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Dispute Settlement Body
25 September 2013

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 25 SEPTEMBER 2013

Chairman: Mr. Jonathan Fried (Canada)

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1.1. The Chairman noted that there were six sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. He recalled that Article 21.6 of the DSU 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". Once again, he urged delegations to provide informative, up-to-date and new information about compliance efforts and to focus on recent developments. He invited delegations to focus their comments on suggestions and ideas for progress towards mutually agreed solutions. With these introductory remarks, the Chairman proposed to turn to the first status report on the Agenda of the present meeting.

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.130)

1.2. The Chairman drew attention to document WT/DS176/11/Add.130, 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 12 September 2013, in accordance with Article 21.6 of the DSU. As noted in the US status report, at least five bills had been introduced in the current Congress in relation to the recommendations and rulings of the DSB. These included H.R. 214, H.R. 778, H.R. 872, H.R. 873 and S. 647. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

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 very soon take steps towards implementing the DSB's ruling and resolve this matter.

1.5. The representative of Cuba said that, in the midst of the negotiating process and with the goal of achieving tangible results at the MC9 in Bali, Members faced enormous challenges in order to meet their WTO commitments. The situation was highly critical and required a great deal of collective effort and flexibility. Members' common objective should be to strike a fair balance in their negotiations and in any future endeavours, which would reaffirm the intrinsic value and effectiveness of the most important organization concerned with world trade. Members could not underestimate the role of the dispute settlement system as a pillar of compliance with the Agreements and as an instrument in support of the tenuous credibility of the multilateral trading system. However, the Agenda of the present meeting demonstrated that one Member who was behind many of the negotiating requests for Bali and the main proponents of the Trade Facilitation Agreement remained inflexible on many issues and continued to neglect its obligation to meet specific WTO commitments. As demonstrated by the Agenda of the present meeting, at least nine Members, most of them developing countries, were still waiting for the United States to comply with the recommendations and rulings adopted by the DSB. This was regardless of the fact that, 12 years ago, the DSB had ruled that Section 211 was inconsistent with WTO rules. However, the United States continued to violate the legitimate rights of Cuban trademark holders and allowed the Bacardi company to engage in the fraudulent and illegal sale of products that were not produced in Cuba using the Havana Club trademark. The US failure to comply in this dispute prompted Members to reflect on the balance between WTO rules and any new commitments that Members were being asked to undertake in the run-up to MC9 in Bali. Cuba could not accept that certain Members, due to their economic hegemony, ignored with impunity their legal responsibilities and the WTO rules that Members were trying to improve. Cuba would continue to denounce the impact of non-compliance by the United States not only on Cuba but also on the system of rules, which other Members respected.

1.6. The Chairman reminded delegations, once again, that they should try to focus on new suggestions and constructive ideas to move forward in resolving this long-standing dispute. He then read out the long list of speakers and said that delegations may wish to adjust their lunch arrangements accordingly.

1.7. The representative of China said that her country thanked the United States for its status report and the statement made at the present meeting. China believed that the prolonged situation of non-compliance in this dispute was highly incompatible with the DSU provisions, in particular since the interests of a developing-country Member were affected. China joined other Members in urging the United States to implement the DSB's rulings and recommendations without any further delay.

1.8. The representative of Brazil said that his country thanked the United States for its status report on the surveillance of implementation in this dispute. Brazil noted that, once again, the United States reported lack of progress. Brazil remained concerned about this situation of non-compliance with the DSB's recommendations and urged the United States to bring its measures into conformity with WTO rules.

1.9. The representative of the Plurinational State of Bolivia said that, once again, his country noted that for the past 12 years, the US status report did not report on any breakthrough. Bolivia reiterated its concern about the US failure to comply with the DSB's recommendations and rulings. This situation of non-compliance undermined the credibility of the multilateral trading system and harmed the interests of a developing-country Member. In Bolivia's view, the only solution to this dispute was for the United States to comply with the DSB's recommendations and rulings and to lift the restrictions imposed under Section 211. Bolivia supported the statement made by Cuba at the present meeting.

1.10. The representative of Ecuador said that his country supported the statement made by Cuba at the present meeting. Ecuador, once again, recalled that Article 21 of the DSU specifically referred to prompt compliance with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Ecuador hoped that the United States would step up its efforts in order to comply with the DSB's recommendations and rulings by repealing Section 211.

1.11. The representative of India said that his country thanked the United States for its status report and the statement made at the present meeting. India noted that there was no change in the situation. India, once again, was compelled to stress that the principle of prompt compliance

was missing in this dispute. India renewed its systemic concern about the continued non-compliance in this dispute, as this undermined the credibility and Members' confidence in the system. India urged the United States to report full compliance in this dispute without any further delay.

1.12. The representative of El Salvador said that her country thanked the United States for its status report. El Salvador joined the previous speakers in expressing its concern about the US lack of compliance in this dispute. This situation of non-compliance undermined the multilateral trading system and affected the interests of a developing-country Member. El Salvador called on the parties to this dispute to promptly comply with the DSB's recommendations and rulings.

1.13. The representative of the Bolivarian Republic of Venezuela said that his country, once again, supported Cuba, a developing-country Member, that challenged the inconsistency of Section 211. The DSB had adopted the recommendations regarding Section 211, but the United States had yet to comply. Venezuela was concerned about the US President's renewal of the Helms-Burton Act, which had a direct impact on this dispute. The current situation of non-compliance not only affected Cuba, but also set a negative precedent for the credibility of the WTO and its ability to resolve disputes. Venezuela, therefore, urged the United States to end this non-compliance and to report on the measures it intended to take to solve this dispute.

1.14. The representative of Nicaragua said that his country thanked the United States for its status report concerning Section 211. Nicaragua noted that, for more than 11 years, the United States had failed to offer any concrete steps towards implementing the DSB's recommendations on this matter. In Nicaragua's view, the protracted situation of non-compliance in this dispute was regrettable, in particular since it affected the interests of Cuba, a small economy, and undermined the credibility of the WTO. Nicaragua supported Cuba's concerns and joined other delegations in urging the United States to bring its measure into conformity with the DSB's recommendations.

1.15. The representative of South Africa said that her country thanked the United States for its status report. South Africa, once again, joined the previous speakers in expressing its concern that since the August DSB meeting no concrete progress had been made in the implementation of the DSB's recommendations and rulings in this dispute. South Africa referred to its previous statements in this regard. She highlighted her country's concern about the systemic effects of non-compliance with the DSB's recommendations and rulings, including undermining the integrity of a critical enforcement pillar of the WTO. In addition, obvious economic consequences for particular economic interests of a developing-country Member were being perpetuated as a result of non-compliance. South Africa, therefore, urged the United States to bring its legislation into compliance with the DSB rulings and recommendations.

1.16. The representative of Argentina said that his country thanked the United States for its status report. Argentina regretted that, once again, there was lack of progress, which was not consistent with the principle of prompt compliance stipulated in the DSU provisions, in particular since the interests of a developing-country Member were affected. Argentina supported the statement made by Cuba and the previous speakers. It called on the parties to the dispute, in particular the United States, to take the necessary measures so as to resolve this matter.

1.17. The representative of Mexico said that, once again, his country urged the parties to this dispute to take the necessary measures in order to comply with the DSB's recommendations and rulings to the benefit of all Members, in accordance with Article 21.1 of the DSU. He said that the Chairman had called for constructive comments so as to enable the parties to promptly resolve this dispute and that the United States had mentioned in its report five relevant legislative texts had been introduced in the US Congress. The fact that the United States had submitted five legislative texts indicated the US willingness to comply. However, Mexico believed that merely submitting the legislative texts might not be sufficient. Mexico asked the United States to provide information regarding meetings held by Congressional committees in charge of such legislative texts.

1.18. The representative of Chile said that his country thanked the United States for its status report. However, Chile noted that the report did not contain any information on substantive progress on this matter. Chile, therefore, reiterated its continued concern about the failure to

comply with the DSB's recommendations and rulings. A solution to this matter would depend on the goodwill of both parties.

1.19. The representative of the Dominican Republic said that, once again, her country called upon the United States to comply with the DSB's recommendations since the long period of time that had passed without compliance undermined the DSB's credibility.

1.20. The representative of Uruguay said that his country thanked the United States for its status report. Uruguay, once again, noted that the situation in this dispute had not changed and, therefore, urged the United States to comply with its obligations in this matter.

1.21. The representative of Viet Nam said that his country thanked the United States for its status report. Viet Nam noted that more than ten years had passed, but the US Administration had not taken any action to implement the DSB's recommendations and rulings. Viet Nam, once again, urged the United States to respect the DSB's recommendations and rulings so as to uphold international public law disciplines and for the benefit of Cuba, a developing-country Member.

1.22. The representative of Cuba said that first her delegation wished to thank the previous speakers. Second, she said that the lack of compliance with the DSB's recommendations and rulings had a significant impact on Cuba, a developing-country whose interests were affected by the financial and economic embargo imposed by the United States. Therefore, the Chair's remark about adjusting lunch plans was unfortunate, since this was an important matter and one had to be careful as to what one said in the context of the discussion on Section 211. Cuba reiterated its view that the only solution to this matter was for the United States to comply with the DSB's recommendations and rulings and immediately repeal Section 211.

1.23. The Chairman said that, before turning to the delegation of the United States, he wished to make a clarification so that there was no misunderstanding. He said that, from the outset when he had taken on the Chairmanship of the DSB, he had sought to emphasize the underlying purpose set out in the DSU provisions for having this discussion. The purpose of having an item on surveillance inscribed on the Agenda of each regular DSB meeting was with a view to promoting a resolution of the dispute. Thus, he had consistently urged all delegations to orient their remarks towards that goal, including the reporting Member to emphasize and put a focus on developments since the previous meeting, and any other Member in commenting on that, to offer concrete suggestions. He had simply been noting, as best as he could, that a repetition was in fact nothing other than repetition. Some delegations had chosen to refer back to their previous remarks while others, and he did not mean to single out any delegations, for example, Mexico, had offered a new suggestion in terms of consultation with Congressional Committees. He certainly did not make light, either of this particular item or of the general item on the Agenda on surveillance, but he did believe strongly, as a matter of systemic interest, that Members could make better use of this surveillance time by focusing on the future. It was in that context that his remarks regarding how to use time had been made. He apologized if anyone had interpreted that as not showing full respect for each and every Member and their contribution to the DSB.

1.24. The representative of the United States said that Mexico had mentioned a desire for more information on the status of the legislation that would address this issue. The United States, therefore, wanted to provide information about the five bills that had been introduced to address this problem. They were similar to bills that had been introduced in prior Congresses and while several of the bills would repeal Section 211 outright, a number of other bills would modify Section 211. First H.R. 214 had been introduced on 4 January 2013 by representative Serrano of New York. That bill would repeal Section 211. The second piece of legislation, H.R. 778, had been introduced on 15 February 2013 by representative Issa of California. That bill would modify Section 211. H.R. 872 had been introduced on 27 February 2013 by representative Rangel of New York. That bill would repeal Section 211. H.R. 873 had been introduced on 27 February 2013 by representative Rangel of New York. This bill would also repeal Section 211. Finally, S. 647 had been introduced on 21 March 2013 by Senator Bill Nelson of Florida. That bill would modify Section 211.

1.25. The Chairman said that, whether later in the meeting or in between meetings, it may be of interest to delegations to know where in the legislative process, beyond introduction, each of those bills stood.

1.26. The representative of Cuba said that her country thanked the Chairman for his remarks. With regard to what the United States had just mentioned, Cuba thanked the United States for the bills that had been presented, but wished to reiterate the statement made by Cuba in previous DSB meetings. Those bills had been submitted to the committees of the US Congress, but they had not been submitted to the Senate. To date, there was no specific action envisaged to make progress in the legislative process. Cuba urged the United States to comply with the DSB's recommendations and rulings.

1.27. 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.130)

1.28. The Chairman drew attention to document WT/DS184/15/Add.130, 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.

1.29. The representative of the United States said that his country had provided a status report in this dispute on 12 September 2013, 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 in this dispute. 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.

