 9.1 of the DSU was appropriate in these circumstances. In regard to the EU's reference to the phrase "whenever feasible" in Article 9.1, the United States would consider that to refer to a situation where no panel had been established. That was not the present situation. What the parties were seeking to do in the present situation was to expand the terms of reference of a panel that had already been established, but that was not establishing a single panel as covered by Article 9.1 of the DSU. The United States considered that another proper approach would be under Article 9.3 of the DSU.

6.10. The Chairman said that it was his understanding that the approach to be followed at the present meeting was consistent with past practice. He then proposed that the DSB agree that the request by Viet Nam for the establishment of a panel with standard terms of reference is accepted, and that as provided for in Article 9.1 of the DSU in respect of multiple complainants, the Panel established at the 28 September 2015 DSB meeting to examine the complaint by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu contained in WT/DS490/2 would also examine the complaint by Viet Nam contained in WT/DS496/3.

6.11. The DSB took note of the statements and agreed to the Chairman's proposal.

6.12. The Chairman further stated that, since a single Panel was established, those delegations who had reserved their third–party rights to participate in the Panel established at the request of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu shall be considered as third parties in the single Panel. He recalled that the following delegations had reserved their third-party rights to participate in the Panel established at the 28 September 2015 DSB meeting: Australia, Chile, China, the European Union, India, Japan, Korea, the Russian Federation, Ukraine, the United States and Viet Nam.

6.13. The representative of Chinese Taipei said that his delegation wished to reserve its third-party rights with regard to the DS496 dispute.

6.14. The DSB took note of the statements

7 INDONESIA – MEASURES CONCERNING THE IMPORTATION OF CHICKEN MEAT AND CHICKEN PRODUCTS

A. Request for the establishment of a panel by Brazil (WT/DS484/8)

7.1. The Chairman drew attention to the communication from Brazil contained in document WT/DS484/8, and invited the representative of Brazil to speak.

7.2. The representative of Brazil said that, since 2009, Brazil had been trying to export chicken meat and chicken products to Indonesia. Over the years, several attempts had been made by Brazil to overcome the barriers imposed by Indonesia against its exports, but it had not been possible to reach a negotiated solution. In Brazil's view, there was no justification for the import ban imposed by Indonesia to Brazilian exports. The Brazilian chicken industry was one of the most technologically advanced in the world and the Brazilian production was internationally recognized for its high-quality and sanitary standards. Brazil was the world's largest exporter of chicken meat and chicken products, exporting to 155 countries, many of which only imported animals slaughtered according to halal prescriptions. In 2014, Brazil had exported 3.6 million tons, of which 1.4 million tons had been of halal chicken. In 2014, as Indonesia had continued to maintain measures prohibiting Brazilian imports, Brazil had decided to resort to the dispute settlement system of the WTO. The consultations, held in December 2014, only confirmed the perception that the various restrictive measures imposed by Indonesia were inconsistent with the WTO rules. In Brazil's assessment, Indonesia imposed a general prohibition on the importation of chicken meat and chicken products through the individual and combined operation of WTO-inconsistent measures, and also applied several specific prohibitions and restrictions, through (i) measures imposing trade restrictions which did not conform to or were based on international standards; (ii) measures which were more trade–restrictive than required to achieve the appropriate level of protection; (iii) undue delay with regard to approval procedures; (iv) discriminatory treatment of imported chicken meat and chicken products over domestic like products; (v) restrictions on the importation of chicken meat and chicken products through its import licensing regime; and (vi) inconsistencies with regard to WTO transparency requirements. These measures seemed to be in violation of the commitments taken by Indonesia before the WTO, especially of the GATT 1994 and of several provisions of the SPS, TBT, and Import Licensing Agreements. In light of the above, Brazil had no other alternative but to request the DSB to establish a panel. Finally, Brazil wished to inform Members that it had requested the Secretariat to circulate a corrigendum to correct a small typographical error in its panel request. Brazil expected that this dispute would bring a solution to the current impediments preventing Brazilian exports from reaching the Indonesian market. Brazil also hoped that it may help pave a new route for both countries to start exploring new business opportunities.

7.3. The representative of Indonesia said that, with regard to Brazil's request for the establishment of a panel to examine this dispute, Indonesia and Brazil had held one round of consultations on 15 and 16 December 2014 in order to address Brazil's concerns in good faith so as to reach an amicable solution. Indonesia believed that responses provided had fully addressed the concerns raised by Brazil. Therefore, in Indonesia's view, it was premature to establish a panel at the present meeting. However, Indonesia was ready to further consult with Brazil on this particular issue. Indonesia noted that the corrigendum to Brazil's panel request had been

circulated after the deadline for inscription of items on the Agenda of the present meeting. Consequently, Indonesia would have to consult with capital on this matter.

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

8 CHINA — MEASURES IMPOSING ANTI–DUMPING DUTIES ON HIGH–PERFORMANCE STAINLESS STEEL SEAMLESS TUBES FROM JAPAN

A. Report of the Appellate Body (WT/DS454/AB/R and Add.1) and Report of the Panel (WT/DS454/R and Add.1 and Corr.1)

9 CHINA — MEASURES IMPOSING ANTI–DUMPING DUTIES ON HIGH–PERFORMANCE STAINLESS STEEL SEAMLESS TUBES FROM THE EUROPEAN UNION

A. Report of the Appellate Body (WT/DS460/AB/R and Add.1) and Report of the Panel (WT/DS460/R and Add.1 and Corr.1)

9.1. The Chairman proposed that items 8 and 9 be taken up together. He drew attention to the communication from the Appellate Body contained in document WT/DS454/11 – WT/DS460/11 transmitting the Appellate Body Report on: "China – Measures Imposing Anti–Dumping Duties on High–Performance Stainless Steel Seamless Tubes from Japan" and the Appellate Body Report on: "China – Measures Imposing Anti–Dumping Duties on High–Performance Stainless Steel Seamless Tubes from the European Union", which had been circulated on 14 October 2015 in documents WT/DS454/AB/R – WT/DS460/AB/R and Add.1. He reminded delegations that the Appellate Body Reports and the Panel Reports pertaining to these disputes 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 Japan said that his country wished to express its appreciation for the time and effort devoted to this dispute by the Panel, the Appellate Body and the respective Secretariats. Japan welcomed the findings and rulings by the Appellate Body and those of the Panel as modified by the Appellate Body that China's anti–dumping measure at issue was in clear breach of its WTO obligations. Japan was pleased to request the DSB to adopt the Reports at the present meeting. In this dispute, Japan had claimed and had argued the inconsistencies of China's anti–dumping measures with the WTO Agreement because the Ministry of Commerce of China ("MOFCOM") had not objectively examined whether products imported from Japan had caused injury to the Chinese domestic industry, and it had not met the transparency requirements and procedural obligations under the WTO Agreement. In particular, Japan had argued that in its injury and causation determination under Article 3 of the Anti-Dumping Agreement, MOFCOM had failed to properly take into account the fact that the HP–SSSTs imported from Japan consisted of higher-end products and were not in competition with the Chinese domestic HP–SSSTs which mainly consisted of lower–end products. Japan found it important that the Appellate Body Report, read in conjunction with the Panel Report, had effectively addressed the issue of competitive relationship between imported and domestic products, and had confirmed that throughout the provisions of Article 3 of the Anti–Dumping Agreement, an investigating authority was required to assess whether or not, and to what extent, imported products and domestic products overlapped with each other in terms of the competitive relationship between the two. Specifically, with respect to price undercutting set forth in Article 3.2, the Appellate Body had found that the proper reading of "price undercutting" suggested that it required a dynamic assessment of the relationship between import and domestic prices, which, in turn, may require an investigating authority to consider, among others, relative market shares of the product types/grades with respect to which price undercutting was found.[3] The Appellate Body had further stated that, while an examination of whether there was a price differential between imported and domestic products may be a useful starting point for an analysis of price undercutting, it did not provide a sufficient basis for an investigating authority to satisfy its obligation under Article 3.2.[4] With regard to the impact analysis, the Appellate Body had properly reiterated its prior finding that Article 3.4 did not merely

