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Dispute Settlement Body
31 August 2015

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 31 AUGUST 2015

Acting Chairman: Mr. Jonathan T. Fried (Canada)

Prior to the adoption of the Agenda, the Director of the Legal Affairs Division, Ms. Valerie Hughes stated that, in the absence of the Chairman of the DSB, Ambassador Harald Neple, she had the pleasure to open the present DSB meeting. She further stated that as Members were aware, in accordance with the Rules of Procedure for meetings of WTO bodies, if the Chairperson of the DSB was absent from any meeting or part thereof, the Chairperson of the General Council or in the latter's absence, the Chairperson of the Trade Policy Review Body, shall perform the functions of the DSB Chairperson. If the Chairpersons of the General Council and the Trade Policy Review Body were also not present, the DSB shall elect an interim Chairperson for that meeting or that part of the meeting. She, therefore, proposed that Amb. Jonathan Fried of Canada be elected as interim Chairman to preside over the proceedings of the meeting.

The DSB so agreed.

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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 in this context that early in his role as Chair of the DSB in 2013, he had made some general observations about this regular item on the Agenda. He had drawn attention to the fact that Members had become accustomed to and complacent about submitting and receiving status reports that generally provided limited information about real and current efforts undertaken to achieve compliance. Having reviewed the records of several DSB meetings, he had observed that Members did little more each month than repeat what they had said the previous month. He had pointed out that this stood in marked contrast to the importance in the WTO dispute settlement mechanism of the surveillance function of the DSB, and had highlighted that it was one of the unique and distinguishing features of the mechanism. The complete record of his remarks was reflected in the minutes of the DSB meeting held on 26 March 2013, contained in document WT/DSB/M/330. 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". In that light, and as he had done throughout his tenure as Chairman of the DSB in 2013, he invited delegations to provide up-to-date information about compliance efforts and to focus on new developments, suggestions and ideas on progress towards the resolution of disputes. Furthermore, he reminded delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record".

1.2. The DSB took note of the statement.

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.152)

1.3. The Chairman drew attention to document WT/DS176/11/Add.152, 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.

1.4. The representative of the United States said that his country had provided a status report in this dispute on 20 August 2015, in accordance with Article 21.6 of the DSU. Several bills introduced in the current US Congress would repeal Section 211. Other previously introduced legislation would modify Section 211. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings and resolve this matter with the European Union.

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

1.6. The representative of Cuba said that her delegation wished to refer to an article in a recent newspaper, which described the Havana Club rum factory and distillery in Santa Cruz del Norte in Cuba. As stated in that newspaper, the rum was aged naturally in soft oak barrels. Cuba's climate and island soils provided sugar cane and molasses, which together with the expertise of Cuban master rum makers, gave a unique flavour to this popular Cuban product. As explained in the Cuban encyclopedia EcuRed, "Havana Club" was the most traditional of all rum brands in Cuba. It had existed since 1878 and its name was rooted in Cuban tradition, the city of Havana and its worldwide reputation. Hence the choice of the name "Havana Club", because it represented the heritage of Cuban rum production and evoked the atmosphere of those days in Havana, whose symbol "La Giraldilla" appeared on the logo of this Cuban brand. One should also reflect on the cultural and traditional aspects of the product at issue in this dispute. This was a Cuban rum and brand, whose origin could be none other than Cuba. However, under Section 211, the Bacardi Company had used the "Havana Club" trademark on US territory since 1997 in order to market rum that was not produced in Cuba and did not contain any products of Cuban origin. Moreover, this was an infringement of the registration of this Cuban rum trademark, which had been renewed in 1996 in the United States for a period of 10 years. In its 152nd status report, the United States

still did not provide new information, nor did it give any indication of its intention to implement the DSB's recommendations and rulings of 2002. Therefore, Cuba wished to reiterate its request that the United States provide a status report, which would contain information on actions that could lead to the settlement of this dispute. In Cuba's view, the US administration had the institutional capacity and the authority to urge the US Congress to repeal Section 211 and to end this non-compliance, which affected and undermined the credibility of the WTO dispute settlement system with regard to its efficient operation. Cuba, once again, urged the United States to repeal Section 211 by eliminating all its adverse effects. Cuba called on the United States to definitively and unconditionally end the policy of economic, commercial and financial blockade imposed on Cuba.

1.7. The representative of Mexico said that since the circumstances of this dispute had not changed and the US non-compliance continued, Mexico wished to refer to its statements made under this Agenda item at previous DSB meetings.

1.8. The representative of Jamaica said that her country thanked Cuba, the United States and the EU for their statements, updates and the status report under this Agenda item. Jamaica noted that the circumstances of this dispute had not changed and that no progress had been reported since the previous DSB meeting. As at previous DSB meetings, Jamaica wished to join other speakers with concerns about the continued US failure to implement the DSB's recommendations adopted in 2002 regarding Section 211. The protracted failure by the United States to take the necessary steps to comply with its obligations under the DSU provisions was incompatible with the requirement for prompt implementation of the DSB decisions. This was of particular concern in cases such as this where the failure to meet an obligation had a negative impact on the economic interests of a developing-country Member. Jamaica reiterated its deep concern about the systemic implications of any disregard for DSB decisions. Such disregard could undermine the overall integrity of the dispute settlement system, which remained a key pillar of the WTO. Jamaica believed that after 13 years since the adoption of the DSB's recommendations, it was more than reasonable for Members to expect that this matter would be resolved and removed from the DSB's Agenda.

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

1.10. The representative of Ecuador said that his country supported the statement made by Cuba. Ecuador, once again, recalled that Article 21 of the DSU referred specifically to prompt compliance with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were concerned. Ecuador urged the United States to step up its efforts and promptly comply with the DSB's recommendations and rulings regarding Section 211. Ecuador said that this dispute demonstrated that the WTO dispute settlement system had some shortcomings.

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

1.12. The representative of Nicaragua said that her country supported the statement made by Cuba. Nicaragua reiterated its concern about the continued US lack of compliance with the DSB's recommendations and rulings in this dispute. Nicaragua noted that the 152nd US status report did

not contain any information on progress towards resolving this 13-year-old dispute. As many delegations had pointed out in previous DSB meetings, the US failure to comply with the recommendations undermined the economic interests of a developing-country Member with a small economy. The failure to comply also undermined the DSB. Nicaragua joined other Members in urging the United States to take the necessary measures to promptly implement the DSB's recommendations and rulings.

1.13. The representative of El Salvador said that her country thanked the United States for its status report and Cuba for its statement made at the present meeting. El Salvador wished to highlight that the failure to comply with the DSB's recommendations and rulings in this dispute affected the economic interests of a small developing-country Member. El Salvador urged the United States to promptly comply with the DSB's recommendations and rulings so as to resolve this dispute.

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

1.15. The representative of Argentina said that his country thanked the United States for its status report. Argentina, once again, regretted that the US status report did not contain any new information on progress in this dispute. In that regard, Argentina reiterated its view that this lack of progress was inconsistent with the principle of prompt implementation of the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Argentina, therefore, supported Cuba as well as the previous speakers and urged the United States to adopt the necessary measures to resolve this dispute.

1.16. The representative of Peru said that his country thanked the United States for its status report and Cuba for its statement. Peru urged the parties to this dispute to take all the necessary measures, within a reasonable period of time, in order to comply with the DSB's rulings and recommendations, in particular since the interests of a developing-country Member were affected. Peru supported the previous speakers who had expressed concern that no progress had been made in implementing the DSB's recommendations in this dispute.

1.17. The representative of Angola said that his country thanked the United States for its status report regarding Section 211. Angola supported the statement made by Cuba and the previous speakers regarding the lack of progress in this dispute. However, Angola welcomed the fact that, after 54 years, on 20 July 2015, there had been a formal re-establishment of relations between Cuba and the United States. Angola considered that the re-established bilateral relationship between Cuba and the United States could provide a new foundation and a new opportunity to resolve this 13-year-old dispute. Angola hoped that the steps that the United States had taken would promptly lead to a solution to this dispute, which affected Cuba, a small and vulnerable developing-country Member. In that regard, Angola considered it important for all Members to implement and respect the DSB's recommendations and rulings so as to ensure the effective functioning of the dispute settlement system. Angola called upon the Unites States to promptly comply with the DSB's recommendation and to resolve this dispute.

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

1.19. The representative of Brazil said that her country thanked the United States for its status report. Brazil regretted that the US status report did not contain any information on progress in this dispute. Brazil shared the concerns expressed by the EU, Cuba and other delegations regarding the lack of compliance in this dispute. In that regard, Brazil urged the parties to the

dispute, as well as the United States and Cuba, in light of their new bilateral relations, to cooperate in finding a solution to this dispute.

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

1.21. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Cuba. Venezuela noted with concern that the 152nd US status report, which was repetitive, did not contain any information on progress towards implementation of the DSB's recommendations and rulings in this dispute. Unfortunately, Section 211 remained in force. In Venezuela's view, the US status report did not meet the obligation under Article 21.6 of the DSU, which required Members to provide information on progress in this dispute. Rather, it simply repeated that no progress had been made. Venezuela recalled that Members had called for an end to this prolonged situation of non-compliance in this dispute and had urged the United States to comply with the DSB's recommendations and rulings. Venezuela joined the previous speakers who had expressed concerns about the systemic implications of this prolonged situation of non-compliance. Such non-compliance set a negative precedent for the credibility of the DSB and undermined the confidence Members placed in the dispute settlement system. It also showed disregard for the dispute settlement system. It also undermined the multilateral trading system as a whole and its ability to resolve disputes. Venezuela urged the United States to comply with the DSB's recommendations and rulings and to repeal Section 211.

1.22. The representative of Uruguay said that her country thanked the United States for its status report regarding Section 211. Uruguay reiterated its concern about the lack of compliance with the DSB's recommendations and rulings in this dispute, in particular since the interests of a developing-country Member were affected.

1.23. The representative of Zimbabwe said that his country thanked the United States for its status report. Zimbabwe, once again, regretted that there was no information on progress in this dispute since the previous DSB meeting. In that regard, Zimbabwe joined the previous speakers in supporting Cuba and urged the United States to comply with the DSB's rulings and recommendations in this dispute.

1.24. The Chairman noted the exchange of views under this Agenda item regarding a status report that, as many delegations had observed, may not have reported on much progress. He noted that many concerns had been expressed, including the impact of non-compliance on the dispute settlement system and developing-country Members. Some delegations had noted that the current environment could provide an opportunity to resolve this matter. He hoped that a mutually agreeable solution to this dispute would be found soon.