1.30. The representative of Japan said that his country thanked the United States for its statement and its status report submitted on 12 September 2013. Once again, Japan requested the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

1.31. 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.105)

1.32. The Chairman drew attention to document WT/DS160/24/Add.105, 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.

1.33. The representative of the United States said that his country had provided a status report in this dispute on 12 September 2013, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the EU, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

1.34. 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 previous statements regarding its wish to resolve this case as soon as possible.

1.35. 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.68)

1.36. The Chairman drew attention to document WT/DS291/37/Add.68, 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.

1.37. The representative of the European Union said that the EU, once again, hoped that it would continue on the constructive path of dialogue with the United States. In recent DSB meetings, the EU had already reported on authorization decisions that had been taken in 2012. Most recently, at the end of June 2013, the Commission had authorized Ms8, Rf3 and Ms8xRf3 oilseed rapes, following the absence of an opinion from the Appeal Committee. In July 2013, the Appeal Committee had voted on three authorization decisions[1], rendering no opinion. The Commission would move to adopt them in the near future. Furthermore, in September, the Standing Committee had voted on draft authorization decision for drought-tolerant maize[2] and had rendered no opinion. The draft decision would now be submitted to the Appeal Committee. As stated many times before, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings. The GMO regulatory regime was working normally as evidenced by the approval decisions just mentioned.

1.38. 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 explained at past meetings of the DSB, the United States had substantial concerns regarding EU measures affecting the approval of biotech products. As of that date in September, the EU had not granted a single approval of a new biotech product in calendar year 2013. Yet dozens of products were waiting in the EU system. The only new approval thus far had been to extend the scope of approval for a previously approved product. The United States was closely following EU delays. One product of particular interest was a biotech corn variety that had received a favourable safety opinion from the European Food Safety Authority (EFSA) in November 2012. The United States had hoped that, in accordance with the EU's own laws, this product could have been approved within three months of the positive safety assessment. There were many other examples. For instance, the United States noted that two pending products had been considered by both the EU regulatory committee and the EU appeals committee, but had yet to see final action. As the United States had noted in the past, the EU measures were causing serious disruption of trade in corn and other agricultural products. The United States urged the EU to take steps to address these matters.

1.39. The Chairman noted that there continued to be a difference of view regarding the timetable.

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

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.17)

1.41. The Chairman drew attention to document WT/DS371/15/Add.17, which contained the status report by Thailand on progress in the implementation of the DSB's recommendations in the case concerning Thailand's customs and fiscal measures on cigarettes from the Philippines.

1.42. The representative of Thailand said that his country wished to refer Members to its most recent status report on this matter. In addition, since that status report, Thailand had received a request from the Philippines for additional information on some of the technical aspects of its implementation, as well as other matters of concern to the Philippines. The relevant agencies of the Thai government were in the process of preparing responses to the Philippines' questions. Thailand looked forward to continuing its discussions with the Philippines on these matters and to resolving this dispute in an amicable manner.

1.43. The representative of the Philippines said that his country thanked Thailand for its status report and the statement made at the present meeting. In its status report, Thailand had referred to the information it had submitted to the Philippines in late August. At the DSB's August meeting, the Philippines had noted its regret for the time it had taken for this information to be provided. The Philippines had also noted that the information, which was being withheld from the importer concerned, was relevant in assessing whether one of Thailand's reported implementation measures was in conformity with the Customs Valuation Agreement. Since the previous DSB meeting, the Philippines had had some time to assess the information received. The Philippines had found that

[1] Maize stack events MON89034 x 1507 x MON88017 x 59122 and GM maize MON89034×1507×NK603 as well as GM maize MON810 pollen.

[2] MON87460 maize.

the information had not only left many questions unanswered, but had also raised new questions, which gave rise to serious misgivings on the WTO-consistency of Thailand's declared measure taken to comply. In order to explore those issues, the Philippines had invited Thailand to discuss those questions in a bilateral technical meeting. The meeting had taken place in Geneva the previous week. In its questions to Thailand at that meeting, the Philippines had covered all outstanding issues, including the criminal investigations that the Philippines had referred to, *inter alia*, in its statement made at the previous DSB meeting. The Philippines was grateful for Thailand's efforts to directly answer as many questions as possible at the meeting and its commitment to follow up on those questions it was unable to answer on the spot. The Philippines would await those further answers from Thailand before considering the next steps.

1.44. The representative of Thailand said that his country understood the Philippines concern referring to the ongoing investigations under Thai law to the extent that those investigations involved Thailand's obligations under WTO law. Thailand would strive to ensure that it acted in a WTO-consistent manner.

1.45. The Chairman said that he thanked both delegations for their candour and for sharing with the rest of the Membership the sincere efforts on both sides, including the previous week's technical consultations to reach a mutually acceptable agreement on full implementation of the decisions rendered.

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

F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.16)

1.47. The Chairman drew attention to document WT/DS404/11/Add.16, 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.

1.48. The representative of the United States said that his country had provided a status report in this dispute on 12 September 2013, in accordance with Article 21.6 of the DSU. In February 2012, the US Department of Commerce had published a modification to its procedures in order to implement the DSB's recommendations and rulings regarding the use of "zeroing" in anti-dumping reviews. That modification addressed certain findings in this dispute. In June 2012, the USTR had requested, pursuant to Section 129 of the Uruguay Round Agreements Act, that the Department of Commerce take action necessary to implement the DSB's recommendations and rulings in this dispute. The United States would continue to consult with interested parties as it worked to address the recommendations and rulings of the DSB.

1.49. The representative of Viet Nam said that his country thanked the United States for its status report and the statement made at the present meeting. Viet Nam noted that the reasonable period of time, agreed by the parties to the dispute, had expired 14 months ago. However, the US Administration had not taken any action to implement the DSB's recommendations and rulings. Viet Nam wished to express its systemic concerns about the US non-compliance with its WTO obligations in this case. Once again, Viet Nam urged the United States to implement, without any further delay, the DSB's recommendations and rulings and, in particular, to revoke the anti-dumping duty that was inconsistent with the WTO laws so as to maintain the multilateral trading discipline and for the benefit of Viet Nam's exporters.

1.50. The representative of the Bolivarian Republic of Venezuela said that his country supported the statement made by Viet Nam at the present meeting. Venezuela shared Viet Nam's concern and called on the United States to put an end to this situation of non-compliance.

1.51. The representative of Cuba noted that, as reflected in the US status report, the legislative progress had been slow and had not produced a real conclusion with regard to the DSB's recommendations and rulings that had been adopted in September 2011. This negatively affected Viet Nam's economy and the trade of an essential product for its development. Cuba urged the

United States to take effective measures in order to implement the DSB's rulings and to remove the measures that violated Viet Nam's rights.

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, once again, the EU requested that the United States 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 so as to resolve this dispute. 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 Chairman said that, as under Agenda item 1, delegations may refer to their previous statements if there were no additional insights to offer.

2.5. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. As it had expressed at previous DSB meetings, Brazil was of the view that the United States was under obligation to submit status reports in this dispute until such time that no more disbursements were made pursuant to the Byrd Amendment. Only then would the issue be resolved within the meaning of the DSU and the United States would be released from its obligation to provide status reports in this dispute.

2.6. The representative of India said that, like Canada, his country thanked the EU and Japan for regularly bringing this issue before the DSB. India shared their concerns. The CDSOA remained operational and the WTO-inconsistent disbursements continued unabated to the US domestic industry. India agreed with previous speakers that this matter should continue to remain under the DSB's surveillance until such time full compliance was achieved.

2.7. The representative of Canada said that his country wished to refer to its statements made under this Agenda item at previous DSB meetings. Canada's position had not changed.

2.8. The representative of Thailand said that, like Canada, his country's position on this matter had not changed.

2.9. The representative of the United States said that, as his country had already explained at previous DSB meetings, the President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, 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 Members had acknowledged during previous DSB meetings that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007. 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 repeating the progress the United States had made in the implementation of the DSB's recommendations and rulings.

2.10. The DSB took note of the statements.

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

A Request for the establishment of a panel by Panama (WT/DS461/3)

3.1. The Chairman recalled that the DSB had considered this matter at its meeting on 30 August 2013 and had agreed to revert to it. He drew attention to the communication from Panama contained in document WT/DS461/3, and invited the representative of Panama to speak.

3.2. The representative of Panama said that, for the second time, Panama was requesting the DSB to establish a panel to examine Colombia's tariff on imports of textiles, apparel and footwear, whose applied levels exceeded the levels bound in Colombia's Schedule of Concessions. Panama wanted to make it clear that it did not question Colombia's freedom to modify its *ad valorem* tariff or apply any other method, including the introduction of a compound tariff. However, Panama challenged the fact that Decree No. 074 of 23 January 2013 did not provide for a "cap" mechanism to prevent the applied tariff from exceeding the bound level for the products in question, as well as the fact that Colombia had imposed tariffs, which did indeed exceed the bound levels. The measure at issue had a significant impact on Panama's exports, in particular in the present context when purchase orders were being placed for the Christmas and end of year marketing period. For Panama it was, therefore, urgent to find a prompt, if not immediate, solution to this dispute. Panama believed that this dispute could be resolved in a relatively simple manner if Colombia introduced, without delay into its regulations, a guarantee or "cap" mechanism similar to the one suggested by the Appellate Body in its Report in the case: "Argentina - Textiles and Apparel" (DS56), which ensured that the applied tariff would not, under any circumstances, exceed bound levels. Panama hoped that the panel to be established at the present meeting would issue a prompt decision with respect to the consistency of the Colombian measure with WTO law.

3.3. The representative of Colombia said that his country was disappointed that Panama had resubmitted its panel request at the present meeting. Since the beginning of this dispute, Colombia had explained why it considered its measures to be consistent with its WTO obligations, as well as their importance for Colombia's trade policy, for compliance with its customs regulations and especially for security reasons, which were of vital interest to Colombia. At the same time, as it had previously mentioned, Colombia had stated at every occasion it was more than willing to address Panama's concerns. In fact, the very recent signing of the Free Trade Agreement between the two countries had provided an opportunity for new exchanges of views on the matter. From those discussions, which had been conducted at the highest level, Colombia had understood that both parties shared a willingness to work together in order to reach a mutually agreed solution, in accordance with Article 3 of the DSU. Colombia regretted that, despite those recent talks and the fact that both parties had clearly expressed, at the highest level, their willingness to move towards a mutually agreed solution, Panama had chosen to resubmit its panel request to the DSB, thus preferring to trigger a mechanism that would burden the system, the WTO and each of the parties concerned, instead of opting for the agreed approach involving direct dialogue between the two countries. Colombia urged Panama to consider, once again, taking the latter course of action.

3.4. The Chairman said that proceeding to the next stage did not preclude concurrent, friendly, amicable, neighbourhood conversations with a view to an agreed solution. Nonetheless, given that the DSB had discussed this matter at its previous meeting, and having taken note of the statements, it was necessary for the DSB to agree to establish a panel, in accordance with the provisions of Article 6 of the DSU, with standard terms of reference.

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

3.6. The representatives of China, El Salvador, Ecuador, the European Union, Guatemala, Honduras and the United States reserved their third-party rights to participate in the Panel's proceedings.

4 AUSTRALIA – CERTAIN MEASURES CONCERNING TRADEMARKS, GEOGRAPHICAL INDICATIONS AND OTHER PLAIN PACKAGING REQUIREMENTS APPLICABLE TO TOBACCO PRODUCTS AND PACKAGING

A Request for the establishment of a panel by Honduras (WT/DS435/16)

4.1. The Chairman recalled that the DSB had considered this matter at its meeting on 19 November 2012 and had agreed to revert to it. He drew attention to the communication from Honduras contained in document WT/DS435/16, and invited the representative of Honduras to speak.