[3] Appellate Body Report, paragraphs 5.159-5.161.
[4] Appellate Body Report, paragraph 5.163.

require an examination of the state of the domestic industry, but it contemplated that an investigating authority must derive an understanding of the impact of subject imports on the basis of such examination.[5] In that regard, the Appellate Body had further noted that an investigating authority may be required to take into account, *inter alia*, the relative market shares of product types/grades with respect to which price undercutting was found.[6]

9.3. Concerning the Panel's assessment of MOFCOM's injury and causation determination under Article 3.5 of the Anti-Dumping Agreement, Japan welcomed that the Appellate Body had upheld the Panel's finding concerning MOFOM's flawed cross–grade price effect analysis.[7] In that context, Japan noted that the Appellate Body had made it clear that an analysis of substitutability between higher–and lower–end products as a basis of a cross–grade price effect must involve not only an assessment of physical characteristics and general uses of those products but also an assessment of the market conditions including customers' demand and price differences between higher– and lower–end products.[8] In particular, as the Appellate Body had clarified, MOFCOM should "at the very least" have assessed the existence and the extent of substitutability between higher–end imported products and lower–end domestic products.[9] These findings by the Appellate Body, as well as other findings of the Appellate Body and the Panel, clearly showed that China's anti-dumping measure at issue was flawed at its very fundamental level, and therefore not tenable. Japan urged China to eliminate the anti–dumping measure promptly and completely in accordance with the DSB's recommendations and rulings. In that regard, Japan noted that Articles 21.1 and 21.3 of the DSU provided that "[p]rompt compliance with the recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes" and directed the Members to "comply immediately with the recommendations and rulings" respectively.

9.4. Before concluding, Japan wished to comment on certain procedural issues in the history of this dispute. Article 16.4 of the DSU required the parties to notify their decision to appeal within 60 days after the date of circulation of a panel report to Members. In addition, Rule 27 of the Working Procedures for Appellate Review provided that: "A division shall hold an oral hearing, which shall be held, as a general rule, between 30 and 45 days after the date of the filing of a Notice of Appeal". In this dispute, the Panel Report had been circulated on 13 February 2015. At that time, three appeals in the DS384/DS386, DS429 and DS430 disputes[10] were pending before the Appellate Body, and another appeal in the DS457 dispute was expected to commence shortly.[11] Taking into account that workload, Japan and China had agreed to request the DSB to adopt a decision which would effectively extend the 60–day time period in Article 16.4 of the DSU to 20 May 2015.[12] The DSB had adopted the decision on 25 March 2015.[13] When Japan filed its notice of appeal in this dispute on 20 May 2015[14] in accordance with the DSB decision, two appeals had been before the Appellate Body, the DS430 dispute and the DS457 dispute. However, in the DS430 dispute, the Appellate Body was expected to issue its report on 4 June 2015[15], and in the appeal in the DS457 dispute, the oral hearing was scheduled to be held on 26–27 May 2015, and it had shortly been announced that the report would be issued no later than 20 July 2015.[16] In the meantime, a new appeal was initiated in the DS381 dispute on 5 June 2015.[17] In that appeal, the written procedures had been completed with the filing of third participant submissions on 10 June 2015. Then, on 11 June 2015, the Division hearing this appeal had announced that the oral hearing would take place on 30 and 31 July 2015, i.e. on days 71 and 72 of these appellate proceedings. In its letter of 15 June 2015 to the Division, Japan had expressed its concerns regarding the substantial delays in the proceedings, including the late scheduling of the oral hearing, and had requested that the Appellate Body provide the reasons for the delay "including the reason for its decision to hold the oral hearing on 71 and 72 days after the initiation of this

[5] Appellate Body Report, paragraph 5.211.
[6] Appellate Body Report, paragraphs 5.211-5.212
[7] Appellate Body Report, paragraph 5.277.
[8] Appellate Body Report, paragraphs 5.262-5.263.
[9] Appellate Body Report, paragraph 5.263.
[10] Appellate Body Report, paragraph 5.263.
[11] "Peru-Additional Duty of Certain Agricultural Products" (AB-2015-3/DS457) which was appealed on 25 March 2015.
[12] WT/DS454/6.
[13] WT/DSB/M/359, page 15.
[14] WT/DS454/7.
[15] WT/DS430/9.
[16] WT/DS457/9.
[17] WT/DS381/24.

appeal". In its communication of 19 July 2015 to the DSB Chair, the Appellate Body had explained the reasons for the delay as follows: "The Appellate Body faces a substantial workload this year, with several appellate proceedings in parallel, often with overlap in the composition of the divisions hearing the different appeals. Due to the number and complexity of the issues raised on appeal in the DS454 and DS460 and parallel proceedings, and scheduling issues arising from the circumstances referred to above as well as the shortage of staff in the Appellate Body Secretariat, the Appellate Body will not be able to circulate its Report by the end of the 60–day period, or within the 90–day timeframe provided for in the last sentence of Article 17.5 of the DSU".

9.5. Japan agreed that "[t]he Appellate Body faces a substantial workload this year", and that the timing of the proceedings in this appeal and other concurrent appeals in the DS457 and DS381 disputes were staggered but overlapping to a certain extent. Japan also noted that one member of the Division hearing this appeal had also served on the division hearing the preceding appeal in DS457, although the other two members of the division hearing this appeal had no such overlap. Under those circumstances, certain scheduling issues might have arisen, for sure. It was still not clear to Japan, however, why the oral hearing in this appeal had to be held on 71 and 72 days from the initiation of this appeal, which was beyond the 60–day period in Article 17.5 of the DSU. Japan thought so particularly because where the preceding parallel appeal in the DS457 dispute had been well advanced already, and the Appellate Body report had been expected to be circulated on 20 July 2015[18], and for the subsequent parallel appeal in the DS381 dispute the proceeding had been further delayed, in which the oral hearing had initially been scheduled on 7-8 September 2015 but eventually moved to 21–22 September 2015.[19] It should be recalled that Rule 27 of the Working Procedures for Appellate Review stated that holding the oral hearing between 30 and 45 days was a "general rule". The introductory clause of Rule 16(2) in turn suggested that a time–period in the Working Procedures, including this "general rule", could be deviated only in "exceptional circumstances" that would involve due process concerns. Japan was not sure if such "exceptional circumstances" were present in this case. While recognizing that the circumstances the Appellate Body was currently facing may give rise to certain scheduling issues, Japan also noted that, pursuant to Article 17.3 of the DSU, "All persons serving on the Appellate Body shall be available and on short notice". Given the language in the relevant provisions of the DSU and the Working Procedures for Appellate Review, Japan respectfully requested the Appellate Body to provide, in future appeals in which it found it necessary to depart from "strict adherence to a time–period set out in Rules" under the Working Procedures for Appellate Review as well as the DSU, more information as to the "exceptional circumstances" that would warrant such departure. Japan appreciated that in paragraphs 1.27 to 1.30 the Appellate Body Report had described the procedural history of this appeal. In the interest of transparency, Japan believed that this was good practice, and encouraged the Appellate Body to continue such a practice in future appeals.

9.6. The representative of the European Union said that the EU thanked the Appellate Body, the Panel, and their respective Secretariats for the work in this dispute. The EU welcomed the findings of the Panel and the Appellate Body, according to which China's anti–dumping measure on certain high-performance stainless steel seamless tubes ("HP–SSST") from the EU was inconsistent with the Anti–Dumping Agreement and Article VI of the GATT 1994. The EU expected that China would now comply swiftly by repealing the anti–dumping measure. The EU had to depart company with Japan on the procedural aspects of its statement. The EU was fully confident that the Appellate Body had done everything it could to organize the hearing and deliver the Report as quickly as possible without compromising on quality. The EU commended the Appellate Body for its efforts.