1.25. 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.152)

1.26. The Chairman drew attention to document WT/DS184/15/Add.152, 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.

1.27. The representative of the United States said that his country had provided a status report in this dispute on 20 August 2015, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration

would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.28. The representative of Japan said that his country thanked the United States for its statement and status report submitted on 20 August 2015. Japan referred to its previous statements that this issue should be resolved as soon as possible.

1.29. 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.127)

1.30. The Chairman drew attention to document WT/DS160/24/Add.127, 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.

1.31. The representative of the United States said that his country had provided a status report in this dispute on 20 August 2015, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

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

1.33. 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.90)

1.34. The Chairman drew attention to document WT/DS291/37/Add.90, 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.

1.35. The representative of the European Union said that, in recent meetings, the EU had already reported on authorization decisions and other actions towards approval decisions taken up to May 2015. One draft decision for the authorization of GM food and feed was scheduled for possible vote in the Standing committee on 14 September 2015.[1] More generally, and as stated many times before, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.36. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. The United States noted that dozens of biotech applications remained pending in the EU approval system. One of these applications had been pending for well over a decade. The ongoing backlog and delays remained a serious impediment to trade in biotech products. The United States remained concerned about an EU proposal for major change in the EU approval measures. If adopted, that measure would result in even greater disruptions in trade in agricultural products. As the United States had previously stated, the EU Commission had proposed to adopt an amendment to EU biotech approval measures that would allow individual EU member States to ban the use of biotech products within their territory, even where the EU had approved the product based on a scientific risk assessment. This was in addition to a cultivation opt-out already in effect. The United States was concerned about the relationship of such a proposal to the EU's obligations under the SPS Agreement. Additionally, the United States noted that one or more EU member State bans on use would serve as a major impediment to the movement and use of biotech products throughout the entirety of

[1] MON 87427 maize.

the EU. The United States urged the EU to ensure that its biotech approval measures operated in accordance with the EU's own laws and regulations and its obligations under the SPS Agreement. To the extent that the EU considered revisions to its biotech approval measures, the EU should ensure that these revisions were consistent with the EU's WTO obligations and should notify these revisions to the SPS Committee pursuant to Article 7 of the SPS Agreement.

1.37. The representative of the European Union said that the proposal that the United States had just referred to was not related to the implementation of the DSB's recommendations and rulings and it therefore fell outside the responsibilities of the DSB under Article 21.6 DSU. There was no basis for a discussion in the DSB on this issue.

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

E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.38)

1.39. The Chairman drew attention to document WT/DS404/11/Add.38, 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.

1.40. The representative of the United States said that his country had provided a status report in this dispute on 20 August 2015, in accordance with Article 21.6 of the DSU. As the United States had noted at previous DSB meetings, in February 2012, the US Department of Commerce had modified its procedures in a manner that addressed certain findings in this dispute. The United States would continue to consult with interested parties as it worked to address the other recommendations and rulings of the DSB.

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

1.42. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Viet Nam and took note of the US status report. Venezuela noted the importance of prompt implementation of the DSB's rulings and recommendations. Failure to do so undermined the rules-based multilateral trading system and its ability to resolve disputes. Venezuela urged the United States to take the necessary measures to resolve this dispute and to report at the next DSB meeting on the measures it intended to adopt.

1.43. The representative of Cuba said that her country was concerned about the continued non-compliance with the DSB's recommendations and rulings and its impact on the affected Members. Cuba noted that the US status report did not contain any information on progress in this dispute which affected Viet Nam, a developing-country Member. Cuba, once again, supported the statement made by Viet Nam and urged the United States to take the necessary measures to comply with the DSB's recommendations and rulings.

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

F. European Communities – Measures prohibiting the importation and marketing of seal products: Status report by the European Union (WT/DS400/16/Add.5 – WT/DS401/17/Add.5)

1.45. The Chairman drew attention to document WT/DS400/16/Add.5 – WT/DS401/17/Add.5, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning EU measures prohibiting the importation and marketing of seal products.

1.46. The representative of the European Union said that the EU continued to work on the implementation of the DSB's recommendations and rulings in this dispute and was making its best efforts to complete the implementation before the expiry of the agreed reasonable period of time on 18 October 2015. As already reported during the previous DSB meetings, the European Commission had submitted a proposal to the Council and the European Parliament for amending those aspects of EC Regulation No. 1007/2009 on trade in seal products that had been found to be discriminatory. In particular, it proposed to remove the exception for maritime resource management hunts and provided for certain modifications to the exception of indigenous communities. The EU was expecting the proposal to be adopted by the legislators in the course of September 2015 and was working in parallel on replacing the current EU Commission regulation No. 737/2010 with a new one. In addition and as already foreshadowed in previous meetings, on 30 July 2015, the attestation system for Canadian Inuit was put in place through a decision by the European Commission. This was the result of constructive cooperation with Canadian authorities and provided the basis for Canadian Inuit to start using the IC exception.

1.47. The representative of Canada said that his country thanked the EU for its sixth status report regarding the implementation of the DSB's recommendations and rulings in this dispute. Since the conclusion of the agreement between Canada and the EU, on a joint statement on access to the EU of seal products from indigenous communities of Canada, Canada continued to engage with the EU to operationalize the indigenous communities exemption, with the objective of ensuring practical market access for Canadian Aboriginal seal products. Canada was pleased that the Commission had adopted, on 30 July 2015, a decision recognizing the Government of Nunavut as an attestation body under the EU seal regime. Canada understood that Nunavut would need to renew its recognised certifying body status upon the entry into force of the proposed amended seal regime. Canada expected that this process would be managed in such a way as to ensure a smooth transition between the existing seal regime and the amended one. Canada had also been following closely the debate concerning amendments to the EU Seal Regime. Canada expected that any such amendments would be implemented consistently with the DSB's recommendations and rulings, and in a manner that did not adversely affect Inuit and other indigenous communities, particularly regarding the renewal of Nunavut's recognized certifying body status, in light of the ongoing Nunavut application. Canada reiterated that Canada's seal harvests were humane, sustainable and well-regulated activities that provided an important source of food and income for coastal and Inuit communities.

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

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

2 IMPLEMENTATION OF THE RECOMMENDATIONS OF THE DSB

A. Ukraine – Definitive safeguard measures on certain passenger cars

B. Peru – Additional duty on imports of certain agricultural products

2.1. The Chairman recalled that in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In that respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He proposed that the two sub-items to which he had just referred be considered separately.

A. Ukraine – Definitive safeguard measures on certain passenger cars

2.2. The Chairman recalled that at its meeting on 20 July2015, the DSB had adopted the Panel Report in the dispute on: "Ukraine – Definitive Safeguard Measures on Certain Passenger Cars". As Members were aware, the 30-day time-period in this dispute had expired on 19 August 2015, and on 17 August 2015, Ukraine had informed the DSB in writing of its intentions with respect to implementation of the recommendations and rulings of the DSB. The relevant communication was contained in document WT/DS468/9. He then invited the representative of Ukraine to speak.

2.3. The representative of Ukraine said that at its meeting on 20 July 2015, the DSB had adopted the Panel Report on the dispute: "Ukraine – Definitive Safeguard Measures on Certain Passenger Cars" (WT/DS468/R and Add.1). Pursuant to Article 21.3 of the DSU, Ukraine in its communication of 17 August 2015 (WT/DS468/9), had notified its intention to implement the recommendations and rulings of the DSB in this dispute in a manner that respected its WTO obligations. Ukraine would need a reasonable period of time for implementation and stood ready to discuss this matter with Japan, in accordance with Article 21.3 of the DSU. In line with the legislation of Ukraine, the Interdepartmental Commission on International Trade ("the Commission") would meet in September 2015 to take a decision required to implement the DSB's recommendations and rulings. The Ministry of Economic Development and Trade of Ukraine would recommend that the Commission revoke the measure at stake in order to move forward with prompt implementation of the Panel's Report.

2.4. The representative of Japan said that his country took note of, and appreciated, Ukraine's intention to implement the DSB's recommendations and rulings promptly as expressed in its statement made at the present meeting as well as in its written communication dated 17 August 2015 (WT/DS468/9). Japan recalled that Article 21.1 of the DSU provided that "prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of the disputes to the benefit of all Members" and that the Panel suggested that Ukraine revoke its safeguard measure on passenger cars "[i]n the light of the nature and number of inconsistencies with the Agreement on Safeguards and the GATT 1994". Article 21.3 of the DSU provided that the Member concerned shall have a reasonable period of time, if it was impracticable to comply immediately with the recommendations and rulings. However, Japan believed that it was not necessary for Ukraine to have a longer reasonable period of time for complying with the DSB's recommendations and rulings in this dispute. In any case, the deadline provided by Article 21.3(b) of the DSU, which was 3 September 2015 in this case, was approaching. Japan thus urged Ukraine to be ready for consultations immediately in order to reach an agreement on the reasonable period of time by the deadline, in accordance with Article 21.3 of the DSU as stated in Ukraine's written communication.

2.5. The DSB took note of the statements, and of the information provided by Ukraine regarding its intentions in respect of implementation of the DSB's recommendations and rulings.

B. Peru – Additional duty on imports of certain agricultural products

2.6. The Chairman recalled that at its meeting on 31 July 2015, the DSB had adopted the Appellate Body Report in the dispute on: "Peru – Additional Duty on Imports of Certain Agricultural Products" and the Panel Report on the same matter, as modified by the Appellate Body Report. As Members were aware, the 30-day time-period in this dispute had expired on 30 August 2015. He invited the representative of Peru to inform the DSB of its intentions with respect to implementation of the recommendations and rulings of the DSB.

2.7. The representative of Peru said that, on 31 July 2015, the DSB had adopted the Panel and Appellate Body Reports in the dispute: "Peru – Additional Duty on Imports of Certain Agricultural Products" (DS457). As required by Article 21.3 of the DSU, Peru informed the DSB that it would implement the DSB's recommendations and rulings within a reasonable period of time, in accordance with its WTO obligations. To this effect, the relevant branches of the Peruvian Government were working in a coordinated manner to determine the appropriate steps to ensure the implementation of the DSB's recommendations.