4.2. The representative of Honduras said that his country was requesting the DSB to establish a panel under Article 6.1 of the DSU to examine Australia's measures concerning trademarks, geographical indications and other plain packaging requirements for the sale of tobacco products. This was the second time that Honduras was submitting its panel request on this matter. Honduras considered that Australia's plain packaging requirements constituted a measure that was inconsistent with the TRIPS Agreement and the TBT Agreement. Australia's plain packaging requirements seriously undermined the essential function of a trademark, which was to ensure a distinction between different tobacco products that were sold legally in Australia. The measures also undermined geographical indications applicable to tobacco products. This was particularly true in the case of cigars, which have a special reputation for high-quality. The plain packaging requirements also constituted a measure that was more trade restrictive than necessary to achieve its objective, and consequently violated Australia's obligations under the TBT Agreement. Contrary to what Australia suggests, the measure at issue does not contribute, in any way, to the objective of protecting human health. Honduras had previously stated that it supported the adoption of tobacco control measures that sought to protect human health. However, it had also stated that when adopting such measures, WTO Members could not disregard their obligations under the WTO Agreements. This meant that measures that limited intellectual property rights, or restricted trade, must be supported by sufficient evidence and appropriate conclusions. Unfortunately, in adopting its plain packaging legislation, Australia had failed to comply with this basic principle. In view of these considerations, Honduras had decided, once again, to request the DSB to establish a panel under Article 6.1 of the DSU to examine the plain packaging measures *vis-à-vis* Australia's obligations under WTO rules.

4.3. The representative of Australia said that Australia's world first tobacco plain packaging measure had been in force since 1 December 2012. Tobacco plain packaging was a sound, well-considered measure designed to achieve a legitimate objective, the protection of public health. The WTO covered agreements recognized the fundamental right of Members to implement measures necessary for the achievement of this objective and provided the necessary flexibilities for Members to do so. While Australia expected that the public health benefits of its tobacco plain packaging measure would be demonstrated over the longer term, recently released research indicated that the plain packaging measure already appeared to be having a positive effect. The study of more than 500 smokers had revealed that a majority of those smoking from plain packs: (i) perceived their cigarettes to be lower in quality; (ii) tended to perceive their cigarettes as less satisfying than a year ago; (iii) were more likely to have thought about quitting at least once a day in the past week, and (iv) were more likely to rate quitting as a higher priority in their lives.[3] As it had stated at previous DSB meetings, Australia was a world leader in effective tobacco control strategies and tobacco plain packaging was the next logical step in Australia's long history of tobacco control. Australia was pleased to note that other WTO Members had announced that they intended to adopt similar measures. All WTO Members had to confront the global tobacco epidemic. The World Health Organization's Report on the Global Tobacco Epidemic 2011 stated that: "Tobacco use continues to be the leading global cause of preventable death. It kills approximately six million people and causes hundreds of billions of dollars of economic damage worldwide each year". It added that: "If current trends continue, by 2030 tobacco will kill more than eight million people worldwide each year, with 80% of these living in low- and middle-income countries".[4] In Latin America and the central Caribbean region, tobacco related deaths were expected to triple from 3.3% of total deaths in 1990 to 9.4% in 2020, a clear indicator of the

[3] Wakefield MA, Hayes L, Durkin S, et al. "Introduction Effects of the Australian Plain Packaging Policy on Adult Smokers: a Cross-Sectional Study. BMJ Open 2013;3:e003175.

[4] WHO Report on the Global Tobacco Epidemic, 2011 (p. 8); see also WHO Tobacco Fact Sheet, updated July 2013 (http://www.who.int/mediacentre/factsheets/fs339/en/index.html, visited 24 September 2013).

increasing proportion of tobacco-related diseases which would be borne by countries such as Honduras. Both Australia and Honduras were parties to the WHO Framework Convention on Tobacco Control. Tobacco plain packaging was recommended in the guidelines for implementation of Articles 11 and 13 of the Convention. Both Australia and Honduras had endorsed those Guidelines. Indeed, Honduras was a member of the Working Group that had developed those Guidelines in relation to Article 11.

4.4. Australia recognized that Honduras also confronted the significant public health challenge of tobacco use and acknowledged the important steps taken by Honduras in relation to tobacco advertising, sponsorship and promotion. Australia's tobacco plain packaging legislation did not undermine the protection afforded to trademarks and geographical indications under the TRIPS Agreement. Nor was the measure more trade restrictive than necessary to fulfil its legitimate public health objective. The tobacco plain packaging measure was origin neutral and even-handed in its application. It was clearly non-discriminatory. It applied to all tobacco products, regardless of type or origin, and represented best practice in tobacco control.

4.5. Australia noted that Honduras had first requested the establishment of a panel in relation to Australia's tobacco plain packaging measure at the DSB meeting held on 19 November 2012. Australia had rejected the establishment of a panel at that meeting, as it was entitled to do.[5] Approximately ten months had elapsed since Honduras' request was made. Australia was not aware of any other instance where such a lengthy period had elapsed between a first panel request made under Article 6.1 of the DSU and a party again placing the issue on the DSB's Agenda. Article 6.1 of the DSU provided that: "If the complaining party so requests, a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's Agenda, unless at that meeting the DSB decides by consensus not to establish a panel". The language of Article 6.1 of the DSU was clear: where a complaining party made a request for the establishment of a panel, a panel shall be established at the latest at the DSB meeting following that at which a request first appeared as an item on the DSB's Agenda, unless the DSB decided by consensus at that meeting not to establish a panel. That requirement was reflected in long established DSB practice. Pursuant to that practice, a second request for a panel establishment was made at the next regular session of the DSB following that session at which the request first appeared on the DSB's Agenda, or at a meeting of the DSB specially convened for the purpose of making a second request.[6] As it had said, Australia had not identified any instance where a ten month delay had occurred between first and second panel requests made in accordance with Article 6.1 of the DSU.

4.6. The language in Article 6.1 of the DSU had its origins in paragraph F(a) of the Decision of 12 April 1989 on Improvements to the GATT Dispute Settlement Rules and Procedures.[7] The improvements in the 1989 Decision had arisen out of Members' concerns to address delays that had sometimes arisen in establishing a panel[8], principally due to the actions of some respondents in repeatedly blocking requests for the establishment of panels. That was not the case at the present meeting. Indeed, it was the complainant that had taken just over ten months since the matter had first appeared on the DSB's Agenda to again request establishment of a panel, a delay that was completely at odds with established DSB practice. Neither the language of Article 6.1 of the DSU nor established DSB practice supported Honduras' assertion that the present request for the establishment of a panel, made ten months after its first request, should be considered to be a

[5] WT/DSB/M/325, pp. 11-14.

[6] Australia had identified only three instances where this practice has not been followed, and even then the time between first and second panel requests was no greater than two months: see Argentina - Ceramic Tiles (DS189, first request 26 September 2000, second request 17 November 2000); European Communities - Selected Customs Matters (DS315, first request 25 January 2005, second request 21 March 2005); Brazil - Retreaded Tyres (DS332, first request 28 November 2005, second request 20 January 2006).

[7] "If the complaining party so requests, a decision to establish a panel or working party shall be taken at the latest at the Council meeting following that at which the request first appeared as an item on the Council's regular agenda, unless at that meeting the Council decides otherwise." (BISD 36S/61)

[8] See e.g., Switzerland (MTN.GNG/NG13/W/8, para. 2.1), Japan (MTN.GNG/NG13/W/9, para. 2) Australia (MTN.GNG/NG/13/W/11, para. 7 and 3.2), Korea (MTN.GNG/NG13/W/19, para. 2(a)), EEC (MTN.GNG/NG13/W/22, para. 4). ("What is important is to fix deadlines for the beginning and the end of the process, in order to expedite examination of disputes and avoid delays in the follow-up stage…the Council should take a decision on the setting up of a panel, normally at the first meeting, or at the latest, at the second meeting following the one where the request was made."); Austria (MTN.GNG/NG13/W/25, p. 3); Mexico (MTN.GNG/NG13/W/26/Rev.1, p. 2), Joint proposal of a number of contracting parties (MTN.GNG/NG13/W/30, p. 3).

request on the basis of which the DSB could validly establish a panel without the responding party's consent. In Australia's view, the principle of automaticity for establishing panels under Article 6.1 was not unlimited and should not allow for first panel requests to remain open indefinitely in the face of lengthy inaction on the part of a complaining party. Such an approach would create uncertainty both for responding parties and for the system as a whole. It would require a responding party to maintain the resources necessary to defend a dispute indefinitely. That could be a challenge for any WTO Member. For developing-country Members with limited resources, this challenge would be even more difficult to meet. It was, therefore, important that the implications of the present day's action by Honduras for the system as a whole, rather than just for this particular dispute, were properly considered. On this basis, Australia was of the view that the request made at the present meeting must be considered a first request, and that Honduras was not entitled to expect the automatic establishment of a panel by the DSB. For those reasons, Australia could not agree to the request made. In so doing, Australia noted that if Honduras wished to proceed to making a second request, it may do so in 15 days' time, pursuant to the terms of footnote 5 to Article 6.1 of the DSU, and Australia would not be able to oppose that second request. Australia noted that the request by Honduras related to the same matter that had been raised by Ukraine at the 28 September 2012 meeting of the DSB (DS434). Accordingly, pursuant to Article 9.1 of the DSU, Australia requested that those complaints be heard by a single panel.

4.7. The representative of Honduras said that his country considered that its panel request was on the Agenda of the DSB meeting for the second time and did not agree that its right to have a panel established by the DSB at this meeting, under Article 6.1 of the DSU, should be subject to additional requirements before a panel could be established. Honduras found surprising the notion that, as suggested by Australia, a second request had to be made at a second consecutive DSB meeting following the meeting at which the first request was considered. This requirement was not specifically mentioned in the DSU provisions. Article 6.1 of the DSU simply stated that: "if the complaining party so requests, a panel must be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel". The text of Article 6.1 of the DSU was sufficiently broad and it did not matter whether or not the second request was made the following month or several months after the first request. The language in Article 6.1 of the DSU specified that the panel must be established "if the complaining party so requests"; this suggested that the complaining party had control about the point in time as to when the second request was filed. The words: "at the latest", suggested that even though a panel may be established upon the first request, it would have to be established by negative consensus at the second meeting. The word "following" referred to the meeting of the DSB held after the meeting at which the first request was made. "Following" did not mean consecutive or immediately afterward. The reference to: "the meeting of the DSB" referred to the particular meeting at which the second request was on the Agenda. It must not be read as referring to the meeting of the DSB that was held immediately after the first meeting. Nothing in the DSU provisions prohibited the establishment of a panel in a situation where the second panel request was considered by the DSB at a non-consecutive meeting.

4.8. Australia's interpretation was not supported by the text of the DSU. Under Article 6.1 of the DSU, in order to establish a panel at the first meeting, there was a need for positive consensus. However, at the second meeting, a panel would have to be established unless there was a consensus not to do so. The negative consensus rule as it applied to the DSB's decision to establish a panel was one of the most important achievements of the WTO. Once the request was on the Agenda of the DSB, neither Article 6.1 of the DSU nor any other DSU provision contemplated action on the part of the DSB other than establishing a panel. It would be very restrictive to interpret Article 6.1 of the DSU such that a Member had to file its panel requests at consecutive meetings in order for the DSB to establish a panel. The only requirement was that a Member had to wait 60 days following the consultation period before requesting a panel. The DSU did not impose any other time-frame regarding when a Member can request the establishment of a panel. Therefore, if a Member could wait five years to request the establishment of a panel, it would be odd to require that Member to make its second request in five years and one month.