9.7. The representative of China said that his country thanked the members of the Appellate Body, the Panels and the respective Secretariats for their time, efforts and assistance dedicated to resolving these disputes. China also thanked third parties for their participation. China regretted that the Appellate Body had reversed several of the Panels' injury findings, and had found that the anti–dumping measures at issue were inconsistent with the Anti–Dumping Agreement. China also regretted that the Appellate Body had thought it appropriate to complete the legal analysis under several claims. While China did not consider that there were sufficient undisputed facts or factual findings by the Panels for it to do so, it had noticed that some of the interpretations of provisions of the Anti–Dumping Agreement had further clarified to the WTO Membership how investigating authorities were to interpret certain key provisions of the Anti-Dumping Agreement, in particular

[18] WT/DS457/9.
[19] WT/DS381/24.

regarding Article 3. China, as usual, respected the conclusions of the Panels and the Appellate Body, and would make a genuine effort to work towards implementing those findings in a WTO–consistent manner.

9.8. The representative of the United States said that his country had participated as a third-party in this dispute and would like to offer an observation on the Reports. As described in its submissions in this dispute, the United States had concerns regarding the Panel's reasoning with respect to the treatment in a WTO dispute of confidential information submitted in domestic trade remedy proceedings. In particular, the United States was concerned that certain statements in the Panel Report might have been interpreted to suggest that Members were required to disclose confidential information submitted to investigating authorities, without the prior authorization of the submitting entity. The proper functioning of trade remedy proceedings, however, required that interested parties in those proceedings had confidence that any confidential information they submitted would not be disclosed without their consent. Therefore, the United States welcomed the Appellate Body's finding that the Panel had "conflated" Members' confidentiality obligations under Article 6.5 of the Anti-Dumping Agreement, which governed the treatment of confidential information in domestic anti–dumping proceedings, and the confidentiality provision in Article 17.7 of the Anti-Dumping Agreement, which related to the treatment of confidential information submitted in WTO dispute settlement proceedings.[20] For that reason, the Appellate Body had declared the Panel's findings on these issues moot and of no legal effect. This finding promoted the interest of all Members in preserving the established rules for the protection of confidential information submitted in trade remedy proceedings.

9.9. The United States thanked Japan for drawing to the DSB's attention certain procedural issues that had arisen in the scheduling of this dispute. As Japan had mentioned, these were also described by the Appellate Body in its Reports, at paragraphs 1.27 to 1.30, which helped Members develop a better understanding of the circumstances surrounding circulation of the Reports. In light of the many issues appealed by the parties, and their apparent acceptance of the delay in issuance of the Reports, the United States had no comments at the present meeting on the 90-day deadline Members had much discussed in the DSB. The United States would note, though, that Members could benefit from understanding better two aspects of the Appellate Body's explanation for the delay in issuing the Reports. In addition to the complexity of the appeal, the Appellate Body had cited to a "shortage of staff in the Appellate Body Secretariat".[21] As Japan noted, three appeals were being considered at any one time during the course of this appeal. The United States understood from the Secretariat's budget proposal that the number of staff posts had been increased in 2014 from 15 to 18. Thus, Members would benefit from more information on the "shortage of staff" cited. Perhaps the Director–General's presentation later that day could shed additional light on this issue. Second, the Reports indicated that the date of circulation of these Reports had been affected "due to a pending request for a change in the working schedule in the parallel appellate proceedings in DS381".[22] The implication was that the delay in the dates in another appeal had also delayed the circulation of the Reports in this appeal. The United States noted that there was no overlap in the composition of the Appellate Body Divisions hearing this appeal and the appeal in DS381. Members, therefore, would also benefit from more information on how the schedule in one appeal could affect the schedule in another appeal involving different parties and being heard by different Appellate Body members. As WTO Members considered resource and workload issues together with the WTO Secretariat, the United States thought that greater transparency would lead to a better understanding of the challenges facing the system and could help Members to identify the most appropriate solutions.

9.10. The representative of Brazil said that his country wished to refer to one issue concerning the 90-day period for circulation of Appellate Body reports. This issue had already been discussed at the DSB and in other fora. As Members were aware the 90-day period was proposed in the early 1990s when the DSU drafters did not know future developments regarding the complexity and the increased numbers of disputes after 1995. In Brazil's view, it was important that Members were informed about what was happening and what problems panels and the Appellate Body were facing. However, Members should try not to micro-manage the work of panels or the Appellate Body.

[20] Appellate Body Report, paragraph 5.316.
[21] Appellate Body Report, paragraph 1.29.
[22] Appellate Body Report, paragraphs 1.29-1.30.

9.11. The representative of India said that his country did not intend to intervene but the comments from Japan and the United States with respect to the procedure warranted so. India noted that this issue had been discussed in previous DSB meetings, in particular in the context of the 90-day period. Members were all aware of the serious workload issues that were confronting both the panels and the Appellate Body. India would agree with Brazil that micro-managing the Secretariat or the Appellate Body's functioning in terms of the time-frames may not serve as well in the larger interests of the system. India wished to reiterate that Members needed to have a more pragmatic and balanced approach in finding a solution to these problems. The Appellate Body circulated and communicated with the parties to a dispute on the reasons for the delay. In India's view, that had to be taken in the right spirit and Members had to engage further on how to solve the problems other than going into micro-details on why certain things happened.

9.12. The representative of Korea said that his country did not necessarily believe that the request for more information about the delays from the Secretariat or the Appellate Body was synonymous with micro-managing. Korea, therefore, would agree with the United States that more information shared with Members on the situation would most likely lead to more practical solutions.

9.13. The DSB took note of the statements and adopted the Appellate Body Report contained in WT/DS454/AB/R and Add.1 and the Panel Report contained in WT/DS454/R and Add.1 and Corr.1, as modified by the Appellate Body Report; and

9.14. The DSB adopted the Appellate Body Report contained in WT/DS460/AB/R and the Panel Report contained in WT/DS460/R and Add.1 and Corr.1, as modified by the Appellate Body Report.

10 ADOPTION OF THE 2015 DRAFT ANNUAL REPORT OF THE DSB

10.1. The Chairman said that, under this Agenda item, he was submitting for adoption the draft text of the 2015 Annual Report of the DSB contained in document WT/DSB/W/554 pursuant to the Procedures for an Annual Overview of WTO Activities and for Reporting under the WTO, contained in document WT/L/105. The Report covered the work of the DSB since the previous Annual Report contained in document WT/DSB/64. In other words, this Report covered meetings of the DSB from 17 December 2014 through 28 September 2015. He noted that the Report contained a factual summary of DSB meetings during the period under review. As in the past, following the adoption of the Annual Report at the present meeting, the Secretariat would update the Report under its own responsibility in order to include actions taken by the DSB at the present meeting. The updated Annual Report would be submitted for consideration by the General Council at its meeting scheduled for 30 November and 1 December 2015. He then proposed that the DSB adopt the draft Annual Report of the DSB contained in document WT/DSB/W/554 on the understanding that it would be further updated by the Secretariat.

10.2. The DSB took note of the statement and adopted the draft Annual Report of the DSB contained in WT/DSB/W/554 on the understanding that it would be further updated by the Secretariat.[23]

11 STATEMENT BY THE DIRECTOR–GENERAL REGARDING DISPUTE SETTLEMENT ACTIVITIES

11.1. The Chairman said that, as he had announced at the previous DSB meeting, he wished to invite the Director–General to make a statement regarding dispute settlement activities. He invited the Director–General to speak.

11.2. The Director–General made the following statement:

"Thank you, Mr Chairman. Good afternoon everyone. I am pleased to have the opportunity to address the DSB once again. I spoke to you here just over a year ago, about the challenges facing the WTO dispute settlement system and what we were doing to address them. There is no question that we have made some progress during the past year. But, as you well know, things are still very challenging. Many delegations referred to the current challenges we face at the

[23] The Annual Report was subsequently circulated in document WT/DSB/67.

August DSB meeting, and some of you have spoken to me about your concerns as well. And of course I fully understand all those concerns. Our dispute settlement system is highly efficient – and remains faster than other international adjudicatory systems the world over. Nevertheless, we can do better. So I want to talk to you today about the challenges before us, and what we can do to meet them.