2.8. The representative of Guatemala said that his country thanked Peru for the statement regarding its intentions in respect of the implementation of the DSB's recommendations and rulings. Given the nature of the measure in question, Guatemala believed that it would be practicable for Peru to comply immediately with the DSB's recommendations and rulings. It was, therefore, not necessary for Peru to seek a reasonable period of time in which to comply. Nevertheless, Guatemala remained open to any proposal under Article 21.3 of the DSU from Peru to be submitted within the period of time provided for in Article 21.3(b), i.e. within 45 days after the date of adoption of the DSB's recommendations and rulings. That deadline expired on 14 September 2015. Guatemala noted, however, that within the period from the adoption of the Reports until the present meeting no special DSB meeting was scheduled; i.e., within the required 30-day period provided for in Article 21.3 of the DSU. Guatemala was also aware that Peru had not requested a meeting within that period to inform the DSB of its intentions in respect of the implementation of the DSB recommendations and rulings. The period of 30 days under Article 21.3 of the DSU had expired on 30 August 2015. Guatemala had decided to accept, exceptionally and in this case only, a pragmatic solution not to convene a special DSB meeting for the purposes of Article 21.3 of the DSU to prevent the misuse of WTO resources. In Guatemala's view, it would have made no sense to convene a special DSB meeting to discuss this matter simply because the deadline had expired the day before the date scheduled for a regular DSB meeting in August. In Guatemala's view, it would, however, have been desirable for Peru to inform the DSB of its intentions towards implementation in writing before the expiry of 30 days.

2.9. The DSB took note of the statements, and of the information provided by Peru regarding its intentions in respect of implementation of the DSB's recommendations and rulings.

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

A. Statements by the European Union and Japan

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

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

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

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

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

3.6. The representative of Canada said that her country thanked the EU and Japan for putting this item on the Agenda of the present meeting. Canada shared the view that the Byrd Amendment was subject to the surveillance of the DSB until the United States ceased to apply it.

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

3.8. The DSB took note of the statements.

4 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. Statement by the United States

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

4.2. The representative of the United States said that his country reiterates its serious concerns regarding China's failure to bring its measures into conformity with its WTO obligations, despite numerous interactions between the United States and China in the DSB and elsewhere. China continued to impose its ban on foreign suppliers of electronic payment services ("EPS") by requiring a license, while at the same time failing to issue all specific measures or procedures for obtaining that license. The United States previously had taken note of an April 2015 State Council decision, which indicated China's intent to open up its EPS market following issuance of implementing regulations by the People's Bank of China and the China Banking Regulatory Commission. The United States noted that the People's Bank of China had issued draft regulations the previous month setting forth some procedures for EPS suppliers to follow when seeking a license. To date, the China Banking Regulatory Commission had not issued any draft or final regulations implementing the State Council's April 2015 decision. As a result, one Chinese

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

enterprise continued to be the only EPS supplier able to operate in the domestic market. As required under its WTO obligations, China must still adopt the implementing regulations necessary for allowing the operation of foreign EPS suppliers in China. The United States continued to look forward to the prompt issuance of all measures necessary to permit foreign EPS suppliers to do business in China. The United States was mindful that any regulations must be consistent with WTO obligations and treat foreign EPS suppliers in a consistent and fair way.

4.3. The representative of China said that his country regretted that the United States had, once again, brought this matter before the DSB. China referred to its statements made under this Agenda item at previous DSB meetings and reiterated that it had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute.

4.4. The DSB took note of the statements.

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

A. Statement by the Philippines

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

5.2. The representative of the Philippines said that her country remained concerned about a series of outstanding compliance issues that remained despite Thailand's repeated statements that it had done all it was required to do to secure full compliance with the DSB's recommendations and rulings in this dispute. As at previous DSB meetings, the Philippines wished to highlight two issues due to their particular systemic impact for the DSB's rulings and the Customs Valuation Agreement overall. First, the Philippines remained deeply concerned about the Thai Attorney General's decision to prosecute an importer of Philippine cigarettes for alleged under-declaration of customs value. The WTO panel had ruled that Thailand enjoyed no legitimate grounds to reject the customs values that Thailand now sought to criminalize. In addition, Thai Customs Board of Appeals (or "BoA") had explicitly accepted those customs values, in a ruling heralded by Thailand itself as a measure taken to comply. Thailand's actions with the criminal prosecution directly undermined the implementation obligation placed on it by the DSB's recommendations and rulings. In systemic terms, there could be no doubt that the disciplines of the Customs Valuation Agreement applied whenever a WTO Member engaged in the customs valuation of goods, including in the enforcement of domestic Customs provisions. Despite this evident WTO-inconsistency, Thailand had explained in its statements made at previous DSB meetings that it "will take steps to ensure" the WTO-consistency of the criminal prosecution. While it appreciated the sentiment behind these repeated statements, the Philippines still had not received an explanation about precisely what steps Thailand would take to ensure the WTO-consistency of the criminal prosecution. The Philippines requested Thailand to deliver expeditiously on its assurance, particularly in light of what the Philippines understood to be a meeting to which the Thai public prosecutor had summoned the importer. That meeting was now scheduled for mid-September 2015.

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

5.4. The representative of Thailand said that his country noted the Philippines' continued concerns. Thailand, once again, wished to inform the DSB that it had taken all actions necessary to implement the DSB's recommendations and rulings. Thailand wished to refer to its previous statements made under this Agenda item.

5.5. The DSB took note of the statements.

6 UNITED STATES – COUNTERVAILING AND ANTI-DUMPING MEASURES ON CERTAIN PRODUCTS FROM CHINA

A. Statement by the United States on implementation of the recommendations adopted by the DSB

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

6.2. The representative of the United States said that his country was pleased to inform the DSB that it had implemented the DSB's recommendations and rulings in the dispute: "United States – Countervailing and Anti-dumping Measures on Certain Products from China". The United States and China had agreed to a reasonable period of time of 12 months from the adoption by the DSB of its recommendations. The original reasonable period of time had expired on 22 July 2015. The United States and China had agreed to extend the reasonable period of time, so as to expire on 5 August 2015. In light of the DSB's recommendations, the US Department of Commerce had investigated the existence of overlapping remedies in the 25 original investigations and administrative reviews covered by this dispute. The Department of Commerce had issued new determinations with respect to these 25 proceedings pursuant to section 129 of the Uruguay Round Agreements Act. On 20 July 2015, and 4 August 2015, the US Trade Representative had directed the Department of Commerce to implement these determinations. Therefore, the United States had implemented the DSB's recommendations and rulings in this dispute prior to the expiry of the reasonable period of time. Despite US disagreement with the legal basis for the underlying finding that there was an obligation to investigate the existence of overlapping remedies, this implementation action by the United States strengthened the multilateral trading system, as all those Members speaking under Agenda item 1 would undoubtedly agree.

6.3. The representative of China said that his country thanked the United States for its statement made at the present meeting. China wished to express its concerns about the US implementation of the DSB's rulings and recommendations in this dispute. The United States claimed that it had completed the process under the US law for implementing the DSB's recommendations and rulings, and that the United States had now brought the measures at issue in this dispute into full compliance with the DSB's recommendations and rulings. China, however, could not agree with the US claim. China was concerned about whether the United States had implemented the DSB's substantive rulings and recommendations in good faith. As could be seen from the final determinations, the USDOC's compliance proceedings yielded virtually no changes in the anti-dumping duty margins applied to the Chinese companies, which had evinced a systematic approach that the United States had undertaken to get around the implementation of the DSB's rulings and recommendations in this dispute. China regretted to see that the United States had interpreted and applied those rulings and recommendations in a worrisome manner. The US implementation action set a bad example for other Members and would have a negative impact on the dispute settlement system. China recalled that the sequencing agreement between China and the United States had been circulated to Members on 25 August 2015 in document WT/DS449/15. China was carefully evaluating the Department of Commerce's determinations and reserved its right to take any necessary actions to address its concerns about the US implementation in this dispute in due course.

6.4. The DSB took note of the statements.

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

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

7.1. The Chairman recalled that the DSB had considered this matter at its meeting on 20 July 2015 and had agreed to revert to it. He drew attention to the communication from Indonesia contained in document WT/DS480/2 and Corr.1, and invited the representative of Indonesia to speak.

7.2. The representative of Indonesia said that at its meeting held on 20 July 2015, the DSB had considered, for the first time, Indonesia's request for the establishment of a panel in this dispute. However, as the establishment of the panel was deferred pursuant to the position taken by the EU, Indonesia had tabled its request for the establishment of a panel for the second time. Indonesia had noted the statement made by the EU at the DSB meeting on 20 July 2015. In that regard, Indonesia wished to make two brief points. First, while the detailed claims of Indonesia would be elaborated in the written submissions in the course of the Panel proceeding, the matter in the dispute "European Union - Anti-dumping Measures on Biodiesel from Argentina" (DS473) only partly overlapped with that in Indonesia's panel request. Second, as each dispute needed to be treated individually on its merits and based on the claims and legal arguments forwarded, Indonesia counted on the engagement of the panel in this dispute and considered that the panel's assessment of the methodological issues raised would contribute significantly towards the clarification and proper application of the disciplines of the Anti-Dumping Agreement. In that regard, Indonesia respectfully reiterated its request that the DSB establish a panel in order to examine the measures referred to in Indonesia's panel request.

7.3. The representative of the European Union said that the EU noted Indonesia's decision to request a WTO panel on the anti-dumping measures imposed by the EU on imports of biodiesel from Indonesia. The EU wished to also point out that the measures challenged by Indonesia were also subject to a dispute with Argentina (DS473) where the Panel would issue its final report to the parties by the end of 2015. Like in the dispute with Argentina, the EU was convinced that the measures identified in the panel request were in conformity with the WTO Agreements and the EU would defend them vigorously before a panel.

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

7.5. The representatives of Argentina, Australia, Canada, China, India, Japan, Norway, the Russian Federation, Singapore, Turkey and the United States reserved their third-party rights to participate in the Panel's proceedings.

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

A. Request for the establishment of a panel by Indonesia (WT/DS491/3)

8.1. The Chairman drew attention to the communication from Indonesia contained in document WT/DS491/3, and invited the representative of Indonesia to speak.

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

GATT 1994, the Anti-Dumping Agreement, and the SCM Agreement. Indonesia requested that the DSB establish a panel to examine the matter set out in its panel request, with the standard terms of reference.

8.3. The representative of the United States said that his country was disappointed that Indonesia continued to seek the establishment of a panel on this matter. The United States maintained that the measures identified in Indonesia's new request for the establishment of a panel were fully WTO-consistent. Indonesia had even brought a claim under a US legal provisions that had no bearings on the investigations and orders mentioned in its new panel request. As noted previously, at a time when WTO dispute settlement resources were stretched thin, the United States did not think that a panel proceeding would be a productive use of those resources. The United States noted that Indonesia had submitted a new panel request and that this was the first occasion that the DSB was considering the request. For all these reasons, the United States was not in a position to agree to the establishment of a panel at the present meeting.