4.9. The DSB did not have jurisdiction to decide whether or not a panel could be established once the second request is on the DSB Agenda. The same approach had been adopted in other circumstances where the DSU provided the DSB with authority to take certain actions. On different occasions, Members had expressed their view that the DSB did not have discretion to decide

whether or not the suspension of concessions must be granted under Article 22.2 of the DSU, or whether a matter should be referred to arbitration under Article 22.6 of the DSU. This was also the case in the dispute "US - Large Civil Aircraft" regarding the procedures for collecting information pursuant to paragraph 2 of Annex V of the SCM Agreement. It was understood under those circumstances that the DSB had to take certain action when a request to initiate an Annex V procedure was made. The DSB practice showed that there had been previous cases in which the DSB had established a panel even though the second DSB meeting in which the request for a panel was considered had not been held immediately after the meeting at which the first request had been made. This suggested that Members and the DSB had never interpreted Article 6.1 of the DSU as requiring that the complaining party must make its second request for the establishment of a panel at the meeting that directly followed the meeting at which the first request was made. It may be that, in some of these cases, the complaining party had reserved its right to submit its panel request later, or that the time lapse between the first and second request had not been long. However, the important point was that a panel was established upon the second request even though that request had not been made at the consecutive DSB meeting. Furthermore, the need for the second request to be made at the consecutive meeting would mean that, when a special meeting of the DSB was convened after the meeting where the first request was made, then the second panel request would have to be made at that special meeting. Article 6.1 of the DSU did not make any distinction between a regular or a special DSB meeting. Australia's interpretation would mean that a second panel request that was not made at a second consecutive DSB meeting would not be valid. However, practice had shown that Members usually waited for regular DSB meetings to submit their second requests. An example was the "Canada - Renewable Energy" dispute (DS412), where Japan's first request for panel establishment had been considered at the DSB meeting on 17 June 2011. A special DSB was held on 15 July 2011, but Japan did not make its second request at that meeting. Japan, in fact, made its second request at the regular DSB meeting held on 20 July 2011. Honduras hoped that this clarification would make clear Honduras' position, namely, that given the fact that Honduras' panel request was on the DSB's Agenda for the second time, the DSB must establish a panel at the present meeting.

4.10. The representative of the European Union said that the EU noted the disagreement between Australia and Honduras regarding the correct legal interpretation of Article 6.1 of the DSU. In the EU's view, Honduras was correct in considering that this was a valid second request for the establishment of a panel that should be considered by the DSB pursuant to negative consensus. This was confirmed by a reading of the DSU based on its ordinary meaning, considered in context, and in light of the object and purpose, and confirmed by DSB practice where panels had been established without discussion even if DSB meetings had taken place between the first and second panel request, such as special meetings. In the EU's view, this was an important institutional point and any disagreement regarding the interpretation of Article 6.1 of the DSU should be the subject of a panel determination or ultimately the Appellate Body's determination. Therefore, the EU urged the DSB to establish a panel at the present meeting. Doing otherwise would allow a defendant to delay the settlement of disputes. The establishment of a panel at the present meeting would not prejudice Australia's legal position, as Australia could and, no doubt would raise, this issue before the panel as a jurisdictional matter. The EU proposed that the minutes of the present meeting should record that a panel was established, with standard terms of reference, without prejudice to the resolution by the Panel of the procedural dispute between Australia and Honduras concerning the meaning of Article 6.1 of the DSU. The EU noted that it had prepared further arguments on Article 6.1 of the DSU, but it did not think that the present meeting was the right forum to present those arguments. The EU intended to be a third party in this dispute and believed that the exchange of those arguments should be made before the Panel. This was of great importance to the EU as an institutional and systemic issue.

4.11. The representative of Ukraine said that his country regretted the fact that Australia was not able to accept the establishment of a panel at the present meeting and seemed to raise procedural hurdles to such establishment by referring to Article 6.1 of the DSU. Ukraine considered that the prompt settlement of the dispute, which was essential to the effective functioning of the WTO, was not served by Members raising procedural objections before the DSB on a doubtful textual basis. Ukraine did not consider that the DSU required the Member to submit its second request at the DSB meeting that immediately followed the DSB meeting at which the request first appeared on the Agenda. Ukraine could not foresee what would happen if, in an effort to reach an amicable resolution, a Member allowed one or more DSB meetings to pass without submitting its second request. Therefore, Ukraine did not see any textual, political or systemic reason for the

requirement Australia sought to read into Article 6 of the DSU. Ukraine did expect the DSB to establish a panel at the present meeting as requested by Honduras.

4.12. The representative of the Dominican Republic said that, first, his country supported Honduras' request for the establishment of a panel at the present meeting. Second, the Dominican Republic wished to indicate that the spirit of the WTO and of the DSB was to provide time for parties in dispute to arrive at an understanding in resolving that dispute before going into litigation, as had been indicated by Ukraine. The Dominican Republic welcomed the opportunity to address briefly this important issue, which had repercussions for the Dominican Republic in its dispute against Australia (DS441) and was of systemic importance to the Membership as a whole. The Dominican Republic supported Honduras' position that, pursuant to Article 6.1 of the DSU, the DSB was required to establish a panel in the DS435 dispute, at this, the second meeting at which a request for panel establishment had been made. In its view, neither the text, object and purpose of Article 6.1 of the DSU nor Members' practice to date under the DSU supported Australia's position that a panel may only be established at the very next DSB meeting following immediately the meeting at which a request for panel establishment had first appeared as an item on the DSB's Agenda. As regards the text of Article 6.1, the Dominican Republic noted first that the opening clause of Article 6.1 read: "[i]f the complainant so requests". That clause qualified the remainder of Article 6.1 of the DSU, which stated that a complaining party may place a "request" for the establishment of a panel on the Agenda of a DSB meeting. The two DSB meetings referred to in Article 6.1 were not just any DSB meetings or even temporally consecutive DSB meetings, as Australia suggested. Rather, they were DSB meetings at which the complainant had "so request[ed]" the establishment of a panel. According to Article 6.1 of the DSU, if a panel was not established at the first DSB meeting at which the complainant "so requests", it must be established at the "following" DSB meeting at which the complainant "so requests", whether or not the two meetings were consecutive. For Honduras, that "following" DSB meeting was the present meeting.

4.13. Second, contrary to Australia's suggestion, Article 6.1 did not state that a request must be made at the DSB meeting immediately following the one at which a first request was made. Article 6.1 of the DSU provided that the sole condition that could limit a Member's right to establish a panel when it made its second request was positive consensus not to establish a panel. That condition did not arise at the present meeting. Accordingly, the panel must be established automatically. The DSB had no power to discuss, let alone decide, whether the panel may or may not be established. Giving effect to Australia's interpretation would be contrary to the object and purpose of Article 6.1 of the DSU in particular, and the DSU in general, which aimed at allowing parties to a dispute the time to arrive at a mutually agreed solution. According to Australia's view, following a first panel request, a complainant would be compelled to have a panel established at the very next DSB meeting, irrespective of whether there were ongoing discussions with a respondent following the first panel request.

4.14. Australia's position was not supported by Members' practice to date. In its statement, Honduras had referred to at least two previous cases in which the DSB had established a panel, even though the second meeting at which the panel had been established did not follow consecutively from the DSB meeting at which the request was first made. As long ago as 1998, in "Brazil - Aircraft", a panel had been established pursuant to Canada's second request, which was filed almost two years after the first request. In "Indonesia - Autos", the panel had also not been established at the DSB meeting immediately following the first DSB meeting, but rather two months later.[9] Moreover, second panel requests had not been filed at consecutive DSB meetings when "special" meetings of the DSB had been held immediately following the "regular" meeting at which a first request had been made. For example, in the dispute "Canada - Renewable Energy" (DS412), Japan had filed a first request at the DSB Meeting on 17 June 2011 but did not submit its second request at the very next DSB meeting, a "special" meeting held on 15 July 2011. Instead, Japan made its second request at the 20 July DSB meeting.[10] Article 6.1 of the DSU did not distinguish between "regular" and "special" DSB meetings, but referred to DSB meetings generally, whether regular or special. Australia's interpretation would, however, mean that a complainant would be obliged to place its second request on the Agenda of a "specially" convened DSB meeting

[9] Panel Report on "Indonesia – Certain Measures Affecting the Automobile Industry", WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R, adopted 23 July 1998, paras. 1.4, 1.13.

[10] See Minutes of DSB Meetings held on 17 June, 15 and 20 July 2011, WT/DSB/M/298, WT/DSB/M/299 and WT/DSB/M/300.

that was held after a regular meeting of the DSB at which a first panel request was made. Members had not, however, followed that practice. In that regard, Australia's position would introduce fundamental changes to Members' understanding of the operation of Article 6.1 of the DSU, which had prevailed since at least 1998. The Dominican Republic did not consider that it would be appropriate to allow a respondent to avoid the establishment of a panel on the basis of a novel interpretation of the DSU provision that had not previously enjoyed support in the DSB. Any such changes to the understanding on Article 6.1 of the DSU, which would diminish Members' rights under that provision, should be considered pursuant to the appropriate procedures set forth in the WTO Agreement. For all those reasons, the Dominican Republic considered that the text, object and purpose, as well as practice concerning Article 6.1, supported Honduras' right to have a panel established by negative consensus at the present meeting.

4.15. The representative of Guatemala said that his country wished to express its views with respect to Australia's comments regarding the establishment of a panel. Guatemala did not wish to comment on the substance of the dispute and its position was without prejudice to its final position on this matter. In Guatemala's view, Australia's interpretation of Article 6.1 of the DSU could not be justified by the text, object and purpose of that provision. The DSB had no jurisdiction to rule on whether a panel should or should not be established. Furthermore, the DSB did not have the authority to amend nor to make an authoritative interpretation of Article 6.1 of the DSU. The DSB should not accept the imposition of additional conditions and/or qualifications to the second request for the establishment of a panel. That would be contrary to the object and purpose of Article 6.1. For those reasons, Guatemala would not be in a position to join in a consensus to rule on Australia's request. The panel requested by Honduras must be established at the present meeting, in accordance with Article 6.1 of the DSU.

4.16. The representative of the United States said that his delegation was surprised and disappointed with the position taken by Australia at the present meeting. The United States had thought that this issue had been resolved years ago when it had first been raised in the DSB. The view that had been held then and now was that the DSU did not require that the second request for a panel be made at the meeting immediately following the first request in order for a panel to be established by negative consensus. Members had been operating under that assumption for years. There were a few examples identified by Guatemala and the Dominican Republic in their interventions that highlighted the frequency with which this had happened. The United States said that it had a few other examples that it could provide but would save those for a later date. Instead, to illustrate how frequently this could come up, Members should just look at the Agenda item immediately preceding this item – the dispute between Colombia and Panama. A special DSB meeting had previously been scheduled to be held at the beginning of September that would have fallen in between the first and second panel request in that dispute. If that meeting had not been cancelled, Australia's interpretation would allow Colombia to block the second panel request in that dispute as well. In the past five or six years, the United States was not aware of any Member raising such a concern before the DSB. The United States had thought that this issue had been resolved and that was why the United States was disappointed to be having this discussion at the present meeting. This was an issue of systemic concern to the United States and other Members and adopting Australia's interpretation would impact the ability of Members to resolve disputes by forcing them to move forward with a second panel request. In terms of moving forward, the United States wished to echo a comment made by the EU. While it did not agree with everything that the EU had said in its statement about this issue, the United States did agree with the EU that it would be useful for Australia to reconsider its position and agree to establish the panel without prejudice to its views. The United States believed that this issue had been settled and believed that there was a pragmatic way forward that was available to Australia – to reconsider its position without prejudice to its views or the views of all of the other Members at the present meeting.

4.17. The representative of Cuba said that her country supported Honduras' legal interpretation and wished to stress the importance of the principle of negative consensus. Article 6.1 of the DSU provided a guarantee for the complaining party that a panel would be established. Australia's arguments made at the present meeting were not supported by the DSU text. Various Members had expressed their concerns with regard to Australia's measures on the plain packaging of tobacco. The repercussions and interest in Australia's measures were well known. About 35 Members had expressed their interest to participate as third parties in the dispute initiated by Ukraine. Thus, many Members expressed concerns and Honduras' request for the establishment of a panel to examine those measures was aimed at resolving those concerns. That panel would not only hear Honduras' concerns but would also provide Australia the opportunity to defend itself and

prove the consistency of its measures with WTO rules. The establishment of a panel should also be of interest to Australia. Cuba did not see any need to delay the establishment of a panel and noted that such a delay would set a negative precedent. In that regard, Cuba made it clear that it would not accept setting a precedent that would have a negative impact on future complainants against Australia's plain packaging measures for tobacco products. There was no legal basis at the present meeting not to proceed with the establishment of a panel, as requested by Honduras.