ACHIEVEMENTS ON HR SIDE SINCE LAST YEAR: Let me first explain what has been done since I spoke to you last September. We continue to work under the zero nominal growth principle and caps on personnel expenditure and headcount. I have continued to reallocate existing resources to the legal divisions, but always observing these constraints that you have set. Specifically, I promised to temporarily assign two to three staff members from non–dispute settlement divisions to pending and upcoming disputes as lead lawyers. This was done. I also mentioned that I had allocated 15 additional lawyer posts to the three dispute settlement divisions – and that vacancies for these posts would be announced soon after my statement. Several recruitments followed. But I have to tell you that it has not been easy to find the senior talent which is what we need most. As you know, this is a specialized area of practice. People with the knowledge and experience required to lead teams supporting WTO dispute settlement panels are hard to find. We have also lost out on occasion because we are not always competitive. Some attractive CVs were received but our offers were turned down because candidates preferred jobs elsewhere. Despite these setbacks, I have continued to shore up the resources dedicated to dispute settlement by reallocating several posts from other divisions. As I mentioned at the CBFA meeting on 23 October, a total of 19 lawyer posts ranging from Grade 7 through Grade 10 have been allocated as follows: five to the Appellate Body Secretariat; seven to the Rules Division, and seven to the Legal Affairs Division. In addition, eight posts for paralegals, secretaries and an editor were put in place in the three divisions. Overall the number of professional posts in the three legal divisions has almost doubled since I took office in September 2013 – from 30 to 57 in terms of allocated posts. We have also restructured our Languages, Documentation and Information Management Division in order to be able to cope with the extra burden on translation services. We have found it more appropriate to keep this specialized type of work in–house. As demand continues to increase, we will need to look at recruitment in this area to build up required expertise over time.

MOVING FORWARD: Looking ahead, I will continue doing all I can to direct available resources to the dispute settlement divisions. As I mentioned last year, my intention is to create overcapacity in the dispute settlement area. Should dispute settlement activity wane in a year or two then we will put these talents to work elsewhere in the Secretariat – and bring them back if the workload in dispute settlement so requires. However, it seems extremely unlikely that the high volume of casework is just a temporary surge. 2015 has turned out to be the busiest period on record with 30 active panels per month, on average. Currently, there are 19 panels or arbitrations in the system – 12 in trade remedies, and seven in all other areas, as well as three appeals, and two arbitrations. In addition there are 11 panels in composition. And since I spoke to the DSB last September we have received 17 new requests for consultations. Of those 17 new requests, 11 have been in the Rules area, and six in Legal Affairs. The vast majority of disputes in recent times have thus been in the trade remedies area. They also include two of the largest disputes ever brought before the system (the Aircraft disputes). Two robust Rules Division teams have been dedicated to those disputes for over three years now, putting a strain on Rules Division resources. And we know from experience that the Appellate Body will have difficulty coping with these large disputes, should they reach that level, together with other appeals that will be on the docket at the time. In assisting panels, we are currently organised so that Rules Division staff are supposed to handle all disputes dealing with trade remedies – specifically: anti–dumping, subsidies, and safeguards. Meanwhile, Legal Affairs Division staff handle disputes in the other areas. Legal Affairs has pitched in to handle some Rules cases in the sequence they arose when they had available staff with relevant expertise. But this has not been sufficient to deal with the recent surge in Rules cases. We are therefore recruiting and developing expertise in the trade remedies area. We need to ensure that the dispute settlement teams will continue to receive the experienced and specialized assistance they will need, including in the ever–expanding number of trade remedies disputes. Through our recent actions on resource reallocation and recruitment, we are likely to shorten the waiting periods for Rules cases in the current queue by several months. My aim is to have all the cases in the current queue underway by April next year. Whether this will be possible depends on several elements. And we cannot eliminate the possibility of having a new queue of cases between now and then if many new panels are established in the meantime. It seems inevitable that the pressures will continue to mount. It takes time to recruit and train new staff members, and new disputes will continue to be filed. We should acknowledge that reallocation and

recruitment alone will not eliminate the challenges we are currently facing. Indeed, we are at the limit of what reallocation can achieve. As I said at the CBFA, members may want to reflect on how we deal with this issue in the future. You have to carefully consider how much resources you want to make available for dispute settlement. The increased breadth and complexity of disputes over the last 20 years has changed the face of WTO dispute settlement completely. This is set out in more detail in the paper on current dispute settlement (DS) activity prepared by the Secretariat and provided as a room document. We are therefore exploring ways that will allow us to be more flexible in meeting demand as it arises – and your views will be central to this process. One idea is to develop more flexibility in staffing panels at the junior level (Grade 7s). For example, we could create a single pool of junior lawyers dedicated to assist all dispute settlement panels be they trade remedies or otherwise. We could draw the junior members of dispute settlement teams from the general pool, rather than being limited to staff from the responsible legal division which may not have junior staff available at the time. Let me be clear here. This does not mean that we are proposing to merge the Rules and Legal Affairs Divisions, or necessarily to put senior level lawyers in the general pool. Currently we have no such plans. Our senior level lawyers (Grades 9s and 10s) will continue to be assigned to lead dispute teams in their areas of expertise. In other words, those with expertise in trade remedies will lead disputes in trade remedies cases, and others will lead disputes in the other areas. And the reason for this is to preserve efficiency and consistency. We would shift junior resources between Rules and Legal Affairs as demand arises in a particular subject area, while preserving the expertise needed for each dispute. Now, how will this address the problem of insufficient senior level expertise? The answer is that it won't, right away. But it will allow us over time to build up expertise at the mid–level, which we currently do not have. The idea is to enhance the capacity of senior lawyers. Today, each senior lawyer handles just one case at a time, often doing most of the drafting, besides reviewing and revising the work of junior lawyers. Our goal is to get more junior lawyers doing most of the drafting. If we succeed with better support and assistance, 10 senior lawyers may be able to handle up to 20 cases in future, rather than only 10, as is the situation today. For this to happen, of course, we need adequate resources at all levels – junior and senior. And as I said, we are continuing to work on building up those levels. So this is one idea that might complement the actions I have taken through resource reallocation. We can continue to think about other ideas and I would welcome your thoughts as well. I have asked DDG Brauner to engage with delegations to gather views from you on improving the functioning of the system further, bearing in mind the budgetary constraints and headcount limitation imposed by members. I also encourage you to continue to actively participate in the DSU review process. This is one of the avenues available to members to make contributions in improving the efficiency and effectiveness of the dispute settlement system.

NON–DISCRIMINATION AND TRANSPARENCY: Finally, I want to say something about non-discrimination and transparency. I have said it before but let me say it again: there has not been and there will not be any favouritism. Once panels are composed, they are staffed by either the Rules or Legal Affairs Division experts depending on the subject matter and move forward by date of composition. If staff are unavailable, panels are set down in a queue be it a trade remedies or non–trade remedies queue, again by date of composition. And they are staffed as soon as staff members with the right level of seniority and experience in the relevant Division become available. No one is permitted to jump the relevant queue. There are no exceptions. Turning to transparency, many of you have pointed to a need for more transparency on the status of the queue and on approximate "wait times" for panels to get underway. I appreciate that you need to be able to plan for upcoming panel work as well as to prepare your domestic constituencies appropriately. It is often difficult for the Secretariat to predict when individual disputes will proceed from consultations to the DSB to a request that a panel should be established or how much time it will take for panel composition. Workload planning is also complicated at the appellate stage. It is difficult to predict exactly when panel reports will be ready for circulation to members, whether they will be appealed and when the reports will be appealed. I have been thinking what we can do to shed more light on the queue and expected delays despite the existing constraints. I have also discussed this with Ambassador Neple. And so we will do the following: The Secretariat will post on the WTO website two lists of panels, one with trade remedies and the other with non–trade remedies disputes that have been composed and set down in a queue by date of composition. Currently, there is only one queue – for trade remedies cases. But this can change depending on future panels composed and we may have times where there are two queues. We will also post a list of panels that have been established but have not yet been composed and we will post relevant information about appeals as well. To be clear, this information is already available on the website. But we are going to present it in a more organized, user–friendly manner. In addition, Ambassador Neple, and his successors as DSB chair, will announce at the DSB meeting each month the number of disputes at

panel composition stage and the ability of the Secretariat to meet expected demand over the coming period. Similar information will be provided about the Appellate Body's workload. This information should enable you to plan your dispute settlement activities better, and to brief your domestic constituencies more accurately.