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

9 KOREA – IMPORT BANS, AND TESTING AND CERTIFICATION REQUIREMENTS FOR RADIONUCLIDES

A. Request for the establishment of a panel by Japan (WT/DS495/3)

9.1. The Chairman drew attention to the communication from Japan contained in document WT/DS495/3, and invited the representative of Japan to speak.

9.2. The representative of Japan said that his country had made this request for the establishment of a panel on 20 August 2015. As explained in the panel request, this case concerned two groups of Korean measures. First, following the accident at the Fukushima Daiichi nuclear power plant that had occurred after the Great East Japan Earthquake of 11 March 2011, Korea had adopted a series of measures in the form of: (i) import bans on certain foods from particular regions in Japan; and (ii) additional testing and additional certification requirements regarding the presence of other radionuclides in foods from Japan where trace amounts of cesium 134, 137 or iodine 131 were detected in them. Second, Korea had further failed to publish these SPS measures, had failed to adequately respond to Japan's requests under Articles 4 and 5.8 of the SPS Agreement, and had provided very limited and insufficient responses to a series of questions posed by Japan to Korea's SPS enquiry point. As explained in the panel request, Japan considered that Korea's import bans and additional testing and additional certification requirements were discriminatory against food products from Japan. Furthermore, they were disguised restrictions on international trade and more trade-restrictive than necessary. Japan considered that these measures were therefore inconsistent with several provisions of the SPS Agreement, in particular, its Articles 2.3, 5.5, 5.6 and 8, and Annex C. Japan also considered that Korea's omissions relating to its transparency obligations under the SPS Agreement were inconsistent with Articles 4, 5.8, 7 and Annex B of the SPS Agreement.

9.3. It was well recognized in the WTO Agreement that the protection of human life and health was a legitimate policy objective Members may pursue, and the ultimate responsibility of ensuring food safety was with the government of each Member. The first sentence of the preamble of the SPS Agreement affirmed that "no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health". Similarly, Article 2.1 of the SPS Agreement recognized that "Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health". However, this right of WTO Members was not without bound and in exercising this right, Members ensured that their "measures are not inconsistent with the provisions of [the SPS] Agreement". In Japan's view, Korea's SPS measures at issue were not consistent with the disciplines of the SPS Agreement.

9.4. On its part, Japan had been and was taking very seriously its responsibility to protect human life and health and to ensure food safety. Japan had been taking all necessary measures to this end. As it had explained in detail in its panel request, for months and years Japan had made intense efforts to address and satisfy Korea's concerns and had provided to Korea volumes of detailed data and information obtained from the monitoring and testing activities and their comprehensive evaluations. Despite these efforts, Korea had yet to offer any indication of

appreciable or meaningful progress toward review and lifting of the measures in question. Under these circumstances, on 21 May 2015, Japan had requested consultations with Korea. Japan had held these consultations in good faith with Korea on 24 and 25 June 2015 with a view to reaching a mutually agreed solution. While the consultations provided useful opportunities for the parties to better understand their respective positions on this matter, the parties were unable to resolve their differences. Japan, therefore, requested, pursuant to Articles 6 of the DSU, that a panel be established to examine this matter, as set out in its panel request, with standard terms of reference in accordance with Article 7.1 of the DSU.

9.5. The representative of Korea said that his country regretted that Japan had chosen to request the establishment of a panel to examine this matter. It had only been four years since the Fukushima nuclear power plant accident of March 2011, and this catastrophic event continued to affect Korea. The accident had caused large amounts of radioactive material to be released into the atmosphere and marine environment, resulting in significant contamination of the ground and ocean. Radionuclides, which were atoms that emitted radiation, poured into the ocean from the fallout, runoff, leakage, and the release of water from the nuclear power plant. Unfortunately, such leakage continued even after the accident had occurred. For example, in June 2013, officials from the nuclear power plant had publicly acknowledged that water contaminated with radioactive material was still seeping into the Pacific Ocean. There were similar reports of continuing leakage of contaminated water into the ocean as recently as February 2015. Thus, to date, significant questions remained with respect to the status of the Fukushima nuclear power plant and the ability of its operators to put an end to the contamination of the marine environment. The SPS Agreement provided that Members had the right to take SPS measures necessary for the protection of human, animal or plant life or health. Korea had done so in response to the Fukushima nuclear accident. Korea had notified its emergency measures to the SPS Committee and was surprised by Japan's allegations of lack of transparency when, in its panel request, Japan referred to no fewer than 45 publicly available documents. Moreover, Korea continued to base all of its SPS measures on sound science. Indeed, Japan appeared to agree with the science as it was not challenging this aspect of Korea's measures. Korea had also engaged constructively with Japan on this matter, and had diligently responded to Japan's requests for information in detail. In short, Korea had adopted and implemented its measures in a transparent and non-discriminatory manner, and in full compliance with its WTO obligations. Korea, therefore, was not in a position to agree to the establishment of a panel at the present meeting.

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

10 INDONESIA – SAFEGUARD ON CERTAIN IRON OR STEEL PRODUCTS

A. Request for the establishment of a panel by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (WT/DS490/2)

10.1. The Chairman drew attention to the communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) contained in document WT/DS490/2. He invited the representative of that delegation to speak.

10.2. The representative of Chinese Taipei said that his delegation wished to request that the DSB to establish a panel to examine the safeguard measure imposed by Indonesia on imports of certain flat-rolled product of iron or non-alloy steel, the investigation and determinations leading thereto, and other aspects related to the notification requirements and consultations required under Article XIX:2 of the GATT 1994 and Article 12 of the Agreement on Safeguards. In Chinese Taipei's view, these were not consistent with the WTO laws. Chinese Taipei and Indonesia had previously held consultations on 16 April 2015 with a view to reaching a mutually agreed solution. While these consultations had resulted in clarifications of certain aspects of the measures and the laws concerned, regrettably they had failed to produce a positive outcome. With respect to the specific duty imposed as a safeguard measure, there were no reasoned and adequate findings regarding the alleged unforeseen development and the effect of GATT 1994 obligations. Other than that, no reasoned and adequate explanations of increased imports, serious injury, threat of serious injury and the causation were provided either. Indonesia had also failed to provide a notification with sufficient information and an opportunity for consultations prior to the imposition of the safeguard measure. In those circumstances, and with the continuation of the said measures, Chinese Taipei was left with no choice, but to request the establishment of a panel to examine this matter.

10.3. The representative of Indonesia said that Chinese Taipei and Indonesia had held consultations concerning this dispute on 16 April 2015 in Geneva. During these consultations, Indonesia had provided comprehensive responses to all technical questions raised by Chinese Taipei. Indonesia believed that it had delivered a clear explanation concerning the legal and factual aspects of the safeguard measure imposed by Indonesia on imports of certain iron and steel products in order to resolve any misunderstanding on the safeguard measure. Despite Indonesia's efforts during the consultations to clarify that the safeguard measure was consistent not only with the Safeguard Agreement but also with its domestic safeguard regulation, Indonesia was disappointed that Chinese Taipei was requesting the DSB to establish a panel to examine this dispute. As provided by the DSU, Indonesia was not in a position to agree to the establishment of a panel at the present meeting.

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

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

A. Report of the Panel (WT/DS447/R and Add.1)

11.1. The Chairman recalled that at its meeting on 28 January 2013, the DSB had established a Panel to examine the complaint by Argentina pertaining to this dispute. The Report of the Panel, contained in document WT/DS447/R and Add.1 had been circulated on 24 July 2015 as an unrestricted document. The Panel Report was before the DSB for adoption at the request of Argentina. This adoption procedure was without prejudice to the right of Members to express their views on the Panel Report.

11.2. The representative of Argentina said that his country was pleased to request the DSB to adopt the Panel Report in the DS447 dispute. Argentina thanked the members of the Panel and the Secretariat for their time and effort devoted to this dispute. This dispute concerned sanitary measures maintained by the United States for more than 11 years. The measures had been designed to prohibit imports of animals, meat and other products of animal origin from Patagonia since that region was not recognized as an FMD-free zone, and to prohibit imports of fresh meat (chilled or frozen) from the rest of the territory of Argentina. Argentina referred to the prohibitions set forth in Title 9 of the Code of Federal Regulations (CFR), Part 94.1(b) and in the 2001 Regulations, and to those contained in Part 94, respectively. The United States had also been responsible for undue delays in applying the approval procedures contained in Title 9 of the CFR, Part 92.2, in respect of Argentina's requests both for authorization of imports of fresh meat and for recognition of Patagonia as an FMD-free zone. The Panel had made it very clear that the US measures were inconsistent with Articles 1.1, 2.2, 2.3, 3.1, 3.3, 5.1, 5.6, 6.1 and 8 and with Annex C(1)(a) and (b) of the SPS Agreement. Essentially, the Panel had found that the US sanitary measures challenged by Argentina were not based on the provisions of the World Organization for Animal Health (OIE) Terrestrial Animal Health Code. They had no scientific justification and had not been based on a risk assessment. They arbitrarily and unjustifiably discriminated between countries where identical or similar conditions prevailed; and that they were more restrictive than necessary to achieve the appropriate level of sanitary protection of the United States. Although Argentina had repeatedly expressed its concern to the United States, both at the bilateral and multilateral levels, the dispute had not been resolved. Argentina, therefore, had decided to have recourse to the dispute settlement mechanism. The Panel's review, as had been reflected in its rulings and recommendations, conclusively and unequivocally upheld Argentina's complaints regarding the inconsistency of the US measures with the SPS Agreement. This was why Argentina welcomed the Panel Report and had asked that it be placed on the Agenda of the present meeting for adoption. Argentina also valued the systemic contribution of the Panel Report regarding the application of sanitary measures. Argentina hoped that the DSB would adopt the Panel's rulings and recommendations and hoped that the United States would comply promptly with the DSB's rulings and recommendations to ensure that this dispute was settled efficiently.