4.18. The representative of Indonesia said that her country wished to highlight the procedural issue concerning this matter. Pursuant to Article 6.1 of the DSU, Indonesia supported Honduras' request for the establishment of a panel at the present meeting to examine Australia's plain packaging measures. Indonesia was of the view that the DSB should consider this request as a second request. Indonesia had at least two main reasons why the DSB needed to consider Honduras' request in that manner. First, Article 6.1 of the DSU stipulated that: "a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's Agenda". In Indonesia's view, there was nothing in WTO jurisprudence that required that a second request must, as a matter of law, follow a first request within a certain period of time in order for the DSB to establish a panel under Article 6.1 of the DSU. Second, there were various examples in prior WTO disputes where a second request had followed the first request two months later, such as in "Indonesia - Autos". In "Brazil - Aircraft", there was a gap of two years and yet the DSB had established a panel based on negative consensus. In that regard, in Indonesia's view, this request was legitimate and in accordance with WTO law and practices. Therefore, Honduras' request should be considered positively by the DSB at the present meeting.

4.19. The representative of China said that, although nearly ten months had elapsed since Honduras' first request had been filed to establish a panel, her country found it difficult to agree with Australia's interpretation of Article 6.1 of the DSU and to consider Honduras' request as the first request. The virtually automatic establishment of a panel at the second DSB meeting where the request was made was a great achievement of the DSU in the Uruguay Round negotiations. The principle had been finally established and closely followed by all Members and should not be shaken in any way. As the EU and other delegations had already mentioned, the lapse of time between the first and second requests had appeared in several cases in the past, and Article 6.1 of the DSU did not distinguish between regular and special DSB meetings. Article 6.1 of the DSU should not be interpreted to require two consecutive meetings, or that the second request be made immediately following the first one. According to Article IX:2 of the WTO Agreement, the Ministerial Conference and the General Council shall have the exclusive authority to interpret the DSU provisions. Thus, China did not think it was appropriate for the DSB to interpret Article 6.1 at the present meeting. China joined the United States in urging Australia to reconsider its position. Under Article 6.1 of the DSU, even if Australia objected, the panel should be established unless the DSB decided by consensus not to establish a panel.

4.20. The representative of New Zealand said that her country would refrain from commenting on the substance of this dispute but wished to take the opportunity to comment on one of the systemic issues raised by Honduras' request. Regarding the timing and process for the establishment of panels, New Zealand had some sympathy for the views expressed by Australia regarding whether this request should be considered as a first or second panel request. New Zealand agreed with Australia's comments that it was important that the implications of Honduras' action for the system as a whole, rather than just for this particular dispute, were properly considered. New Zealand noted that Article 6.1 of the DSU gave a complaining party the ability to choose when to make its panel request, but also that the same Article envisaged the timely establishment of panels at the DSB meeting following an initial request. New Zealand agreed with Australia that the principle of automaticity for establishing panels under Article 6.1 was not unlimited and should not allow for first panel requests to remain open indefinitely in the face of lengthy inaction on the part of a complaining party. As had already been noted at the present meeting, there may, and there had been, certain instances in which a second request was deferred in order to pursue settlement negotiations, which was something the DSU encouraged and had potential benefits for the Secretariat resources and the system, or to encourage or facilitate the formation of single panels by enabling other complaints to "catch up". But, overall, there appeared to be good reasons for the assumption in the DSU that second panel requests be pursued in a timely manner including certainty and fairness for respondents and third parties. New Zealand was of the view that any departure from that assumption and from established practice should be made only with good reason.

4.21. The representative of Panama said that the discussion at the present meeting concerned one of the most important principles of the dispute settlement system. Panama had taken note of all arguments but would not go into details because it agreed with those delegations who had stated that the interpretation of the WTO Agreement was reserved for Members in the context of the General Council or the Ministerial Conference. In that regard, the DSB was not the right forum to discuss this matter in detail. Panama noted Australia's statement and considered that, should the DSB take a decision contrary to what Honduras had requested, it would enter into an exercise of interpreting the agreement which would raise a number of other systemic problems and issues. Members could discuss these issues in other fora. Panama believed that there were practical issues to be taken into account. If Members were to agree with Australia, this would involve more work rather than reduce costs for the WTO. Delaying, rather than accelerating the process would reduce costs in particular for developing countries. The DSB must proceed with the establishment of the panel at the present meeting. Panama did not agree with the suggestion that the DSB should establish special terms of reference for this panel. Honduras had requested a panel with standard terms of reference and no other terms of reference should be considered. Panama noted the statements made by Australia as well as other delegations and believed that the DSB should establish a panel at the present meeting.

4.22. The representative of Japan said that, although his country did not express any position on the facts and legal arguments in this dispute, Japan shared the concern expressed by many other Members with regard to Australia's interpretation of Article 6.1 of the DSU. Japan wished to reiterate that procedural issues that derived from the interpretation of the text should be resolved by a certain flexibility of the parties, and that such procedural matters which may affect jurisdiction should be carefully considered.

4.23. The representative of El Salvador said that her country did not agree with Australia's interpretation of Article 6.1 of the DSU. Honduras' request was well founded and therefore a panel must be established at the present meeting.

4.24. The representative of the Philippines said that his country noted the systemic concerns expressed by many delegations on this matter. Since the issue concerned the understanding of the rights and obligations of Members under the covered agreements, the DSB may not be in a position to make a ruling or an authoritative interpretation on this matter.

4.25. The representative of Mexico said that, without prejudice to its position on the dispute before the DSB and without prejudice to the responsibilities of other WTO bodies, this procedural matter had systemic implications. A reading of the DSU did not point to the conclusion that Australia was putting forward in addition to the arguments on the ordinary meaning, context, object and purpose of Article 6.1 of the DSU. Mexico recalled Article 3.3 of the DSU. Article 3 concerned "general provisions" and paragraph 3 referred to prompt settlement as essential to the effective functioning of the WTO. In fact, the Article began with the words "[t]he prompt settlement … is essential". In Spanish, the wording was different, but it did say "es esencial … la pronta solución", and the French also spoke of "règlement rapide" as being "indispensable". Australia's position appeared to be contrary to the DSU principle.

4.26. The representative of Brazil said that there were several reasons why a delay or a gap may occur between the first and second panel requests. But even if that delay kept the respondent in a "suspended state" about when and if the second request would be filed, in the absence of a cogent and clear interpretation of Article 6.1 of the DSU mandating the second panel request to be made at the subsequent meeting, one should be cautious not to engage in an exercise of interpretation. As the EU had suggested, this matter should be left to the panel. With regard to a special DSB meeting taking place between the first and second requests, Brazil found those arguments less convincing. Special meetings were convened for a particular purpose and a second panel request would not necessarily be considered during such meetings. Article 6.1 of the DSU could be read as referring to regular DSB meetings.

4.27. The representative of India said that his country had a systemic concern on this matter regarding the proper interpretation of Article 6 of the DSU. India respectfully disagreed with Australia's interpretation of Article 6 of the DSU. Australia's interpretation was not supported by the text, the object and purpose of the DSU nor past practice. Article 6 of the DSU began with the phrase: "If the complaining party so requests, a panel shall be established...". In India's view, Article 6 of the DSU gave the complaining party the choice when to establish a panel, which could

at the latest be at the meeting following the meeting in which the request was first made. Article 6 of the DSU did not prevent the complaining party from deciding to request a panel at a later time. Australia's argument to support its interpretation was that if the panel was not established in the subsequent meeting, then this had implications since it would lead to uncertainty, and that Members, especially developing countries, would not be able to plan their resources for the dispute. In India's view, that argument was not convincing. If one looked at the DSU, there was also uncertainty at other stages of the dispute settlement process, for example, whether or not the complaining party would request a panel after 60 days from the date of the request for consultations. There was also uncertainty at the panel composition stage where, often, the parties did not ask the Director-General to compose a panel after 20 days from the date of the establishment of the panel. There was a reason for this uncertainty. The purpose of the dispute settlement mechanism was to arrive at a mutually agreed solution. The DSU, therefore, required mandatory consultations to give diplomacy a chance to mutually resolve disputes. It was thus not proper to interpret Article 6 in a manner which would make Members rush for the establishment of panels without fully exploring the chances for arriving at a mutually agreed solution. India, therefore, disagreed with Australia's interpretation and like the United States and China, requested Australia to reconsider its proposal.

4.28. The representative of Costa Rica said that this matter had important systemic implications for all Members. Costa Rica considered that the text of Article 6.1 of the DSU did not specify any condition as to when the second panel request had to be filed, and the DSB would establish a panel automatically on the basis of negative consensus. For that reason, in Costa Rica's view there was no alternative but to establish a panel at the present meeting.

4.29. The representative of Nicaragua said that his country supported Honduras' request for the establishment of a panel. In its view, a panel must be established at the present meeting. If not, this could set a negative precedent for the multilateral trading system. Nicaragua, a producer and exporter of tobacco and derivative products, had systemic interests in this matter. Nicaragua had expressed its concern about this matter and was of the view that a panel should be established at the present meeting. Nicaragua did not agree with Australia's position and referred to the jurisprudence from similar cases as well as the arguments set forth by Honduras and other delegations. Nicaragua would reserve its third-party right to participate in the Panel's proceedings.

4.30. The representative of Argentina noted that an important systemic issue had been raised and agreed with the majority of delegations who had expressed their views on this matter. In Argentina's view, neither the DSU text, DSB practice nor DSU spirit, as encompassed in Article 3.7 of the DSU, supported Australia's interpretation of Article 6.1 of the DSU. It was for these reasons that Argentina was of the view that a panel must be established at the present meeting as requested by Honduras.

4.31. The representative of Chile said that his country supported the statement made by Argentina and would reserve its third-party rights to participate in the Panel's proceedings.

4.32. The representative of Canada said that his country felt compelled, like others, to intervene on the systemic issues to add its views to those that considered Honduras' request at the present meeting as a second request. Canada did acknowledge, as others had, that there was and may still be some ambiguity surrounding the interpretation of Article 6.1 of the DSU. However, Canada also agreed that more recent practice suggested more certainty about the correct interpretation and many arguments that had been raised by others should be considered valid in that respect. More importantly, this debate perhaps put too much strain on the DSB as a decision-making Body when it was raised in the context of a specific panel request, given that it went to the heart of the automaticity of panel establishment, the core innovation in the DSU, as others had noted. Canada, therefore, was of the view that a panel should be established at the present meeting. Canada was ready to join others in any necessary and separate discussions that would take place outside the context of this specific dispute to see whether or not Members needed to formally resolve any residual uncertainty around the correct operation of Article 6.1 of the DSU.

4.33. The representative of Thailand said that his country supported the majority of views that the first and second request did not have to come consecutively. Thailand was of the view that the DSB had no choice but to establish the panel at the present meeting. Thailand would reserve its third-party right to participate in the Panel's proceedings.

4.34. The representative of Ecuador said that, in accordance with Article 6.1 of the DSU, the DSB must establish a panel at the present meeting by negative consensus.

4.35. The representative of Zimbabwe said that her country supported the request made by Honduras and the statements made by India and other delegations. Zimbabwe recognized Honduras' request as a second request that was consistent with the existing rules, and supported the view that the panel should be established at the present meeting.

4.36. The Chairman noted that the discussion was stimulating and important. He was aware that Members were concerned that any unilateral ruling from the Chair may not necessarily carry the wishes of the entire Membership. Thus, any non-action, action, or action with conditions in any event constituted some form of interpretation. He appreciated what had come out of the discussion and recalled the long history of the DSU provisions, which were an effort by the drafters to reform the GATT system whereby a responding party to a complaint could forever block a panel by not agreeing to its establishment. Thus, there was a common intention to add some element of automaticity in establishing a panel when efforts to mutually settle a dispute had been exhausted. As some Members had pointed out, adding a second request to a first request was to re-enforce the paramount desire wherever possible to have the parties directly concerned reach a mutually agreeable solution. However, differing views had been expressed at the present meeting, suggesting that the drafters may not have ever turned their attention beyond automaticity to consecutivity in any explicit manner. Having anticipated that this issue might arise, he had requested the Director of the Legal Affairs Division, Ms. Valerie Hughes and her team, to undertake a review of the negotiating history and practice of the Membership since the WTO's inception. He invited Ms. Hughes to give a short synopsis of this research, so as to further inform the Membership of the context.