CONCLUSION: In conclusion, I think that, despite our current challenges, we should not forget what we have in the WTO's dispute settlement system. It is unquestionably one of if not *the* most active international adjudicatory systems in the world. And it still operates faster than any other. So clearly we need to work together to maintain and improve the system, and to keep it running well. I have limited my remarks today to what I can do to address the current challenges we face in dispute settlement. I intentionally avoided focusing on what you can do to improve the system. But of course, what I can do is only part of the picture. As you will see in the dispute settlement activity annexed to my statement, we are in a new world of disputes. You can do much more than I can to make the system work more expeditiously and more efficiently. I appreciate the thoughts that you have already shared on this issue, and I am keen to hear your ideas. As I mentioned, DDG Brauner will engage with you to gather your views and ideas. I also encourage you to provide comments on the paper recently distributed by the Appellate Body about limits on the length of submissions. They have set up a dedicated section of the WTO Members' website for this purpose. Ambassador Neple is also available to consult with you to find solutions. But before we open the floor, I have one final thing to say. I cannot close this presentation without saluting the lawyers and non–lawyers alike, across this house, who work so hard to make the dispute settlement such a source of pride for the whole organisation. I want to thank them for their commitment. That concludes my statement. Thank you for listening."

11.3. The Chairman thanked the Director-General for his presentation made in response to some of the concerns raised at the previous DSB meeting. He then opened the floor to delegations wishing to make statements on this matter.

11.4. The representative of Canada said that his country thanked the Director-General for his presentation to the DSB and for his update and prognosis. Canada also thanked the Director-General for his commitment to do what he could to increase the capacity of the dispute settlement system to deal with what he had described as a structural change, not just a cyclical change in demand. Canada was among those Members that had disputes that were stuck in the queue and were pending the availability of resources in the Secretariat. In that regard, Canada shared many of the concerns that had been raised in previous meetings and to which the Director-General was responding at the present meeting. If left unchecked, the increasingly lengthy delays did risk undermining the credibility of the system that the Director-General had rightly described as admirably successful to date. This concern about the workload was certainly not new. He said that it had preoccupied the DSB during his tenure as DSB Chair a few years ago, as well as prior to that. But what was coming to clearer focus, and as highlighted in the circulated annex, was just how long the delays were becoming. As the Director-General had admitted, improvements and capacity of the system would all depend on how the resource allocation steps kicked in. Despite that caveat, Canada welcomed the steps the Director-General had described and had announced at the present meeting. Indeed, a significant part of the solution was long term. It required investment in personnel, covering not only legal staff, but translation services or its outsourcing equivalent. Canada took great reassurance from the Director-General's presentation at the present meeting that the Director-General, Deputy Director-General Brauner, and their colleagues in the Secretariat were doing all that was within their power and responsibility, admittedly within the budget constraints that Members imposed on them, to address these issues in the spirit of transparency. Canada agreed that with the Director-General's closing remarks that it was not just by increasing resources to the Secretariat and adjudicators that Members would solve the structural problems. A good deal of the responsibility rested with Members to alleviate the pressure on the system. Members had the responsibility to be more mature as litigants, to develop new practices that could be designed to help them limit inputs or improve procedural steps that reduced the burden that Members themselves created.

11.5. With all of the warnings Members had received over the past few years about this growing issue, Canada regretted that there had been a collective failure among the Membership, whether in the DSB or in the DSB in Special Session, to pursue even the most modest of practical reforms. Members had been considering the issues of workload and delays for so long that they did have a lot of ideas on the table that were well developed to address some of these issues. It was up to Members to act collectively to implement Member-driven, demand-side solutions. Members needed

to take their responsibility as a Membership and should be working together to find sustainable solutions that preserved the credibility and the legitimacy of the dispute settlement system. The Director-General had mentioned the DSB in Special Session; the special responsibility that Deputy Director-General Brauner carried, inheriting and building upon the work of his predecessor, Deputy Director-General Alejandro Jara; and looking at practical reforms that did not require formal amendment of the DSU that could streamline the system and shorten delays. Certainly among the most major users of the system, there had been extensive conversations for some time about these kinds of practical reforms. What was required was the political will to adopt and implement those practical steps. Canada was ready to continue to engage with other delegations in such a collective effort. It was only by accompanying the Secretariat's efforts that Members would find sustainable and permanent solutions to the full range of factors that contributed to the ongoing challenges referred to. Canada noted that the Director-General had, in his remarks, been polite and refrained from talking about the responsibility of the Membership. Canada thought it incumbent upon itself to admit, and say on the Director-General's behalf, that it was Members responsibility to accompany the Director-General's efforts with their own.

11.6. The representative of China said that his country thanked the Director-General and the Secretariat for the importance attached to, and the commitments made, in finding solutions to address the delays in the dispute settlement process. China appreciated the efforts made, and supported the new efforts and new ideas in addressing this issue. China was pleased to hear that the queue would be put to an end by April 2016. In spite of the huge efforts invested in a number of recent disputes, the panel proceedings were significantly delayed, including the DS488 dispute and many others. Members had been informed that such delays were expected to continue indefinitely because the Secretariat could not estimate when its resources would be available for each case. China was concerned that there was an unfavourable and growing trend in the WTO dispute settlement practices that in more and more cases, the deadlines stipulated in the DSU were not respected. China did not think that this was the right way forward. Furthermore, the delays did not serve the purpose of the WTO dispute settlement mechanism. The dispute settlement mechanism was a central element in providing security and predictability to the multilateral trading system. The effective and efficient operation of the system was vital in preserving the international trade environment. The increased use of the dispute settlement mechanism underscored Members' confidence in the system. The effectiveness and the legitimacy of the dispute settlement mechanism depended on its ability to promptly settle disputes, as explicitly referred to in Article 3.3 of the DSU and embedded throughout the DSU in the form of strict deadlines for each stage of the legal proceedings. Therefore, if no prompt solution were to be found to alleviate the significantly late proceedings, this unprecedented situation would seriously undermine the functioning of the dispute settlement mechanism. Moreover, long delays may create perverse incentives for adopting and maintaining WTO-inconsistent measures. If the current delays continued, such lack of prompt adjudication meant convenience for the WTO-inconsistent measures, which would in turn lead to more disputes in the WTO, more workload for the adjudicators and more delays in the dispute process, which would be detrimental to the dispute settlement mechanism. China believed that no Member would wish to see this happen. For those reasons, China stood ready to engage actively in efforts to address this issue seriously.

11.7. In that regard, China wished to share some thoughts. First, more information should be provided to Members that could help them better understand how and why workload problems affected these disputes. Second, China supported the Director-General's efforts in allocating more resources to the dispute settlement divisions and recruiting more dispute settlement lawyers. In that regard, China was aware that the allocation of 24 staff to the dispute settlement divisions and recruiting more dispute settlement lawyers was a positive step. However, given the serious situation even with additional lawyers, China still did not know if that was enough to improve the situation soon. China was looking forward to the ideas and suggestions of other Members. Third, the present meeting was a good start, but should not be once-and-for-all. A proper mechanism probably led by the Director-General should be established to review the status of delays regularly and to identify problems and the type of efforts Members could make until the dispute settlement process returned to its normal track. In other words: "justice delayed is justice denied". Given the current situation, China hoped that the Director-General would take this issue as one of his priorities. China noted that the Director-General may have many other priorities given that the WTO was at a critical juncture. China reiterated its strong commitment to support the Director-General, the DSB Chair and the Secretariat. China would constructively engage in further discussions with a view to a prompt and effective solution.