11.3. The representative of the United States said that, since the time Argentina had requested the DSB to establish a panel, the view of the United States had been clear. The United States was moving forward with its evaluation of Argentina's requests for access for beef imports, and action on those requests would address Argentina's concerns about the length of the regulatory process. In fact, those evaluations did move forward, and the United States Department of Agriculture was able to propose and complete regulatory actions several months ago. These US administrative

actions, taken following the rigorous, science-based review that the United States applied to any application, now permitted the import of Argentine beef under conditions that met the high level of protection of the United States, in particular to ensure that foot-and-mouth disease (FMD) would not be introduced into the United States through beef imported from Argentina. Based on these actions, taken well in advance of the Panel Report, the United States considered that it had addressed the matters raised in this dispute. The United States would like to emphasize that neither the disease at issue nor the review process were trivial. The US cattle herd consisted of nearly 90 million head of cattle, with a value of some US$60 billion. The United States had been free of FMD since 1929. In light of the complex nature of FMD, and the fact that it was highly contagious and had serious biological and economic impact, the United States had conducted a thorough and scientifically rigorous review of the sanitary situation in Argentina's two designated regions, Patagonia and Northern Argentina. The United States Department of Agriculture had conducted several intensive field visits and had collected significant amounts of veterinary and other data. Throughout this regulatory process, which had overlapped with the dispute, the United States had openly communicated with Argentina. Argentina had agreed to permit US experts to conduct a veterinary site visit after the first written submissions had been submitted in this dispute. Before the first panel meeting, in relation to Argentina's request on beef from Patagonia, the United States had issued an updated 87-page risk analysis and had proposed administrative action that would find the Patagonia region to be free of FMD. Following public comments, the United States had taken final action more than one year ago, in August 2014, with the result that beef from Patagonia was no longer restricted on account of FMD. Before the second panel meeting, in relation to Argentina's request on beef from Northern Argentina, the United States had also issued, in August 2014, an updated 103-page risk analysis and had proposed administrative action that would permit fresh beef from Northern Argentina to enter into the United States with certain risk mitigations. Following public comments, the United States had taken final action in July 2015, consistent with its risk analysis and proposal that beef from Northern Argentina may, with scientifically justified conditions, be safely imported into the United States. Both of these administrative actions, then, had been proposed one to two years ago, and had become final from 1 to 12 months ago, before the issuance of the Panel's Report in this dispute. In that regard, the United States continued to consider that this dispute was not necessary, or the most efficient use of resources. The Panel Report made no findings that were inconsistent with the actions now taken by the United States on Argentina's applications – to the contrary, the Panel's findings supported them.

11.4. First, the Panel Report recognized that the initial action taken by the United States to prohibit the importation of fresh beef after Argentina suffered severe outbreaks of FMD had been appropriate and fully consistent with science. The Panel Report had stated that "the undisputed science supports the conclusion in the June 2001 Interim Rule that Argentine products posed a significant risk for introduction of FMD into the United States"[3] Second, the Panel Report also recognized that FMD was a substantial and harmful animal disease. The Panel Report had referred to the statement by the World Organization of Animal Health, the international standard-setting body in this area, that FMD "is a high impact disease, a trans-boundary animal disease, highly contagious and has serious impact".[4] Third, the Panel Report recognized that the United States maintained a level of sanitary protection with respect to FMD that was "higher than that achieved" by the World Organization of Animal Health's standard, the Terrestrial Code.[5] Fourth, the Panel had made certain findings on the basis that the United States had previously evaluated the scientific evidence and had applied conditions for the importation of beef from certain other regions that purportedly had the same FMD-status as Argentina. Now that the United States had completed its evaluation of the scientific evidence concerning imports from Argentina, US authorities had, as explained, determined that in fact those same conditions that the Panel had noted the United States had already applied successfully in other cases could also ensure that beef from Argentina did not transmit FMD and met the US level of protection. Although the United States was disappointed that this dispute had moved forward, despite the fact that the United States had continued to work diligently and had applied consistently its high standards of scientific review to determine Argentina's FMD disease status, the United States also considered that the Panel Report, coming many months after the United States had taken action to approve Argentina's applications, was no longer especially relevant. The United States was also cognizant

[3] Panel Report "United States – Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina", at paragraph 7.334.

[4] Idem, at paragraph 7.331.

[5] Idem, at paragraph 7.387.

of the need for Members to consider the many demands on the dispute settlement system. Therefore, the United States had decided not to appeal the Panel Report. The adoption of the Panel Report provided a renewed opportunity for Argentina and the United States to work together, and in fact the parties to the dispute were collaborating on separate technical matters. The United States looked forward to working constructively, and was available to confer further with Argentina in relation to the actions taken by the United States on its beef approval applications.

11.5. The representative of Argentina said that his country noted the US statement to the effect that the measures to comply with the DSB's recommendations and rulings had been adopted. Regarding the importation of fresh meat (chilled or frozen) from the territory of Argentina situated in northern Patagonia, Argentina acknowledged the efforts made by the US Department of Agriculture (USDA) to publish the final rule authorizing, under certain conditions, the importation of fresh meat (chilled or frozen) from that region (9CFR 94.29), which would enter into force at the beginning of September. However, Argentina was concerned about the draft House[6] and Senate[7] legislation currently in Congress, entitled: "Bill Making Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending 30 September 2016, and for other purposes", which had already been approved by the Appropriations Committees of both chambers. Section 749 of House Bill 3049 and Section 743 of Senate Bill 1800 were intended to restrict the availability of funds to "implement, administer, or enforce" the final rule authorizing the importation of Argentine fresh meat from the region of northern Patagonia. They imposed a series of new requirements that blocked the implementation of the final rule, thereby maintaining the same effects on trade as the measures that had been recognized by the final Panel Report, which was before the DSB at the present meeting for adoption, as being inconsistent with the provisions of the SPS Agreement. Argentina's concern was evidenced in a communication from the Office of Management and Budget (OMB), which was within the Executive Office of the US President to the Chair of the Senate Appropriations Committee, which stated that: "the Administration opposes the bill's provisions blocking implementation of two final rules for the importation of beef from Brazil and Argentina published on 2 July 2015, that acknowledge the efforts of trading partners and our own efforts to provide for safe and mutually-beneficial trade. These rules were based on objective analyses of risk and the identification of appropriate mitigation measures and reflected diligent work including site visits and economic analysis finding that the rules would have a net benefit to the US economy. Completing the requirements listed in the bill before these rules can be effective would, at a minimum, delay the implementation of the rules, potentially by years".[8] Argentina concluded that, if any of the provisions in the mentioned bills were to be adopted, it would not be possible to implement the DSB's rulings and recommendations, with the result that the obligations of the United States under the DSU would be violated. Consequently, Argentina could not accept the statement by the United States that it had complied with the DSB's rulings and recommendations. Argentina would continue to examine the US measures currently being adopted and would consider the best way to address its concerns.

11.6. The representative of the United States said that in relation to certain proposals in the Congress, to which Argentina had referred, the United States wished to clarify that these were proposals only and had not been enacted. As such, these proposals did not have any effect on the administrative action that USDA had taken.

11.7. The DSB took note of the statements and adopted the Panel Report contained in WT/DS447/R and Add.1.

12 CHINA – COUNTERVAILING AND ANTI-DUMPING DUTIES ON GRAIN ORIENTED FLAT-ROLLED ELECTRICAL STEEL FROM THE UNITED STATES: RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE UNITED STATES

A. Report of the Panel (WT/DS414/RW and Add.1)

12.1. The Chairman recalled that at its meeting on 26 February 2014, the DSB had agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel the matter raised by the

[6] Available at https://www.congress.gov/bill/114th-congress/house-bill/3049/text
[7] Available at https://www.congress.gov/bill/114th-congress/senate-bill/1800/text
[8] Letter from the Director of the Office of Management and Budget to the Chair of the Senate Committee on Appropriations, page 3. Available at http://www.whitehouse.gov/omb/legislative_letters

United States concerning the implementation by China of the recommendations and rulings of the DSB pertaining to this dispute. He also recalled that the Report of the Panel, contained in document WT/DS414/RW and Add.1 had been circulated on 31 July 2015 as an unrestricted document. The Panel Report was before the DSB for adoption at the request of the United States. This adoption was without prejudice to the right of Members to express their views on the Panel Report.

12.2. The representative of the United States said that his country was pleased to request the DSB to adopt the Report of the compliance Panel in this dispute. The Report was important and of a high quality, and the United States thanked the compliance panelists, and the WTO Secretariat assisting them, for their work in producing the Report. Grain-oriented flat-rolled electrical steel (GOES) was a high-tech, high-value magnetic specialty steel. Prior to China's imposition of anti-dumping and countervailing duties, US steel producers had been able to export over US$250 million of this specialty product to Chinese purchasers. The countervailing duties and anti-dumping duties that China had imposed on US exports of GOES had unfairly restricted US exports to this increasingly important market. In fact, since China had imposed duties, US exports of GOES to China had fallen to virtually nothing. The DSB would recall that the United States had challenged China's duties, and the DSB had adopted recommendations that China should bring those duties into conformity with WTO rules. China had chosen to continue those duties and simply provide further elaboration to, allegedly, support them. But there had been no change in substance. The compliance Panel had found that China had failed to address the findings of the original Panel and the Appellate Body in this dispute. China had repeated many of the same errors identified in the original proceedings, rather than come to grips with the recommendations and rulings of the DSB. In particular, the United States wished to draw attention to two points. First, the compliance Panel had found that China's price effects analysis in its injury re-determination was fundamentally flawed. The compliance Panel Report underscored that China's analysis of price effects was not based on positive evidence and did not involve an objective examination. The Report found that China's determination that imports caused injury to the domestic industry was not supported by facts and evidence on the administrative record. The Report also found that China did not disclose the essential facts supporting this analysis. Second, the United States also noted that other Members were pursuing similar claims involving other AD and CVD measures adopted by China. The United States continued to hope that China would respond to these series of disputes by making the systemic changes necessary to begin operating its AD and CVD regimes in accordance with WTO rules. The United States noted that China had announced, in the penultimate stages of this proceeding, that it would terminate the anti-dumping and countervailing duties on GOES from the United States. The United States obviously welcomed that action by China. Nonetheless, the United States regretted that this action had only been taken following original Panel and appellate proceedings and towards the very end of a compliance Panel proceeding when the conclusion of all of these WTO reports was that China never had a legal basis to impose those duties on US exports. In sum, the United States was pleased to propose that the DSB adopt this important Report. As noted, the United States hoped that China would begin to address these systemic deficiencies so as to ensure that all of its AD and CVD investigations comported with its WTO obligations.

12.3. The representative of China said that his country welcomed the compliance Panel's decision in terms of the adverse impact on domestic industry and disclosure of essential facts of domestic industry conditions. China, however, maintained a reservation on the compliance Panel's decision on price effect, causality and disclosure of essential facts. China regretted that the compliance Panel had found that China's compliance measure was not in conformity with its obligations under the Anti-Dumping and SCM Agreements. China, therefore informed the DSB that the AD and CVD measures on imports of GOES originating from the United States had already been terminated upon their expiration on 10 April 2015. In that regard, there was no need for China to take any further action to implement the DSB's recommendations and rulings.