4.37. The Director of the Legal Affairs Division, Ms. Valerie Hughes, made the following statement: "The results of our research are similar to what has already been articulated by some of the delegations today. We know, of course, that in the vast majority of cases, consecutivity, if I may use that word, is followed. However, we found examples of situations that demonstrate that a particular Member was of the view that consecutivity is required and it felt obliged to make the second request at the immediately following meeting in order to, as it said, protect its rights. We also found examples where Members have not objected to panels being established, even when the requests for panel establishment were not consecutive. We found examples where a Member has withdrawn a second panel request from the DSB Agenda of the immediately following meeting, and in those instances stipulated that should the request be made a future meeting, it shall be treated as a second request. We also found in our files that there was a request in 1997 by a delegation that the DSB Chair, at the time, undertake consultations on the practice under Article 6.1 and on how Article 6.1 should be interpreted. In connection with that informal consultation, delegations asked the Secretariat to prepare a factual summary of the drafting history of Article 6.1. That factual summary reports that the intent was to, as the Chair has said, introduce automaticity in panel establishment in order to move away from the past practice of delays. The note also says that the Secretariat found no evidence that the negotiators discussed the consequences of a situation where the complainant fails to inscribe its panel request as an Agenda item of the DSB meeting immediately following the meeting at which the request first appeared as an Agenda item. The files for that meeting include a document dated March 1997 entitled "Observations of [two Members]". It refers to the request made to the Chair to conduct consultations concerning Article 6.1. The document also makes several points. These two delegations indicate the view that consecutivity is not required and that the panel will be established at the subsequent meeting "regardless of when it takes place", unless there is a consensus otherwise. The document notes that the DSB practice has not been to require consecutivity. It says further that the DSU should not be interpreted in a manner that unduly limits a Member's flexibility after it makes a first request because it is desirable that settlement be pursued. The files do not reveal that any statement or interpretation or anything else was adopted or agreed after that consultation conducted by the Chair. We also looked in the DSU negotiations files and found a note compiling "informal and preliminary comments submitted for the DSU Review by Members through 1 December 1998", reporting that several Members expressed the view that Article 6.1 does not require that requests for panel establishment be made at consecutive meetings. Of note is that there is no overall statement. It is rather that several Members expressed the view that Article 6.1 does not require consecutive meetings because to require that would, in the view of these delegations, seem to run contrary to the preference for working towards mutually acceptable solutions and can force a complaining party to request a

panel when negotiations are proceeding to narrow or resolve the differences. One delegation is reported to have suggested that there should be a limit on that flexibility, while another delegation is reported to have said that there is ambiguity in the language of Article 6.1. That sums up our research on this question."

4.38. The Chairman said that, what he took from the research, from the present meeting's discussion and from the history, was that there was no definite interpretation among the Membership. The history showed that even in 1997, when there had been a specific taskforce tasked to see if further precision was required, there had been no common position, despite some written papers on the subject. Second, he noted that, based on this discussion, delegations had cautioned that he should not, in any manner, take a decision contrary to Members' wishes. There had been various suggestions, or at least two major suggestions on how that follow up and focus might occur. The first one was via litigation, should it be raised in the course of this dispute by the parties themselves or by potential third parties. The second one was in some other form of discussion, whether at the DSB or in an informal grouping that Members may wish to undertake. Against that backdrop, it seemed that the Chair had a responsibility to all to respect the thoughtful views that each had offered and not to suggest any route that would offer any prejudice to any of the views. In listening to the debate, he had come to a conclusion similar to some of the delegations' suggestions that the DSB should take note of all of the views and comments expressed by the parties to the dispute and by other Members, and that the minutes should reflect this. He encouraged each delegation that had written statements to ensure that they were submitted for inclusion in the minutes of the present meeting. The DSB would take note of all comments regarding Article 6.1 of the DSU and would note that many Members had suggested that the DSB should revert to this matter at a later date or in another setting. Against that backdrop of taking note for the purposes of the dispute that was before the DSB at the present meeting, he proposed that the DSB, without prejudice to the views that had been expressed by any delegation, establish a panel with standard terms of reference.

4.39. The representative of the United States said that his country wished to intervene to get some clarity on the situation on where things stood. Before intervening, the United States recognized that this was an Agenda item in which the United States was a third party. The United States wondered whether Australia wished to take the opportunity to respond. The United States did not want to deny Australia that opportunity and would thus defer to them should they wish to respond. If not then the United States would offer some comments and thoughts.

4.40. The Chairman said that, should the DSB establish a panel in the manner he had suggested, which was without prejudice to the position of any party on this interpretive issue, he would ask delegations to indicate their third-party interest.

4.41. The representative of Australia said that his country had one query: it wished to know if the Chair was proposing that there be a decision with which all of the Members would actually concur. In that regard, Australia wished to clarify that it did not actually concur with the decision.

4.42. The Chairman said that, as he understood it, some Members had pointed out that a panel was established unless there was negative consensus. The unanimous consent of all Members was not required to establish a panel. As he had said at the outset, the views of each and every Member were recorded but the panel had been established.

4.43. The representative of Australia said that his country wished to reconfirm for the record that it did not agree with the views put forward by Honduras and other delegations about the interpretation of Article 6.1 of the DSU, nor did Australia accept the precedential value of some of the references to individual disputes put forward by a number of delegations. Australia noted the decision to establish a panel at the present meeting despite the important systemic concerns that it had raised and requested that its views be reflected in the record. Australia reserved its right to raise this issue before the Panel. Australia fully agreed that the WTO dispute settlement system should be flexible enough to allow parties to achieve a mutually agreed solution to a dispute at any time. However, Australia also wished to make it clear that, in the current case, the complaining party had made no attempt to reach out to Australia to resolve this dispute since the first panel request had been made at the DSB some ten months ago. Australia remained committed to defending this important public health measure.

4.44. The representative of the United States said that his country had difficulty understanding what had just transpired and would appreciate clarification on the matter. There were remarks made by many delegations, which seemed to express a view in this particular instance in opposition to the position held by Australia. The United States appreciated the views of the Chair as well as the research that had been provided by the Secretariat, but it was having trouble seeing how the panel would be established. Could Australia clarify that, for the purposes of the present meeting, it was dropping its objection that this was not a second request and agreeing that it would be appropriate to establish a panel? If that was not the case, the United States did not entirely understand what the Chair was proposing and whether there had been a ruling from the Chair, a decision by the DSB, or someone else. The United States felt that it was not appropriate to take a decision like this and did not understand what the mechanism would be to take a decision like this without the consent of the Members involved.

4.45. The Chairman said that he would try to be even more explicit. This would be a decision of the DSB to establish a panel under Article 6.1 of the DSU. That could be a decision taken and should be a decision taken, unless there was a consensus not to do so. Australia, in that context, with negative consensus, was free to record that it did not agree to a panel. To his knowledge, there was nothing that said that the parties to the dispute in particular must agree.

4.46. The representative of China said that her country did not agree with the United States that the DSB still needed to seek the consent from Australia that the decision had been made and said that the Panel had been established at the present meeting, at the request of Honduras. As the Chair had made clear, the decision had been made on the basis of a negative consensus as provided in the DSU provisions. That was China's understanding of the situation. There was no need to seek a view from Australia on this. China hoped that the Chair would understand the current situation and not insist that Australia give its view on this. The Panel had been established by negative consensus.

4.47. The representative of Honduras said that his country was satisfied with the decision that had been taken to establish a panel. With regard to Australia's request for a single panel to examine Honduras' complaint and the complaint raised by Ukraine, Honduras noted that Article 9.1 of the DSU stated that a single panel may be established to examine similar disputes. Under Article 9.1 of the DSU, however, there was no obligation to establish a single panel. In the "India - Patent" dispute, the Panel said that the establishment of a single panel was recommendatory and not mandatory. Article 9.1 of the DSU should not affect the substantive and procedural rights and obligations of individual Members. The establishment of a single panel without the agreement of the complaining Member could affect the right of that Member to a separate panel, thereby prejudicing that Member's procedural rights. As a result of Honduras' objection, a single panel could not be established. This decision to establish a single panel should be taken by positive consensus. This is in contrast to the negative consensus rule that applied under Article 6.1 of the DSU. This was confirmed by DSB practice and Honduras wished to point out that on occasions, when the DSB had recommended the establishment of a single panel with respect to several complaints, no party had objected. If a party objected, then a single panel could not be established. In the "United States - Customs Bond Directive" dispute, a single panel had not been established because the United States had objected to it. In the "US - Steel Safeguards" dispute, the consolidation of several panels, in keeping with Article 9.1, had been established with the agreement of all parties. In the "Canada - Dairy" dispute, New Zealand stated that it did not object to its case being reviewed together with another complaint by a single panel. In "Korea - Alcoholic Beverages", the United States and Korea agreed to the establishment of a single panel. At the DSB meeting on 30 August 2013, a panel was established to examine the dispute: "China - HP-SST". The DSB had previously established a panel with regard to the dispute initiated by Japan on the same measure (DS454) imposed by China and the Panel had already been composed. A single panel was not established on 30 August 2013 because the complaining parties had not requested it. However, the parties had agreed that the same panelists would examine the dispute. DSB practice showed that Members understood that the establishment of a single panel was not automatic. Instead, parties can elect to have the panel proceedings harmonised pursuant to Article 9.3 of the DSU.

4.48. The representative of the European Union said that the EU wished to draw Members' attention to Articles 2.2 and 2.4 of the DSU as context. What was clear in the EU's view was that there was no consensus at the present meeting not to establish a panel. Therefore, and with the caveat that Australia may raise this issue before the Panel as a jurisdictional matter, the DSB

action that necessarily followed under Article 6.1 of the DSU was the establishment of a panel despite Australia's objection.

4.49. The representative of New Zealand said that her country wished to comment on Australia's request for the establishment of a single panel to hear the complaints in DS434 and DS435. New Zealand firmly supported Australia's request and, in that regard, wished to place on record its views on this matter. In New Zealand's view, the DSU clearly encouraged and provided for single panels to be established for multiple complaints related to the same matter, and for good reason. The benefits of establishing a single panel included efficiency, timeliness and consistency for the system, fairness for respondents, and facilitation of the participation of smaller and more resource-constrained delegations in disputes affecting their interests. New Zealand did note that Article 9.1 of the DSU stopped short of requiring single panels. It provided that: "a single panel should be established to examine such complaints whenever feasible". In a situation such as the present one, where the two cases were similarly progressed, a single panel was clearly "feasible" in the sense of the DSU. While the overall number of disputes/claims already brought against these same measures may increase the complexity of establishing a single panel, this did not, in New Zealand's view, make the establishment of a single panel for DS434 and DS435 "unfeasible". In its view, the slightly different scope of the claims in this instance did not have a bearing on the question of feasibility. A single panel could adopt appropriate procedures, for example, separate reports or findings for each complaint, to ensure that there was no disadvantage. Articles 9.1 and 10.1 of the DSU provided that the interests of the parties to a dispute and those of other Members shall be fully taken into account during the panel process. Consequently, in New Zealand's view, the rights of the parties and the convenience of establishing a single panel must be balanced. Among the factors that favoured the establishment of a single panel were the common issues of fact and law that arose in both Ukraine and Honduras' complaints, and the savings that would be achieved in time and cost to the parties and to the WTO resources. In light of all the circumstances outlined at the present meeting, it was clear that Australia and, to a lesser extent, New Zealand and other third parties would suffer real prejudice if separate panels were established. On the other hand, it appeared that Honduras would not suffer any real prejudice if a single panel were established. All of these factors decisively outweighed Honduras' grounds for establishing separate panels.