11.8. The representative of Japan said that his country thanked the Director-General for his presentation. Japan recalled that, several years ago, Ambassador of Canada, Jonathan Fried, the then-Chair of the DSB, had warned Members about the challenging situation. Since then, some measures had been taken and Japan highly appreciated the leadership of the Director-General. However, many challenges still remained. Unlike the WTO's negotiating arm, the WTO's dispute settlement system had been a success. In order to further strengthen the effective and efficient functioning of the system, Members needed new ideas, and the Director-General's ideas were appreciated. At the same time, as Japan had stated about a year ago, and taking into account the budgetary constraints, Members needed to look not only at the activities in the working method of the dispute-related activities, but also the full range of WTO activities. Japan was prepared to engage in Members' collective efforts in this regard.

11.9. The representative of Korea said that his country thanked the Director-General for his presentation and his willingness to tackle the problem of increasing delays in the dispute settlement system. Korea also appreciated the Secretariat who was supporting the Director-General in his endeavours. Korea renewed its commitment to work with the Secretariat and other Members to find practical solutions to this enduring problem. This was an issue that had persisted for too long. At the same time, Korea considered that Members had entered a whole new phase. The delays Members were currently facing were qualitatively different from what had been seen before. They raised questions not just about the efficiency of the dispute settlement system, but its effectiveness. Korea welcomed the proposals put forward at the present meeting by the Director-General, which were very positive steps in the right direction. Korea would study them more closely and hoped to contribute to the discussions in the immediate future. If necessary, Korea would consider asking that this matter be included on the Agenda of the next DSB meeting in order to provide more considered reactions to the Director-General's important statement. Furthermore, as had been proposed by the Director-General, Korea would work with the Membership, including the frequent dispute settlement system users, to identify areas where Members could alleviate the Secretariat's workload. Numerous ideas had been tabled over the years, and this was the time to mobilize Members into action. At the same time, Korea was mindful that the Membership was not a unitary entity. Different dynamics were at play, not least because Members were involved in actual disputes. Considerations arising from their status as complainants or respondents would find their way into those discussions, as the stakes in a dispute could range from merely high to literally astronomical. It was understandable that Members were tempted to approach discussions through the lens of the disputes to which they were parties. It was also predictable that the complex discussions needed to ultimately provide systemic and long-term solutions would likely take a long time. This was time that Members did not have if they were to provide relief or at least a "day in court" in the many disputes that were currently in the pipeline. Therefore, Members needed to also search for solutions that could be delivered more immediately. That was why Members turned to the Director-General's leadership. In that regard, Korea welcomed the Director-General's plan to further allocate resources to dispute settlement. Korea also thanked the Director-General for agreeing to publish the status of the queue on a regular basis. Korea continued to believe that more information shared with Members would lead to more practical solutions. Korea expressed its appreciation to the Director-General for those significant developments and hoped that the Director-General would also continue to work on other possibilities. Through discussions with the Secretariat and Members, Korea had identified one area that had the potential to reduce the backlog even further. As the Director-General had mentioned at the present meeting, it involved addressing the startling difference in the workload of the two divisions in the Secretariat that handled dispute settlement. The sensible response and one with the greatest consequence would be to aggregate the resources of the two divisions. Korea would leave to the Secretariat to decide the mechanics of doing so, without disrupting the legitimate expectations and status of the disputes already in the pipeline. The Director-General had outlined some encouraging steps to this effect, which Korea would study more carefully. Korea's sense was that the sense of urgency about tackling the problem of delays was widely shared among Members. Korea, once again, thanked the Director-General for his continued leadership. Korea would do everything possible on its part to help solve this problem, and reaffirmed its commitment to work within the community to find practical solutions.

11.10. The representative of Singapore said that his country thanked the Director-General for his presentation. The dispute settlement system was undoubtedly "the jewel in the crown" for the WTO. Members would be remiss if they failed to address the serious challenges which the system was currently facing. The rules-based multilateral trading system could not function without an effective and well-functioning dispute settlement mechanism, which should ensure the prompt

resolution of trade disputes. Long delays in the settlement of disputes by panels and the Appellate Body would impact negatively on the credibility of the system. On the other hand, Members could not afford to rush the process as disputes were often complex and time was needed to produce high-quality reports. This meant that Members needed to think creatively to find ways to deliver on both quality and timeliness in meeting the prescribed deadlines set out in the DSU text. Singapore commended the Secretariat for its hard work and commitment to the dispute settlement system, given the challenges posed by the workload. However, the dispute settlement system was being overwhelmed by the number and complexity of cases. There was an urgent need for Members to work closely together with the Secretariat to develop the necessary solutions to counter the problems both in the short-term and in the long-term. Singapore looked forward to the constructive engagement and discussions with other delegations and the Secretariat so as to deal with the issues in a holistic manner.

11.11. The representative of European Union said that the EU thanked the Director-General for his explanation and assessment regarding the WTO's dispute settlement activities. The EU was fully aware of the precious contribution of the dispute settlement system to the functioning of the WTO as a whole and acknowledged the enormous workload of the WTO Secretariat due to an ever increasing number of cases. As a matter of fact, the EU was one, if not the most, affected Member by the current situation with several cases stuck in the queue. The EU acknowledged that the situation was difficult, both in terms of adverse impact on the interests of WTO Members who needed to wait for the case to start in earnest and in terms of finding a solution to the underlying problems of which all Members were well aware. In the EU's view, Members needed to have two objectives in mind. First, to manage this difficult situation in the short-term, Members had confidence in the Secretariat that this would be managed in a proper way. In that respect, the EU would emphasize that the approach needed to be workable as much as transparent and even-handed. The second objective would be to find solutions in the mid-and-long-term against the background of ever increasing pressures on the WTO system. With regard to these issues Members had already had good discussions in the past and it was quite clear that there was no miracle solution, but rather many individual steps and measures that were needed to cope with this problem, and that together they would make the difference.

11.12. The representative of Norway said that his country thanked the Director-General for providing information on this important matter. Norway appreciated the action already taken by the Secretariat as well as the planned steps, including the budgetary proposals of shifting resources in favour of the Appellate Body Secretariat and the legal divisions. Norway further noted, with interest, the Director-General's idea to establish a pool of lawyers allocated to dispute settlement cases, which would be available to both the Legal and Rules Divisions. Nevertheless, like Canada and others, Norway acknowledged that the Secretariat could not manage this challenge alone. In this Member-driven Organization, Members must assume their responsibility. A well-functioning and efficient dispute settlement system was a key pillar of the WTO. Combatting comprehensive delays, which could pose a threat to the system, should therefore be a core priority to all Members. Norway encouraged users of the dispute settlement system to reflect on any initiatives that could make ongoing dispute processes more efficient and reduce further delays. In that regard, Norway welcomed the Appellate Body's initiative to consider possible limits to the length of written submissions in WTO appellate proceedings. Norway supported all efforts, including consultations and informal meetings in various formats aimed at addressing this challenge. In conclusion, Norway welcomed the steps that the Director-General, the Secretariat and the DSB Chair were taking to ensure transparency.

11.13. The representative of Mexico said that his country appreciated the Director-General's presentation made at the present meeting, which was a follow-up to the presentation he had made in September 2014. In particular, the presentation allowed Members to understand the adjustments that had been made in the Secretariat with regard to the divisions involved in dispute settlement. In that respect, Mexico recognized that progress had been made recently. As an example of what could be done, one suggestion was made by the Appellate Body regarding executive summaries and the proposal to limit the number of pages. In Mexico's view, the responsibility of ensuring the functioning of the system rested with everyone and, in particular, with Members who adopted inconsistent measures and maintained those measures long after the termination of the DSU proceedings thus overloading the dispute settlement system. Mexico noted that the current reality was more complex and required creative ideas. Finally, Mexico reiterated its commitment to work towards further improvements of the system.