12.4. The DSB took note of the statements and adopted the Panel Report contained in WT/DS414/RW and Add.1.

13 DELAYS IN THE DISPUTE SETTLEMENT PROCESS

A. Statement by Korea

13.1. The Chairman said that this matter was on the Agenda of the present meeting at the request of Korea and invited the representative of Korea to speak.

13.2. The representative of Korea said that his country wished to express its concerns about the growing delays in the WTO dispute settlement process. As Members were aware, on 25 March 2015, the DSB had established a panel in the dispute: "United States – Anti-Dumping Measures on Certain Oil Country Tubular Goods from Korea" (DS488). The Panel had subsequently been composed and, in accordance with the DSU, the adjudication process should have proceeded without delay. Instead, the Secretariat had informed Korea that the Panel would not begin its work until the end of 2016, at the earliest, a date some 15 months from the time that Korea had been notified of the delay. This remarkable and extraordinary delay was not because the panelists were unavailable. Rather, Korea had been informed that it was due to the constraints affecting the Secretariat. Korea understood the challenges posed to the Secretariat by the current caseload. However, a delay of that magnitude between the panel composition and the initiation of panel proceedings was simply unreasonable, in light of both the DSU provisions and the economic reality. In fact, it undermined the very purpose of the dispute settlement system. The drafters of the DSU had recognized that the effectiveness and legitimacy of the new dispute settlement system depended on its ability to provide for the prompt settlement of disputes. This principle was expressly reflected in Article 3.3 of the DSU and embedded throughout the DSU in the form of strict deadlines for each stage of the process and mechanisms that ensured that the process could not be blocked by one of the parties to the dispute. Article 12.9 of the DSU provided that "[i]n no case should the period from the establishment of the panel to the circulation of the report to the Members exceed nine months". In spite of this unambiguous language, Korea had been asked to wait 15 months just for the case to get started. To put it into perspective, this delay was almost twice as long as the period foreseen in Article 12.9 of the DSU between the establishment of a panel and the circulation of its report. Korea was aware that in some instances the deadlines laid out in the DSU provisions could be surpassed by practical realities. However, the delay proposed in the DS488 dispute was so excessive and so far removed from the deadlines set forth by the drafters that it was impossible to reconcile with the principle of prompt settlement of disputes that was at the core of the DSU. Unless the problem was urgently addressed, the dispute settlement mechanism risked becoming "toothless", as a delay of this kind was effectively a denial of remedy. Moreover, Korea was concerned that Members were getting used to the idea of slipping deadlines, even as they were becoming longer and longer. A delay of, for example, six months no longer raised alarm. Timelines, regardless of how unequivocally they were stipulated in the DSU, were becoming easier to brush aside with each passing dispute.

13.3. However, WTO disputes were not about abstract disagreements. Real world economic interests underlay every single dispute. There were people who suffered real losses while a dispute was pending. The DS488 dispute illustrated this vividly. The dispute involved anti-dumping measures applied by the United States against imports of certain Korean steel products. As a result of these punitive measures, the affected Korean companies were sustaining losses of US$10 million a month. A delay of fifteen months meant losses of US$150 million. These were just the losses from the delay in getting the panel proceedings operational. By the time the panel report was actually received, the damage would likely be double that figure. These companies could very well have gone out of business by then and thousands of people could have lost their jobs. At that point, any ruling, however favourable, would have become an afterthought.

13.4. The problem would only get worse if left unaddressed. Long delays created perverse incentives by lowering the cost of adopting and maintaining WTO-inconsistent measures. Interest groups seeking protection would pressure Members to adopt those measures, insisting, rightly, that they would not be subject to review by the WTO for years. Members could therefore expect more protectionist measures and more, not less, disputes being brought to the WTO. These, in turn, would cause further delays, prompting a vicious, never-ending cycle. It was in the interest of everyone, the parties, the wider Membership and the Secretariat, not to let this happen. Korea fully appreciated the efforts being made by the Secretariat to improve the system under significant resource constraints. Notably, in September 2014, the Director-General had provided a helpful assessment of the current situation and ways to address the challenges. Korea was ready to engage with the Secretariat and other Members to address such challenges. One possible path

forward would be to boldly redistribute and more effectively utilize existing resources of the WTO system as a whole. In that regard, Korea would welcome constructive ideas from the Secretariat. In order to discuss prescriptions, however, there was a need for an accurate diagnosis. Thus, it was critical that the Secretariat provide more information to Members on the specific constraints that it was facing. The information, updated regularly, should include hard numbers on staff members available to assist panels, and the allocation of staff among the various dispute settlement divisions of the Secretariat in relation to each division's evolving workload. Additionally, the Secretariat needed to provide case-specific information to the parties that could help them better understand how the Secretariat's across-the-board workload problems affected their disputes. This information needed to be detailed and tailored enough so that parties could appreciate in non-conceptual terms why, for instance, the Secretariat could not commit its staff to a case before a certain date. Information on the assignment of staff to each panel and each panel's place in the queue would also be appreciated. Korea had previously asked the Secretariat for such information, but the Secretariat, unfortunately, had been less than forthcoming.

13.5. In Korea's view, the general, one-size-fits-all letters that the Secretariat currently sent out under circumstances of delay were neither sufficiently detailed nor specific to the case at hand. Something more individualized would be required to help parties understand where they stood. Korea believed that this case-specific information, as well as the more general assessments that Korea hoped the Secretariat would continue to provide Members, would allow the dispute settlement community to better focus on the problem and formulate necessary responses. Korea wished to make it clear that seeking such information was distinct from attempting to intrude on the Secretariat's internal management. Far from it, Korea respected the Secretariat's decisions regarding management. Nor was Korea suggesting that the Secretariat should work harder than it already did. The standout professionalism and dedication of the entire WTO staff were deeply appreciated and had never been in question. Korea respectfully requested the Secretariat to provide, preferably by the next DSB meeting or at the earliest possible date the following: (i) specific information regarding the state of the dispute settlement workload; and (ii) an explanation of how that general information translated into the "end of 2016" timeline that Korea had been notified of in the DS488 dispute. Korea hoped that this information would serve as a platform for further constructive efforts.

13.6. The representative of the United States said that Korea had raised an important systemic issue at the present meeting. Unfortunately, Korea had also raised a bilateral dispute in this context and the United States said it would like to make it clear that the United States did not agree with Korea's statement about harm to its companies since the United States considered that US duties had been imposed consistently with WTO rules. That said, for some time the dispute settlement system had been facing significant delays, first at the appellate stage, and now at the panel stage. This raised some significant concerns, particularly in light of the fact that the WTO dispute settlement system had, for many years, operated with admirable efficiency. The United States shared the view that Members needed a better understanding of the causes behind delays so that they could develop and consider appropriate solutions. The United States looked forward to further discussion and analysis of this issue.

13.7. The representative of Guatemala said that his country thanked Korea for placing this item on the Agenda of the present meeting. Growing delays in the WTO dispute settlement process was an issue of extreme importance that concerned all Members. Guatemala shared Korea's concerns in this regard. A delay of almost 15 months to begin a panel's work due to the constraints faced by the WTO Secretariat was alarming. It was extremely difficult to reconcile this situation with the very purpose of the WTO dispute settlement system. As Korea rightly pointed out, Article 12.9 of the DSU provided that "[i]n no case should the period from the establishment of the panel to the circulation of the report to the Members exceed nine months". Members were aware and had accepted that in some instances the DSU deadlines could be surpassed by practical realities including, but not limited to, resource constraints. However, this could not change the meaning of Article 12.9 of the DSU, far from it. Guatemala believed that the success of the dispute settlement mechanism rested on three key aspects, one of which was the ability to settle disputes promptly. The other two were the quality of the panel and the Appellate Body reports, and the stability and predictability of its rules and procedures. The WTO dispute settlement system was recognized for these features as well as for the professionalism and hard work of panelists, Appellate Body members and the WTO staff servicing panels and appeals. The WTO dispute settlement system was one of the most effective and prompt international systems of adjudication. Victim of its own success, the system faced the risk of becoming slower. If no effective action were taken to address

this unfortunate situation, the principle of "prompt settlement of disputes" in Article 3.3 of the DSU would become a mere "best endeavour" provision, not more than an illusionary aspiration. Guatemala also agreed with Korea that long delays in the dispute settlement mechanism may create perverse incentives for adopting politically motivated WTO-inconsistent measures. Since the current system did not provide for interim relief or retroactive measures, like full reparation, the lack of prompt justice would mean that WTO-inconsistent measures could be maintained longer without any consequences. This would be the equivalent of obtaining "unilateral waivers" or adopting "safeguard measures" without obligation to provide compensation. If WTO Members allowed this situation, the result would be an even more significant increase in the caseload. This would, in turn, only contribute to the collapse of the system. Guatemala believed that this problem deserved urgent and dedicated attention. More importantly, it needed effective action by Members. Guatemala wished to make it clear that this was not the Secretariat's problem, nor a problem that only the Secretariat could or had to resolve. This situation required collective understanding and effort from the dispute settlement community, Members, practitioners, Secretariat, academics, etc. For these reasons, Guatemala agreed with Korea that the Secretariat should provide Members with more details on its current resources and the specific constraints it was facing. More importantly, the Secretariat should provide its own assessment on its specific needs to address those constraints. Equally critical was for Members to start taking action in the framework of the DSB. While Members continued their discussions of the never-ending DSU review to address issues that they had identified more than 17 years ago, the dispute settlement system urgently needed action that could not wait another 20 years. Members had to act fast. In conclusion, Guatemala was ready to participate constructively and proactively in any effort that may be undertaken to address this issue.

13.8. The representative of Chile said that her country shared the view that it was essential for the WTO to have a system that was instrumental in defusing and settling trade disputes brought by Members. Chile was concerned about these long delays, which were unprecedented in the history of the system. Chile believed that it was important to improve transparency and to deal with the problems that could give rise to a significant build-up of cases. Therefore, measures should be taken to ensure efficiency at each stage of dispute settlement proceedings. It was important that the dispute settlement system operated expeditiously so that trade barriers were removed promptly.