4.50. The representative of Australia said that his country did not understand Honduras' opposition to the establishment of a single panel. Australia had identified no other instance where either a complainant or a respondent had objected to the establishment of a single panel under Article 9.1 of the DSU where the original panel had not yet been composed. The practice, for a range of important reasons, had been to establish single panels in cases such as the one currently before the DSB. The procedures for multiple complainants under Article 9 of the DSU were another means of ensuring the security and predictability of the WTO dispute settlement system. The measure at issue in both disputes was the same measure; the claims in both disputes were very similar and, in some respects, identical. The Panel that had been established with respect to Ukraine's complaint had not yet been composed. There was, therefore, no practical impediment to the establishment of a single panel. The establishment of a single panel represented the most efficient means of hearing the disputes. To decide otherwise would place an undue burden on Australia as the respondent by requiring Australia to respond to two very similar complaints in two separate proceedings. It would also place an undue burden on third parties participating in the separate proceedings and an undue burden on the WTO Secretariat in supporting separate proceedings. On the other hand, it was not clear how Honduras or Ukraine could be negatively affected by the establishment of a single panel, particularly as Honduras was so keen to have a panel established at the present meeting. Australia noted that under Article 9.2 of the DSU, the Panel may provide separate panel reports if so requested by Honduras or Ukraine or any other party to the dispute. Australia strongly urged the Chairman to take into account the rights of all Members concerned, as the terms of Article 9.1 required. If however, despite Australia's views, and as a result of Honduras' opposition, a single panel were not established to hear these two very similar complaints relating to the same matter, Australia did expect that the same persons shall serve as panelists on each of the separate panels and that the time-table for the panel process in such disputes shall be harmonized, pursuant to Article 9.3 of the DSU.

4.51. The representative of the United States said that his country was in a difficult position because, while it did not agree with Australia's interpretation of Article 6.1 of the DSU, the United States had thought that the issue had already been resolved. The United States wished to support Honduras' position and understood that Australia was still objecting to the establishment of a

panel, or at least Australia had not clarified that it had dropped that objection. The United States had hoped that Members could find a pragmatic way forward and that Australia would withdraw its objection without prejudice to its systemic views.

4.52. The Chairman said that he and perhaps other Members may need clarity from the United States. This was, under Article 6.1, a second request for a panel. As the EU had noted, either there was a consensus not to establish a panel, or it shall be established. Australia was trying to generate a negative consensus but had not generated full support for that view. Thus, pursuant to Article 6.1 of the DSU, there seemed to be a common view that there was no lack of clarity as to how the DSB was proceeding or under what authority.

4.53. The representative of the United States said that his country's concern was that there was a Member objecting to a decision that was being taken and yet the DSB was proposing to take it anyway.

4.54. The Chairman said that a decision could be taken unless all Members agreed not to.

4.55. The representative of the United States said that his country was still trying to understand Australia's position. If the DSB were not able to get clarity on this issue, it may need to consider whether there were other ways to resolve it and whether it needed to suspend the proceedings to talk through exactly what was going on. The US concern was that by proposing to take a decision on the establishment of a panel without Australia's consent on whether or not this was the second request, the DSB was, de facto, taking a decision that this was a second request. It was the leap from the first step to the second step that was the problem with this approach.

4.56. The Chairman said that he would always welcome a consensus but the DSB did not have that at the present meeting. Australia's view, as he had noted, would be fully recorded. There was nothing extraordinary about a decision to establish a panel by the DSB since the second panel request would result in such a decision of the DSB. That was the automaticity – in the absence of negative consensus. He did not mean to speak for Australia but said that Australia may wish to respond to the US view to join the consensus in a manner that might still record fully their legal view, which ultimately may be subject to litigation or negotiations. But he was trying to reconcile the US concern with the plain language of negative consensus in Article 6.1 of the DSU.

4.57. The representative of the Bolivarian Republic of Venezuela said that, regarding the US statement, developing countries defended the principle of consensus in the DSB, and this principle must be preserved. However, Article 6.1 of the DSU referred to negative consensus. In Venezuela's view, from the moment Australia referred to establishing a single panel under Article 9.1 of the DSU, Australia had accepted a decision of the DSB to establish a panel. In other words, Australia had already accepted a panel at the present meeting.

4.58. The representative of Honduras said that his country thanked Members and the DSB for the decision to establish a panel, in accordance with Article 6.1 of the DSU. With regard to the issue of a single panel raised by Australia, Honduras did not agree with the establishment of a single panel under Article 9.1 of the DSU. Honduras had already presented its views on this matter. The fact that there was no agreement between the parties to the dispute was enough to prevent the establishment of a single panel under Article 9.1 of the DSU.

4.59. The Chairman said that Members should keep their focus on the Article 6 issue. The DSB would come back to the Article 9.1 issue and the single panel issue once it had settled the establishment issue, the negative consensus and Australia's objection.

4.60. The representative of the Dominican Republic said that his country believed that the Article 6.1 issue had been sufficiently discussed. Although the respondent had objected, there had been admission, as Venezuela had stated, by Australia on the establishment of a panel since they had requested the establishment of a single panel. In that regard, as far as the Dominican Republic was concerned, Honduras' request had been accepted.

4.61. The Chairman said that the DSB procedure under the DSU provisions was that when there was a second request for a panel, at the following meeting, whatever that meant, a panel shall be established unless there was a consensus not to do so. There was at least one if not two delegations that had considered that those requirements were not met. However, given the second request and given no negative consensus, the panel was established. In that context, the DSU fully noted the views of Australia, New Zealand and other delegations regarding the "consecutivity" issue. In his view, that preserved the US right to continue to advocate that this issue had been settled long ago, whether in a third-party context, before a panel, at the DSB, or if Members agreed to reconstitute the informal consultations that had taken place in 1997 or 1998. It fully preserved the rights of Australia and New Zealand to argue that there must be two successive meetings and it preserved the right of all other delegations to deepen that debate by discussing whether it was two successive regular meetings, a special meeting, of what was the balance of rights and interests. It avoided any suggestion that the Chair alone had tried to direct the DSB to make a decision or an interpretation in one direction or another that would bound the Membership for the future. It preserved everything status quo ante but allowed a panel to be established, subject to the discussions on Article 9.1 and the issue of a single panel. That was how he proposed to proceed.

4.62. The representative of the United States said that the Chair had been constructive and creative. The US views had been fully reflected in the debate and perhaps more reflected than other delegations would like. For the purposes of the present meeting, without prejudice to their views, as the United States understood it, Australia was acknowledging the fact that a panel was being established at the present meeting. This was not being done by the Chair, but this decision was being taken by the Membership with the agreement of Australia.

4.63. The Chairman said that he was prepared to note the further diminution of any authority on his part as the Chair in the face of the Membership. The US view would be fully recorded. Whatever the right word of acknowledgement, acquiescence, non-objection, silence was, it was not endorsement of the procedure by Australia, but it was not a blocking of the DSB proceeding. Members had agreement on the Article 6 approach, which was not an action of the Chair. He saw no objection from Australia to his observations or to those of the United Sates. Having said that, he wished to proceed to any remaining discussion on the issue of a single panel.

4.64. The representative of the European Union said that the EU was slightly worried about where the discussion might be heading. For over 15 years Members had worked on the basis that, despite a Member formally objecting to a panel request, a panel was established at the second DSB meeting unless the DSB decided by consensus not to establish a panel. This was what negative consensus was about. The EU hoped that this would be clearly recorded.

4.65. The representative of the United States said that his country wished to respond to the comments raised by the EU. As the United States understood it, there were two issues: whether it was a first or second panel request and whether a panel could be established by negative consensus if it were a second request. The US concern was about the leap between the two steps rather than the latter step itself.

4.66. The Chairman said that he observed two things with regard to Article 9.1 of the DSU. In his view, it was important to note that as early as 1998 in the "India - Patents" dispute, the Panel had been explicit in saying that the establishment of a single panel under Article 9.1 was not mandatory, it was a recommendation. It was an encouragement, as New Zealand and others had noted and there was a lot of common sense to consolidation and litigation economy where possible. However, the panel itself, and it was not reversed or challenged on appeal, said it was a recommendation. Second, in reviewing the history of single panels, it was interesting to note that, on the one hand, other cases were discovered where even if a second complainant came along later – as long as three or four months later – that length of time and that gap was not a bar to the establishment of a single panel. Members had been given an additional ten days to reserve their third-party rights because of the second complaint, even though it came along three, or four, or five months later. But what was interesting was that on no previous occasion had a single panel been established with regard to a second complaint after action had been taken by the panel that had been composed for the first complaint. If further steps had been taken, then it would not be a precedent for the situation before the DSB. Taking into account the "India - Patents" case, which determined that establishing a single panel was a recommendation, the issue under consideration at that point was a matter of positive rather than negative consensus and he did not hear full

agreement to have the DSB positively agree that there shall be a single panel. There had been no universal decision to proceed that way. Against that backdrop, his suggestion was in effect the agreed approach the DSB had sought in order to exhaust this Agenda item. He noted that there was no need for additional observations on the single panel because preferences had been strongly expressed each way. An affirmative consensus was required for the single panel, which was not the case at the present meeting. In that regard, he noted that the DSB had exhausted the discussion on this Agenda item and that, subject to all the conditions and notes recorded, a panel was established.

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

4.68. The representatives of Argentina, Brazil, Canada, Chile, China, Cuba, the Dominican Republic, the European Union, Guatemala, India, Indonesia, Japan, Korea, New Zealand, Nicaragua, Nigeria, Norway, Oman, Panama, the Philippines, Singapore, South Africa, Chinese Taipei, Thailand, Turkey, Ukraine, the United States, Uruguay and Zimbabwe reserved their third-party rights to participate in the Panel's proceedings.

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

A Recourse to Article 21.5 of the DSU by Canada: Request for the establishment of a panel (WT/DS384/26)

B Recourse to Article 21.5 of the DSU by Mexico: Request for the establishment of a panel (WT/DS386/25)

5.1. The Chairman proposed that the two sub-items to which he had just referred be considered together. He recalled that the DSB had considered these matters at its meeting on 30 August 2013 and had agreed to revert to them. He first drew attention to the communication from Canada contained in document WT/DS384/26 and invited the representative of Canada to speak.

5.2. The representative of Canada said that his country wished to refer to document WT/DS384/26 and to its statement made at the August DSB meeting under the same Agenda item. As it had previously indicated, Canada considered that the amended COOL measure, adopted by the United States on 23 May 2013, did not bring the United States into compliance with the DSB's recommendations and rulings in the "US-COOL" dispute. Rather, the amended COOL measure only served to deepen the discrimination found in the original labelling requirements. Accordingly, Canada had no choice but to exercise its right at the present meeting to request, for a second time, that a panel with standard terms of reference be established to examine whether the United States had brought its measure into compliance with the DSB's recommendations and rulings. As provided for in Article 21.5 of the DSU, Canada hoped that it would be possible to refer this matter to the original Panel. If Mexico and the United States agreed, Canada would also agree that a single panel be established to deal both with its complaint and Mexico's. Canada looked forward to working with the United States in the coming days to ensure that the panel could conduct its work within the prescribed timelines. In the meantime, Canada remained ready to discuss with the United States other measures it might take to bring itself into compliance as quickly as possible.

5.3. The Chairman drew attention to the communication from Mexico contained in document WT/DS386/25 and invited the representative of Mexico to speak.

5.4. The representative of Mexico said that his country wished to refer to its statement made under the same Agenda item at the previous meeting. Mexico was requesting the DSB to establish a panel under Article 21.5 of the DSU because it considered that the United States had failed to comply fully with the DSB's rulings and recommendations. Mexico urged the United States to adopt the necessary measures to do so. Mexico hoped that this matter would be examined by the original Panel.