11.14. The representative of New Zealand said that her country thanked the Director-General for his update on dispute settlement activities. New Zealand noted with concern the ongoing pressures and constraints that the Secretariat, panels and the Appellate Body were working under and the resulting delays that Members were facing. New Zealand placed great value on the dispute settlement system at the WTO. It was important that all Members had access to a neutral legal forum where they could resolve their disputes in a timely and effective manner. In New Zealand's view, this was not just important for the resolution of disputes, but also more broadly for the health of the WTO itself. As recognized in Article 3 of the DSU, the dispute settlement system was central to ensuring the security and predictability of the multilateral trading system as a whole. New Zealand welcomed the Director-General and the Secretariat's efforts to respond to the current challenges, for example, through staff and resource allocation to increase capacity and also through new working practices. Like Canada, Norway and other Members, New Zealand also acknowledged that the Membership also had to take responsibility in this regard. New Zealand recognized that the fact that there were more disputes with more complex claims and lengthier submissions was because of Members themselves. New Zealand agreed that there were things that Members could do to ensure that the system ran more smoothly. New Zealand was prepared to think creatively and engage through any of the processes that had been outlined. New Zealand also agreed that Members should not throw out the good work that had been done already through the "Jara process", through the DSU review and even through lessons from Members' own domestic systems that Members may be able to draw on. For example, New Zealand had experience of page-limit guidance for its submissions in its own domestic system which, while obviously needing some adjustment to the international context, was worth considering further. New Zealand took note of the suggestions made by the Director-General and other Members and would study these more closely. New Zealand looked forward to working constructively with other delegations, the Secretariat and DDG Brauner to see how Members could ensure that the WTO's reputation as a forum for high-quality dispute settlement endured.

11.15. The representative of Australia said that her country joined previous speakers in thanking the Director-General for his presentation on this important matter. As it had stated previously, Australia shared the concerns of other Members about the serious delays currently facing the dispute settlement system. These delays, if not effectively addressed, threatened the very high standing the WTO dispute settlement system currently enjoyed and had the potential to impact Members' rights. At a time when global free trade faced challenges on many fronts, maintaining this avenue to freer trade and ensure compliance with WTO obligations was of even greater significance. Australia appreciated the updated information provided at the present meeting and thanked the Director-General for the initiatives he had taken to address delays, including the redeployment of staff. This appeared to have had a positive impact and Australia would encourage the Director-General to continue, within the limits of what was practical, to redeploy resources to disputes. In that regard, the Director-General's suggestion of having a pool of lawyers seemed sensible. Australia also welcomed practical initiatives by the Secretariat and panels to streamline panel processes and reduce overall workload on the Secretariat, panelists and indeed on the parties. In that vein, Australia considered the recent opening of a dialogue on limits on written submissions by the Appellate Body a welcome development and looked forward to engaging in this and other such initiatives. Australia's view was that Members did have a responsibility to engage with the dispute settlement system in a way that promoted its sustainability, and hoped that Members, especially the most frequent users of the system, would be open to discussions on ideas in this area. For its part, Australia stood ready to participate in any processes, whether Member-driven or guided by the Secretariat, to seek solutions to this serious and ongoing problem. In conclusion, Australia thanked the Secretariat staff currently working on disputes, in the Legal Affairs Division, Rules Division and the Appellate Body Secretariat for their dedication. Australia appreciated their dedication.

11.16. The representative of the United States said that his country thanked the Director-General for his report and the personal attention that he had brought to these set of challenges. The United States also thanked the DSB Chair and the DDG. The United States also appreciated the steps that had been taken and those that had been proposed. The United States recognized that they did not represent definitive solutions. The Director-General had posed challenges to Members and the United States took note. The United States would examine closely the information the Director-General provided at the present meeting. Given resource constraints on the WTO and the projected level of activity for the WTO dispute settlement system going forward, it was the US sense that Members would all need to be creative in considering solutions to the problem of delays, in order to maintain an efficient and high-quality mechanism. The United States looked

forward to additional discussions with other Members, with the DSB Chair, the DDG and the Secretariat on this important issue.

11.17. The representative of Chinese Taipei said that his delegation thanked the Director-General for the presentation made at the present meeting, in particular for the part regarding enhanced transparency on the queue of the disputes. Chinese Taipei understood that there was no one single, immediate and absolute solution to the problem of delays. That was the reason why Chinese Taipei emphasized the need for transparency. The Secretariat and all Members should monitor the situation of delays together with the proposed solutions. Chinese Taipei anticipated that more practical and creative solutions may result from such empirical observations. Chinese Taipei would convey all the information to capital for consideration. In conclusion, Chinese Taipei supported the statements made by previous speakers and emphasized its commitment to work with the Secretariat and other Members to explore other possibilities in this regard. Chinese Taipei appreciated and counted on the Director-General's leadership in this difficult task.

11.18. The representative of Brazil said that his country thanked the Director-General for his presentation. Brazil had been following with concern, almost apprehension, the difficulties currently faced by the WTO Secretariat in charge of disputes. Brazil thanked the Director-General and the Secretariat for the measures taken, which helped mitigate, to some extent, the problems currently experienced by the system. Although Members kept praising the WTO dispute settlement system, and all recognized that a dispute settlement mechanism was a strong and indispensable pillar of the multilateral trading system, Members were not acting accordingly and sufficiently to preserve it. All Members were aware that the budgetary constraints faced by the WTO had compounded the difficulties in retaining qualified staff within the WTO and that the parties to disputes contributed to the workload by raising complex and numerous claims in the proceedings and producing thousands of pages in submissions and exhibits. Brazil also realized that the Dispute Settlement Understanding, which had been drafted in the early 1990s did not capture the magnitude and complexity that the system eventually acquired. But this diagnosis, which was not new to the frequent users of the system, risked becoming just "whining and idleness" if it was not accompanied by more concrete and creative steps. In fact, the sense of frustration regarding the lack of outcome in the context of the DSU negotiations was omnipresent. This should not, however, prevent Members from searching, with an open mind, new ways to streamline and simplify the procedures, something that could have a healthy impact on the workload of panelists, members of the Appellate Body and legal staff. Brazil recalled that, Members had participated in the past in the "Jara process" and more recently in the initiative undertaken by the Chairman of the Appellate Body to reach out to Members to discuss options to overcome bottlenecks in the system. Brazil noted that recently Members had received a new communication from the Appellate Body, which could also be seen as a renewed cry for help, on the length of written submissions, an initiative that was welcomed. Brazil noted that recently an announcement had been made that two WTO Members would have recourse to the new SPS mediation mechanism. The fact that some disputes would be dealt with under an alternative dispute resolution framework should be monitored carefully. Should the experience be positive, similar approaches could be suggested, upon Members' agreement, in other cases. In that regard, Brazil recalled that Article 5 of the DSU already provided the possibility for good offices, conciliation and mediation. Perhaps Members could consider reinvigorating this option. Also, past experience demonstrated that there was a reasonable degree of convergence on how to improve certain issues in the way disputes were being handled. What blocked an agreement was possibly the traditional negotiations approach of trade-offs in an area that could certainly benefit from a more systemic approach. Members should also reflect on this. It was time for Members to find their sense of direction and purpose. Brazil noted that it would be much easier to deal with the lack of resources by means of a budget increase. However, Brazil was aware that this was of course easier said than done. Brazil continued to support the Director-General's efforts and practical initiatives to overcome the workload problem. Brazil was also ready to engage with other interested Members to explore all available avenues to make the DSU work better. Beyond the traditional issues, attention should also be given to those areas that would not require formal amendments to the DSU text. In doing so, Members would need a firm deadline. In the short-term, Brazil hoped that the current backlog generated by the lack of resources would be handled in a manner so as to preserve the quality and efficiency of the dispute settlement system as well as transparency of WTO disputes. In Brazil's view, an independent, impartial and well-functioning dispute settlement system was essential for the WTO.

11.19. The representative of India said that his country joined other delegations in thanking the Director-General for his detailed account of the state-of-play of the dispute settlement system and the steps being taken to address the issue of workload both at the panel and Appellate Body stages. India welcomed the steps being undertaken and hoped that they would begin to have a bearing on the workload issues soon. Redeployment of staff and increasing the capacity without raising the overall financial burden was definitely a welcomed step. Information on the stages of various cases as well as time-frames for their completion may serve as a useful input for Members to assess the gravity of the problem as well as reasons for the delay. The Appellate Body Secretariat had also initiated some steps that may address the issue of workload at the appellate stage – limiting the length of Executive Summaries in appeal proceedings as well as starting a discussion on the limits on the length of written submissions. India was ready to work constructively with other Members as well as with the Secretariat to address the root causes of the problem and to find practical solutions on making the dispute settlement process more prompt, effective and relevant.