13.9. The representative of China said that his country recognized that the Secretariat was currently facing a heavy workload and that the disputes involved more and more complex factual and legal issues. At the same time, China shared the serious concerns raised by Korea. In several recent disputes, the panel proceedings were significantly delayed due to resource restraints. China had been told that such delays were expected to continue indefinitely. China believed that if there were no prompt solution, this unprecedented situation would seriously undermine the effectiveness and credibility of the WTO dispute settlement mechanism. To remedy the problem, China wished to urge the Director-General to take all appropriate steps as soon as possible to address the serious delays and, at the same time, to maintain the high quality of the Secretariat's work. To solve the problem, China was open to discuss any proposals with other Members. China supported the Secretariat's efforts to allocate more resources to the area of dispute settlement and to recruit more dispute settlement lawyers.

13.10. The representative of Australia said that his country recognized the significant resource constraint currently placed on the Secretariat, as a result of the growing number of disputes, and the increasing complexity of those disputes. The consequent delays at both the panel and Appellate Body stage, while understandable, were problematic for the system and, in Australia's view, needed to be addressed. This issue should be of concern for the entire WTO Membership, not only for those affected by the current delays. The dispute settlement system was the cornerstone of the multilateral trading system and was a widely respected and effective international legal system. It was essential for the WTO that its effectiveness and efficiency be maintained. Australia was, therefore, willing to work with other Members and the Secretariat to consider any option that might help alleviate the current situation and improve the system over the long-term. This included ensuring that the Secretariat had the resources needed to service disputes in a timely manner, and also exploring ways for the Membership to reduce the burden on the system in terms of the length and complexity of disputes. This may need to involve re-allocation of resources within the Secretariat. Australia would also be prepared to consider proposals from the Secretariat or Members for streamlining dispute settlement processes, whilst fully respecting the requirements of the DSU and maintaining the high-quality of reports. Australia also considered it important to,

once again, thank the WTO Secretariat staff from the Rules Division, the Legal Affairs Division and the Appellate Body Secretariat for their hard work and dedication. The dispute settlement system could not function without them and their efforts were greatly appreciated.

13.11. The representative of the Russian Federation said that her country thanked Korea for raising this important systemic issue at the present meeting. The delays in the dispute settlement process seriously jeopardized the multilateral trading system. They undermined the effective functioning of the WTO and weakened a proper balance between the rights and obligations of Members. The dispute settlement mechanism was correctly labelled "the jewel in the crown" of the WTO. Yet, as Members were aware, even the most precious and beautiful jewels needed to be polished from time to time. The WTO was a Member-driven organization, and the fate of the dispute settlement system was in Members' hands. As an active user of the dispute settlement mechanism, both as a complainant and a respondent, Russia stood ready to actively participate in multilateral efforts to address this issue.

13.12. The representative of Mexico noted that his country had expressed its views on the issue of delays at the September 2014 DSB meeting[9]. Mexico had two concerns with regard to the issue of delays. First, Mexico had a direct interest in two recent disputes that had been initiated at the end of 2008 in which Mexico was a complainant (DS381 and DS386). These disputes had not yet been concluded and this had implications for the respective national industries. Second, Mexico had a systemic interest in this matter since longer periods to settle a dispute increased both the disincentive to file complaints and the incentive to adopt protectionist measures. While a Member may suspend concessions in the case of non-compliance, this would not eliminate the impact of such non-compliance. Delays only added to already long periods for protectionist measures to remain in place. Members should ask themselves whether they, and indeed the Secretariat, had been adhering to the principles of the "prompt settlement" of disputes and "prompt compliance", as provided in Articles 3.3 and 21.1 of the DSU. As Mexico had stated at the September 2014 DSB meeting, it would be a shame if one of the best-functioning pillars of the WTO – "the jewel in the crown" – became a source of criticism because of its increasingly tarnished performance. This criticism had been expressed by the private sector, which was affected by proceedings of uncertain, but certainly longer, duration. Mexico regretted that almost a year had lapsed since the DSB meeting when the issue of delays had been considered. Yet, these delays continued with no information as how to remedy the situation. Finally, Mexico reiterated its commitment to finding a solution to the issue of delays.

13.13. The representative of Pakistan said that his country welcomed Korea's initiative to bring to the attention of Members one of the most pressing issues, namely, delays in solving trade disputes under the dispute settlement mechanism. Pakistan attached great significance and firmly believed that the dispute settlement system was the bedrock of the entire multilateral trading system and the most crucial pillar of the WTO. The functioning of the dispute settlement system had been excellent since the birth of the WTO and, to date, had delivered quite efficiently and effectively towards the settlement of trade disputes among Members. Certainly, the dispute settlement system ranked much higher in performance when compared with other international systems. While Pakistan acknowledged the significant role of the dispute settlement system leading to the ever increasing growth in global trade over the last 50 years, at the same time, it shared the issues and concerns raised by Korea, which deserved positive consideration by all Members and the Secretariat. What was needed was a proposal that would bring greater transparency and efficiency in the dispute settlement mechanism, in line with the relevant DSU provisions that stipulated a well laid out procedure based on specific timelines for each and every stage. On the other hand, Pakistan did recognize the resource constraints that the Secretariat was faced with. Pakistan, however, urged Members to engage constructively with a view to addressing the critical challenges that hampered the smooth functioning of the dispute settlement mechanism, not only from a systemic viewpoint but also for the timely resolution of Members' disputes. On its part, Pakistan was ready to undertake constructive engagement with Members and the Secretariat to find an efficient way forward.

13.14. The representative of Japan said that his country shared the concerns expressed by some Members regarding backlogs and substantial delays in many dispute settlement proceedings, including months of delay in commencing proceedings after composition of panels. Article 3.3 of the DSU provided that "[t]he prompt settlement of [WTO disputes] is essential to the effective

[9] WT/DSB/M/350, paragraphs 1.8 to 1.11

functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members". This principle of "prompt settlement" was specifically expressed in various DSU provisions including those which imposed strict time-limits on the parties, as well as Article 12.2 of the DSU which provided that "[p]anel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process". The growing trend of substantive delays in the dispute settlement process was particularly alarming because it may potentially undermine "the effective functioning" of the WTO dispute settlement system, which had proven to work so successfully. It was well recognized that a mounting number of disputes and their increasing complexity had certainly placed an enormous strain on the ability of WTO adjudicators and the Secretariat supporting them to strictly follow the principle of "prompt settlement" of WTO disputes and observe time-limits imposed by the DSU. The substantial delay in the dispute settlement process was also due, in part, to resource constraints. Japan noted that this was a difficult issue, which should be addressed by Members urgently. Japan, on its part, had been working with other Members through informal discussions related to this issue and cooperating with WTO adjudicators in their efforts to meet the deadlines in disputes involving Japan. That said, as the Appellate Body Report in the "Thailand-Cigarettes" dispute had observed, WTO Members had "legitimate" interests, "such as an adjudicative process in which it can seek redress in a timely manner" and "[t]hese interests find reflection in the provisions of the DSU" such as Articles 3.3 and 12.2 in which the principle of "prompt settlement" was enshrined.[10] By virtue of these legitimate interests of Members, and as a matter of transparency and due process as well, the current practice of extending the time period set out in the DSU regularly without even providing sufficient explanation to the parties caused serious concerns.

13.15. Japan considered that in a case where WTO adjudicators found that scheduling beyond prescribed deadlines was necessary, consultations should be held to ensure that all parties to the dispute had an opportunity to express their views and to be fully informed of the reasons for such delays. Japan attached the utmost importance to the effective functioning of the dispute settlement system and believed that the value and the credibility of the system should not be undermined. Japan continued to work with other Members to find ways to cope with the challenges which the WTO was currently facing.

13.16. The representative of Brazil said that the issue raised by Korea at the present meeting was of interest to all Members and not only to active participants in the dispute settlement system. Brazil shared many of the general concerns expressed by Korea and considered that more transparency in the administration of the panel proceedings and an open dialogue between Members and the Secretariat could only contribute to a more efficient mechanism. In particular, Members would only be able to search for, and offer, practical solutions to the current workload problem at the panel level if they had accurate and sufficient information about the ongoing difficulties in handling the disputes. It would be natural to expect that longer delays would require more specific information to be provided by the Secretariat. Both the parties to a dispute and the Secretariat had a stake in keeping the system as efficient as in the past. If the system started to show signs of strain, more collaboration, reflection and action would be needed. Brazil believed that the dialogue that already existed between Members and the Secretariat could be improved and should strike an appropriate balance regarding: (i) the legitimate expectations of parties to a dispute under the DSU; (ii) the information provided by the Secretariat about time-tables and reasons for delays; and (iii) a realistic and thorough appraisal of the available resources available in the Secretariat. In search for this balance, preserving mutual trust was paramount. Therefore, while the Secretariat was responsible for explaining the delays, it was also important that Members' justified concerns did not result in micromanagement or undue interference in the administration of disputes, so as not to affect the ability of the dispute settlement mechanism to provide for the prompt settlement of disputes in an independent and impartial manner.

13.17. The representative of Canada said that his country thanked Korea for placing this item on the Agenda of the present meeting and bringing it to the attention of the DSB. Canada had received similar information from the Secretariat in two new disputes in which it was involved. Canada, therefore, shared many of the concerns raised by Korea, including the concern that these delays, if left unchecked, risked undermining the credibility of the WTO dispute settlement system. But these delays should not just concern Members that currently had disputes underway or pending. These delays should concern all Members, which seemed to be the case given the interest expressed in this item at the present meeting. This was not a new issue. In fact, during

[10] Appellate Body Report, "Thailand – Cigarettes" (Philippines), paragraph 150.

his tenure as the DSB Chair in 2013, the interim Chairman of the present meeting, Amb. Jonathan Fried (Canada), had conducted a series of consultations with Members to identify possible solutions to what at that time was already a worrying trend of increasing delays. These consultations had revealed that the causes of the increasingly burdened dispute settlement system were multi-faceted, and had suggested, therefore, that multi-faceted solutions would be required. Some initial steps were taken, in particular related to the reallocation of Secretariat resources to dispute settlement activities. But as the Director-General himself had acknowledged when he had presented his progress to the DSB in September 2014, the issues could not be resolved only by increasing resources to the Secretariat and adjudicators. The Director-General himself had called upon Members to act to identify a range of solutions, including action on limiting inputs and outputs and demand for, and supply of, dispute settlement outcomes. While the issue was not new, what was perhaps new at the present time was just how long these delays had become, and how little the resource allocation steps taken in the previous year seemed yet to have accomplished much in terms of avoiding further delays. Canada understood though that the resource constraints could not be fixed overnight and that it would take some time for the new resources to be fully functional such that delays could be reduced. The good news was that because Members had been considering the issues of workload and delays for several years now, a lot of ideas had already been developed to address them. The membership, which was ultimately and collectively responsible for ensuring the capacity of the system, had not failed in coming up with ideas. The Membership had, however, failed in its efforts to agree and implement any of them. For example, Korea had at the present meeting requested to receive more information about the status of all disputes to allow parties and Members more generally to evaluate better the demand on the system. These ideas for more information sharing, among others, had in fact been extensively discussed in a small group of frequent users, who had come close to putting together a proposal for DSB action in this area. Unfortunately, for a variety of reasons, the Members involved in these discussions had been unable to arrive at an agreed proposal and the efforts had faded away. Korea's statement of concern at the present meeting, echoed as it had been by other Members, was a reminder that Members could not just sit back and wait for resource reallocation alone to solve all the problems. Members needed to persist in their efforts to find multi-faceted solutions. Members needed to take the responsibility as a governing body seriously and work together to find sustainable solutions that preserved the credibility and legitimacy of the WTO dispute settlement system for the next 20 years. Canada stood ready to re-engage in discussions, in whatever form they might take, to develop, and finally implement, such solutions.