5.5. The representative of the United States said that his country was disappointed that Canada and Mexico had made second requests for the establishment of panels in this matter. As the United States had explained at prior meetings of the DSB, the US Department of Agriculture had issued a final rule that fully met the concerns expressed in the adopted reports by ensuring that consumers were provided with detailed and accurate information on origin. Accordingly, the final rule had brought the United States into full compliance with the DSB's recommendations and rulings in this dispute. Although it was unfortunate that Canada and Mexico were nonetheless pursuing a compliance proceeding, the United States was prepared and ready to rebut any claims regarding the US compliance measure.

5.6. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to an original Panel, if possible, the matter raised by Canada in document WT/DS384/26 and the matter raised by Mexico in document WT/DS386/25. It was agreed that the terms of reference would be standard.

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

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

A Report of the Panel (WT/DS427/R and WT/DS427/R/Add.1)

6.1. The Chairman recalled that, at its meeting on 20 January 2012, the DSB had established a panel to examine the complaint by the United States pertaining to this dispute. The Report of the Panel contained in document WT/DS427/R and Add.1 had been circulated on 2 August 2013 as an unrestricted document. The Report of the Panel was before the DSB for adoption at the request of the United States. The adoption procedure was without prejudice to the right of Members to express their views on the Report.

6.2. The representative of the United States said that his country was pleased to place the Panel Report on Broiler Products on the Agenda of the present meeting. This dispute involved China's imposition of significant levels of anti-dumping (AD) duties and countervailing duties (CVD) on broiler products from the United States. As the United States said that it would summarize in a few minutes, the Panel had correctly found that China's AD and CVD measures had serious substantive and procedural deficiencies. The Report was important in at least three respects. First, the Report was important both for US exporters, and for Chinese consumers, of US chicken broiler products. The United States was the world's leading producer of these high-quality poultry products. The duties that China had maintained on US exports had unjustifiably restricted US exports, resulting in a drop of nearly 80% since China initiated its investigations. The United States looked forward to China's compliance with the recommendations and rulings in the Report, and to a return to prior levels of trade.

6.3. Second, this dispute was important because it was one of a series of disputes involving what appeared to be a systemic misuse by China of AD and CVD measures. In November 2012, the DSB had adopted similar findings with regard to China's AD and CVD measures on a high-tech US steel product. A third panel was currently considering US claims that China's AD and CVD measures on US automobiles likewise involved pervasive breaches of WTO obligations. The United States also noted that other Members also were pursuing similar claims involving other AD and CVD measures adopted by China. The United States hoped that China would respond to the series of disputes by making the systemic changes necessary to begin operating its AD and CVD regimes in accordance with WTO rules.

6.4. Third, this Report also had important systemic findings that would benefit all Members. For example, the Report confirmed that WTO rules required meaningful transparency, including with respect to the disclosure of the information that resulted in the dumping margin. The Report confirmed that price comparisons in injury determinations must not be distorted by comparing dissimilar products. The Report also found that authorities may not arbitrarily reject legitimate cost information submitted by respondents in order to create artificially inflated margins. More specifically, the Report that would be adopted at the present meeting included the following key

findings. The Panel had found that China had breached Article 6.2 of the AD Agreement[11] by failing to provide an opportunity for interested parties with adverse interests to meet and present opposing views and to offer rebuttal arguments. The Panel had found that China had failed to require non-confidential summaries of allegedly confidential information in breach of Article 12.4.1 of the SCM Agreement[12], and Article 6.5.1 of the AD Agreement. This failure had prevented the United States and US companies from gaining a reasonable understanding of the substance of the information. The Panel had found that China had failed to disclose essential facts in breach of Article 6.9 of the AD Agreement, in particular the formulas and data used to determine the existence and margins of dumping. The Panel had found that China had breached Article 2 of the AD Agreement due to the unjustified rejection of certain US producers' costs as kept in their books and records. The Panel had found that China had breached Article 19.4 of the SCM Agreement and Article VI:3 of the GATT 1994 by levying countervailing duties in excess of the amount of subsidization. The Panel had found that China had breached its obligations under the AD and SCM Agreements when it applied facts available to calculate the "all others" rate for unknown producers and exporters in the AD and CVD investigations. The Panel had also found that China had breached the AD and SCM Agreements by failing to disclose the essential facts, as well as its findings and conclusions with regard to these rates.

6.5. Lastly, the Panel had found that China had breached its obligations under the AD Agreement and the SCM Agreement with respect to its underselling analysis because China had relied on subject import and domestic average unit values that included different product mixes, without taking any steps to control for differences affecting price comparability. In light of this flawed underselling analysis, the Panel had also found China's finding of price suppression to be inconsistent with China's obligations. The United States also noted, as was not surprising in a report covering such a broad range of issues, that the United States did not agree with every finding made by the Panel. The Panel had not upheld the US claim that China had skewed the injury analysis by excluding domestic producers that did not support the investigation. The Panel had made this finding even though the Appellate Body had previously confirmed that an injury analysis must not be based on a biased subset of the domestic industry. The United States understood that this finding related only to the unique facts of this dispute. The Panel had not found China's failure to compare prices at the same level of trade to be inconsistent with its obligations under the AD Agreement or SCM Agreement. Reconciling this finding with prior panel and Appellate Body reports was difficult. Again, the United States understood that this finding was tied to the unique facts of the dispute. In conclusion, for the reasons it had set out at the present meeting, the United States was pleased to propose that the DSB adopt this important Report. The United States looked forward to prompt action by China to comply with the findings in this dispute. As noted, the United States also hoped that China would begin to address its systemic problems so as to ensure that all of its AD and CVD investigations comported with its WTO obligations.

6.6. The representative of China said that her country wished to register its disagreement with any comments that were not within the scope of the dispute under this Agenda item, especially those with respect to the trade remedy measures currently under the Panel's proceedings. China thanked the Panel and the Secretariat for their work in this dispute as well as the third parties for their participation. China welcomed the fact that the Panel supported China's claims regarding certain issues in this dispute, such as the definition of domestic industry, price comparability in terms of levels of trade, and the manner to inform unknown exporters. China believed that these findings were correct and represented a proper resolution of these issues. However, China regretted that the Panel had concluded that the measures at issue were inconsistent with the Anti-Dumping Agreement and the SCM Agreement. China was also concerned about some of the Panel's rulings, in particular the Panel's approach regarding the disclosure of the essential facts. China believed that further clarification on such types of issues in the future would be helpful to Members.

6.7. The representative of Korea said that his country had not participated as a third party to this dispute, but wished to make brief comments on one point contained in the Panel Report. One of the issues in the dispute was whether communications to the general public were an adequate notice to unknown interested parties to which the anti-dumping investigating authority had applied "facts available" under Article 6.8 and Annex II of the Anti-Dumping Agreement. On this issue, the Panel had ruled that notices published in an official gazette or on the internet were sufficient to

[11] Agreement on Implementation of Article VI of the GATT 1994 ("AD Agreement").
[12] Agreement on Subsidies and Countervailing Measures ("SCM Agreement").

provide adequate notice to unknown interested parties. Korea agreed with the Panel on this point. As had rightly been pointed out by the Panel, investigating authorities may have no choice but to proceed through communications to the general public to request information from unknown interested parties. With regard to unknown interested parties who were unaware of the ongoing investigation at the time of the investigation, "facts available" should be applicable, provided that the investigating authority had exercised its best efforts to give an appropriate public notice. This was precisely the position that Korea had presented in the DS440 dispute proceedings as a third party to the dispute. Korea believed that this was the right way of interpreting Article 6.8 and Annex II of the Anti-Dumping Agreement, and was pleased that the Panel had taken the same view.

6.8. The DSB took note of the statements and adopted the Panel Report contained in document WT/DS427/R and Add.1.

7 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/512)

7.1. The Chairman drew attention to document WT/DSB/W/512, which contained three new names proposed by Japan for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/512.

7.2. The DSB so agreed.

8 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. Statement by the United States

8.1. The representative of the United States, speaking under "Other Business", said that China's measures affecting electronic payment services (EPS) continued to be of significant and substantial concern to the United States. In the EPS dispute, the DSB had found that China had instituted measures to block and discriminate against non-Chinese suppliers of electronic payment services, all to protect and to privilege its own state-favoured entity, China Union Pay. China had agreed to bring its measures into compliance 11 months after the adoption of the DSB's recommendations and rulings – and that deadline was 31 July 2013. However, to date no foreign EPS suppliers were able to do RMB business in China; nor was there any way for them to obtain the authorization that China stated was necessary in order to do business in China. This was despite China's WTO commitments and the clear statement by the Panel that China's services commitments included an obligation to give EPS suppliers of other WTO Members access to its market. It was over one year since the adoption of the Panel Report and over two months since the conclusion of the reasonable period of time. The United States understood that a regulation to provide access for foreign EPS suppliers was being drafted. Although the United States had been engaging with China, China had not provided any specific time by which it would publish the draft nor had it communicated clearly what criteria it would employ in issuing licenses. The United States remained seriously concerned with China's compliance efforts and hoped the two Members could work together to achieve measurable progress in the near term.

8.2. The representative of China said that, as it had reported at the DSB meeting on 23 July 2013, China had fully implemented the DSB's recommendations and rulings within the reasonable period of time in this dispute. With respect to the US concerns, China remained open to further bilateral discussion. At the two following bilateral technical meetings, China had made further explanation and clarification to the United States with respect to the implementation. Regarding the market access commitment issues, China urged the United States to read closely the Panel Report. The Panel's ruling on the market access commitment issue was very limited. In respect of mode 3 under Article XVI of the GATS, the Panel had only found that the Hong Kong/Macao requirements were inconsistent with Article XVI:2(a) of the GATS. China remained open to discuss, at the appropriate forum, the US concerns that were outside the implementation of the DSB's rulings and recommendations in this dispute.

8.3. The Chairman said that the two statements had provided some enlightenment as to the current state of play. It was up to the two delegations to decide whether in future, either one would wish to inscribe this matter on the Agenda of the DSB so as to refrain from making longer statements under "Other Business".

8.4. The DSB took note of the statements.

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

9.1. The Chairman, speaking under "Other Business", said that he wished to provide delegations with a further update on the process for the possible reappointment of one Appellate Body member. He recalled that the DSB Decision of 24 May 2013 directed him to conduct consultations on the possible reappointment of Mr. Peter Van den Bossche. He assured delegations that he continued to take that responsibility very seriously and with a fair amount of focus and dedication. He had continued to conduct consultations and had particularly focused on Members and delegations who had a wealth of experience both offensive and defensive in dispute settlement matters. He had drawn on and sought the wisdom of those with special expertise, for example, former DSB Chairs, certain DDGs and others. He would continue those consultations and had every intention of meeting the deadline for coming forward with the results of those consultations.

9.2. With regard to the selection process for an Appellate Body member, the Chairman said that he had sent out a fax that set the date for the interviews by the Selection Committee. The interviews would be held on 21 October 2013. Delegations wishing to meet the candidates were invited to do so by contacting directly the Missions of the respective candidates. As had been explained in the fax, delegations wishing to meet with the Selection Committee were invited to contact the Secretariat, Council/TNC Division, to make an appointment. The Selection Committee would be available to meet with delegations on 24, 25 and 28 October. Alternatively, delegations may send comments in writing to the Chair of the DSB, in care of the Council/TNC Division, no later than 31 October 2013. As had been agreed by the DSB, following the interviews and consultations with delegations, the Selection Committee intended to meet its deadline and to make its recommendation not later than 7 November 2013. The recommendation would be sent by fax to delegations so that it may be considered by the DSB at its meeting on 25 November 2013.

9.3. The representative of Brazil said that his country took note of the Chairman's statement regarding the possible reappointment of one Appellate Body member. Brazil was confident that the Chair, in the course of his consultations, would ensure the respect for the integrity, impartiality and independence of the Appellate Body members with a view to strengthening the dispute settlement mechanism. Furthermore, he observed that it may be desirable for WTO Members to undertake a close look at Article 17.2 of the DSU in order to discuss and delimitate under which circumstances reappointment would or would not be automatic.

9.4. The representative of the European Union said that his delegation fully endorsed the statement made by Brazil.

9.5. The DSB took note of the statements.

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