11.20. The representative of Guatemala said that his country thanked the Director-General for his report as well as for the prompt action that he had taken to respond to the problems faced by the WTO dispute settlement system. Guatemala was a very small country that had recourse to the dispute settlement mechanism occasionally. Guatemala recognized the efficiency of the system and was convinced, by its own experience, of its usefulness. Guatemala had also witnessed the impressive work and dedication of the staff of the WTO Secretariat and the Appellate Body. However, this did not mean that Guatemala's important industries had been able to rely on quick resolutions of disputes. For those sectors, many of which relied on a single export market, each day dedicated to dispute-settlement proceedings and then to the implementation of the DSB's recommendations and rulings cost a lot of money and jobs. Therefore, Guatemala was very much interested in preserving the efficiency of the dispute settlement system and wished to place on record its commitment towards the search for solutions that would improve the system's efficiency and effectiveness. As Guatemala had stated on previous occasions, the problem being discussed was not new. Rather, its resolution was the responsibility of all, the administrators of the system as much as the users of the system.

11.21. The representative of Argentina said that his country thanked the Director-General for his presentation and his paper, which provided Members with a fuller picture on the state of the situation in the dispute settlement system. Argentina believed that the proposed ideas were valuable and allowed Members to be cautiously optimistic regarding an improvement in the medium- and long-term for one of the problems currently facing the system. In Argentina's view, adjusting and reallocating current human resources was a good solution. Argentina emphasized the need to address the current problems in a transparent and non-discriminatory manner. In particular, the publication of information in a structured way as set out by the Director-General would assist Members in understanding the current situation and the problems that the WTO dispute settlement system faced. Like the previous speakers, Argentina was affected by the impact of the delays on the system. In that regard, Argentina wished to reaffirm its commitment to working together with the Secretariat and Members in order to ensure that the dispute settlement system continued to be praised for its efficiency and effectiveness.

11.22. The representative of Saudi Arabia said that his country thanked the Director-General for his presentation made at the present meeting. Saudi Arabia also thanked the Secretariat for its efforts devoted to solving disputes. In Saudi Arabia's view, it was important for the dispute settlement system to be efficient. It was also important to keep in mind the time-frames set out in Article 20 of the DSU. Saudi Arabia stood ready to support all efforts to improve the current situation.

11.23. The representative of the Russian Federation said that her country appreciated the opportunity to hear more details about the current state of affairs, and the growing efforts to address these issues. Russia joined other Members in thanking the Director-General, his team and the Secretariat for this opportunity and for all the measures that had already been taken. As expressed by previous speakers, Russia acknowledged the difficulty of this task, and the fact that it was, to a great extent, in the hands of the Members to work on possible solutions. Russia was ready to engage in constructive discussions on the steps that could be done to effectively address the various challenges that the dispute settlement system was currently facing.

11.24. The Chairman thanked delegations for their statements and invited the Director-General to make some concluding remarks.

11.25. The Director-General said that he took good note of the statements made by delegations. The problems faced by the dispute settlement system required all to work together to find solutions. In this regard different formats of consultations would be convened and any ideas in this regard would be welcome. He said that for his part he was doing his best in terms of reallocation and restructuring of the Secretariat in order to improve the efficiency of the system, but there were limitations as to what could be done. Even with unlimited resources, one could not solve the problem in the short term. One needed time to recruit, train and develop the necessary expertise. Thus far, efforts were under way to address the queue by April 2016, but that was still too long. In his view, there should be no queue at all. But that was the reality and the system suffered from its own success. He said that the Secretariat was doing its best to rectify the current situation. He invited delegations to engage in discussions on how to remedy the problems. He said that no idea would be disregarded and indicated that his door was open if delegations wished to discuss this matter with him directly.

11.26. The Chairman thanked the Director-General for his concluding remarks and said that all appreciated that the Director-General was paying attention to this important matter. It was also clear that the current situation was a shared concern between Members and the Secretariat. He said that he himself as well as Deputy Director-General Brauner would be involved in the process of consultations to find the best solutions to the current problems. He himself would also be available to delegations to discuss this matter. He further stated that, as always, his door was open, and invited delegations with ideas on how best to address current problems regarding dispute settlement activities to contact him directly. Should delegations wish, he would be ready to convene an informal meeting of the DSB to discuss such ideas.

11.27. The DSB took note of the statements.

12 UNITED STATES — MEASURES AFFECTING THE IMPORTATION OF ANIMALS, MEAT AND OTHER ANIMAL PRODUCTS FROM ARGENTINA

A. Statement by Argentina

12.1. The representative of Argentina, speaking under "Other Business" said that his country welcomed the fact that the US Department of Commerce had published the final rule that authorized the importation of fresh meat (9 CFR 94.29). However, Argentina noted with concern the developments in this dispute for two reasons. First, there had been no progress on pending work concerning equivalence measures, which were required for access to the US market. Second, two bills were before the US Congress, which were supported by protectionist lobbies in the meat sector in the United States. Argentina noted that, in the recent past, the US Congress had taken similar measures as those supported by the protectionist lobbies with the effect of preventing the access of Argentine meat to the US market. Argentina would continue to analyse the measures taken by the United States towards its implementation of the DSB's recommendations and rulings in this dispute.

12.2. The representative of the United States said that his country was surprised by Argentina's statement at the present meeting. It would have been preferable for Argentina to have provided more advance notice of this issue. Given that Argentina had chosen to make this statement under "Other Business", the United States would avoid engaging in a lengthy discussion and would instead refer Argentina and other Members to the US statement made on this issue at the 31 August 2015 DSB meeting. As it had explained at that time, the United States had long been moving forward with its evaluation of Argentina's requests for access for beef imports, and action on those requests would address Argentina's concerns about the length of the regulatory process. As the United States had stated in August, those evaluations had moved forward, and the United States Department of Agriculture was able to propose and complete regulatory actions several months prior. Those US administrative actions, taken following the rigorous, science-based review that the United States applied to any application, now permitted the import of Argentine beef under conditions that met the high level of protection of the United States, in particular to ensure that foot-and-mouth disease (FMD) would not be introduced into the United States through beef imported from Argentina. Based on those actions, taken well in advance of the Panel Report,

the United States considered that it had addressed the matters raised in this dispute. With regard to Argentina's statement made at the present meeting, the United States noted that it did not consider Argentina's reference to "protectionist lobbies" to be language appropriate for this forum. In relation to certain proposals in the Congress, to which Argentina had referred, the United States would again clarify that these were proposals only and had not been enacted. As such, these proposals did not have any effect on the administrative action that USDA had taken. Nevertheless, as it had stated in August, the United States remained available to confer further with Argentina in relation to the actions taken by the United States on its beef approval applications.

12.3. The representative of the European Union said that the EU supported the US point regarding the procedure. In the EU's view, it was very important that Members provided sufficient advance notice on matters that they wished to raise under "Other Business" so that Members concerned could prepare their positions.

12.4. The DSB took note of the statements.

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

13.1. The Chairman, speaking under "Other Business", recalled that, as all delegations were aware, he had been consulting informally with interested delegations on the issue of possible reappointments of Mr. Ujal Singh Bhatia and Mr. Thomas Graham. He wished to report that in light of his consultations, it was his intention to host a meeting with these two members of the Appellate Body. He invited any interested delegation that would wish to participate in that meeting and to pose questions to the Appellate Body members to contact him directly or via the Secretariat by 6 November 2015 and to indicate the topics that they wished to raise. That meeting was scheduled for 12 November 2015 starting at 2 p.m. and it was open to Ambassadors plus one. He informed delegations that it was his intention to place the issue of reappointments on the Agenda of the 25 November 2015 DSB meeting for decision.

13.2. The DSB took note of the statement.

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