13.18. The representative of India said that his country thanked Korea for raising the issue of delays in dispute settlement proceedings. India understood Korea's disappointment with the inordinate delay in the initiation of panel proceedings. A well-functioning dispute settlement system was a critical component of the multilateral trading system. There were many elements to a well-functioning, rules-based dispute settlement system. Prompt resolution of disputes was chief amongst them. Delays in the dispute settlement system severely affected the credibility of the system, a point that Korea had raised at the present meeting. India viewed the issue holistically and in a balanced manner. India recognized the fact that the dispute settlement system was currently faced with an unprecedented workload burden. The number of cases filed was a testimony to the success of the system. Delays in dispute settlement, especially between panel composition and the initiation of panel proceedings, severely impacted on the economic interests of the parties to the dispute as well as on the systemic interests of the Membership. The credibility of the process was at stake and it was understandable that a Member affected would be disappointed and agitated. However, it was equally important to recognize that there were genuine reasons for the delay and a severe resource crunch was one of them. The Rules Division, in particular, may be facing increased pressure due to the nature of WTO cases that had arisen in the past few years, mainly trade remedy disputes. It was important to underscore and recognize the work of the Secretariat to expeditiously handle disputes and put teams in place. India believed that the functions of the Secretariat must not be interfered with in terms of the internal management of the process to ensure total independence and integrity of the process. India believed that this was performed by the Secretariat in a non-arbitrary manner. Furthermore, the quality of reports was also of pivotal importance and could have a bearing on time-frames. Members, therefore, must engage in a discussion to have a pragmatic, balanced and practical solution to the issues at hand. Information on the stages of the various disputes as well as time-frames for their completion with reasons for the same could serve as a useful input for Members to assess the gravity of the problem as well as the reasons for the delay. On the other hand, Members must guard against interference in the internal management of the panel process. It was a delicate balance and must be deliberated upon. India looked forward to other suggestions

that Members may have on this issue and was ready to work with other Members and the Secretariat to address the root causes as well as to find practical solutions on making the dispute settlement process more prompt and effective. In India's view, any solution would have to address the parties' concerns for prompt settlement and the need to maintain the independence of the Secretariat to manage its resources as well as effectively schedule cases.

13.19. The representative of the European Union said that the EU thanked Korea for raising this important matter. The EU noted that it was one, if not the most, affected Member by the current situation, with many cases in the queue. The EU acknowledged that the situation was difficult, both in terms of adverse impact on the interests of WTO Members who needed to wait for the cases to start in earnest, and also in terms of finding a solution to the underlying problems of which all Members were aware. In the EU's view, there was a need to have two objectives in mind. The first was to manage the situation at hand. In this regard, the EU had confidence in the Secretariat's management of the situation and that this was handled in a proper way. Korea had provided additional ideas on how this could be further improved, and the EU would be interested in continuing this discussion. In that respect the EU would emphasize that the approach needed to be workable and pragmatic, as much as transparent and even-handed. The second objective would be to find solutions to the mid and long-term situation against the background of ever increasing pressures in the WTO dispute settlement system. In that respect, the EU had already had good discussions in the past in various fora. There was no miracle solution, but rather many individual steps and measures would be needed to cope with the problem that Korea had raised at the present meeting.

13.20. The representative of Argentina said that his country shared the concerns expressed by Korea and other Members. Argentina thanked Korea for placing this item on the Agenda of the present meeting. Argentina was also affected by current delays, in particular with respect to disputes relating to anti-dumping. Argentina, therefore, shared Korea's concerns about the economic damage irrespective of whether or not the measure was eventually ruled to be consistent with WTO Agreements. In particular the predictability of the multilateral trading system was affected. Argentina was aware and appreciated that the WTO Secretariat and the Appellate Body Secretariat were considering certain measures that would reduce current delays and resolve the problem and to find a prompt solution to this matter. Argentina was prepared to continue to discuss this issue with Members and with the Secretariat and was open to suggestions. In Argentina's view, this issue would continue to have serious implications, as pointed out by other delegations. Therefore, the necessary measures to resolve this situation must be taken as quickly as possible.

13.21. The representative of Chinese Taipei said that his delegation thanked Korea for raising this issue at the present DSB meeting. Chinese Taipei shared Korea's concerns about delays in the proceedings under the DSU. As Chinese Taipei understood and as mentioned by several Members, such delays may be caused by the increasing workload and the shortage of human resources in the Secretariat. Chinese Taipei noted that the situation was going from bad to worse, in particular with the disputes under the mandate of the Rules Division. For example, two rules-related dispute panels, which had been composed in June 2014 (DS464[11] and DS473[12]), had announced that the final reports were expected to be issued by the end of 2015. In other words, the panel proceedings would last for approximately one year and six months. However, another two rules-related dispute panels, which had been composed in December 2014 (DS442[13] and DS479[14]), had announced that the final reports were expected to be issued by the end of 2016. In other words, the prospective duration of proceedings was extended to approximately two years. Thus far, Chinese Taipei had not seen any panel composed in 2015 announcing the expected final report issuance date,

[11] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds464_e.htm ("On 20 June 2014, the Director-General composed the panel…. The panel expects to issue its final report to the parties by the end of 2015.")

[12] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds473_e.htm ("On 23 June 2014, the Director-General composed the panel…. The panel expects to issue its final report to the parties by the end of 2015.")

[13] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds442_e.htm ("On 18 December 2014, the Director-General composed the panel…. The panel expects to begin its substantive work shortly and to issue its final report to the parties in the second half of 2016.")

[14] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds479_e.htm ("On 18 December 2014, the Director-General composed the panel…. the Chair of the panel…does not expect to issue its final report to the parties before the end of 2016.")

including the DS482 Panel before which Chinese Taipei was the complaining party. Chinese Taipei could reasonably expect that those proceedings would be delayed even longer. Chinese Taipei was of the view that Members did not need to be reminded again about the negative effects the worsening delay problem may have on the dispute settlement system. In that regard, Chinese Taipei agreed with Korea that action should be taken as soon as possible to address this problem. Having more detailed and exact information about the Secretariat's workload and human resources situation would be the first step to an effective solution. In addition to Korea's proposal, Chinese Taipei proposed that the Secretariat publish a list of the panels awaiting the allocation of Secretariat staff. That information should specify each panel's place in the queue, the availability of supporting staff, and the estimated time when the supporting staff would be available. The publication of that information should be maintained on a regular basis and updated. For short-term purposes, publication of that information would allow the parties to those pending disputes and the third-parties to better arrange their preparatory work. In the long-term, that information may be used as an index to measure the severity of the delay problem, allowing the Secretariat, the DSB and all Members to keep observing the issue and communicating on the most appropriate solution. Chinese Taipei, once again, thanked Korea for raising this issue at the present meeting and for the constructive and practical proposal. Chinese Taipei appreciated the views of Members and hoped that more engagement in this matter would soon resolve the matter.

13.22. The representative of Norway said that her country noted with interest the views expressed by Korea and other Members under this Agenda item. Norway understood that an increased level of activity in dispute settlement had resulted in resource challenges in the dispute settlement pillar of the Secretariat, leading to serious delays in panel proceedings. Norway agreed with Korea and the previous speakers that transparency was of great importance when longer delays in panel proceedings were foreseen. Providing case-specific information to the disputing parties would give them a better understanding of the situation and the necessary consequences for the dispute at hand. The delays gave rise to concerns about the well-functioning and efficient dispute settlement system. It was crucial that the Secretariat was set up in a way that enabled it to adapt to fluctuations in the number of disputes, their scope and their complexity. In Norway's view, this should be a core objective of the ongoing organizational review of the Secretariat. Like previous speakers, Norway stood ready to engage in further discussions on this important issue raised by Korea at the present meeting.

13.23. The Chairman thanked Korea for placing this matter on the Agenda of the present meeting and Members for their thoughtful statements. He said that many Members were aware that this was an issue that had long concerned him personally as well as institutionally. In summing up, he wished to suggest some next steps. First, he said that Members had the benefit of having, at the present meeting, the Directors of the Legal Affairs Division, the Rules Division, and the Appellate Body Secretariat to hear the views expressed by Members. He assured Members that their views would be conveyed to the Director-General. He was certain that there would be further discussions in the Secretariat on some of the issues raised. Second, a number of delegations had referred to the fact that there were other dimensions to the problem of delays. To some extent, when more Members burdened the Secretariat and the panelists with bigger briefs, covering more issues, requiring more time and attention, there was an inevitable domino effect that led to the unavailability of resources for later cases in the line-up. That had triggered some discussion, as was mentioned among the major users, regarding whether Members themselves could do something to help to contribute to a more streamlined process. This could be either voluntarily between the parties or by agreement on best practices or potentially procedurally, and ultimately, referred to the DSU negotiations for consideration. He noted that some Members had stated that they were willing to continue discussions and that this issue might be further explored in the Special Session of the DSB. Third, he recalled that DDG Brauner had been given the responsibility to continue with the "Jara process" named after Alejandro Jara, the former DDG, who had led a series of consultations on practical ideas that might contribute to streamlining the dispute settlement system. That process was now called the "Dispute Settlement Efficiency Exercise". He was certain that DDG Brauner would soon undertake his consultations on this matter. He assured Members that he would report back to the Chair of the DSB on the discussions held at the present meeting regarding the issue of delays in the dispute settlement system.

13.24. The DSB took note of the statements.

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