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Dispute Settlement Body
20 July 2018

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 20 JULY 2018

Chairperson: Ms. Sunanta Kangvalkulkij (Thailand)

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1 SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.185)

B. United States – Section 110(5) of the US copyright act: Status report by the United States (WT/DS160/24/Add.160)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.123)

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.7)

1.1. The Chairperson noted that there were four sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. She recalled that Article 21.6 required that: "[u]nless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time ... and shall remain on the DSB's Agenda until the issue is resolved". Under this Agenda item, she invited delegations to provide up-to-date information about their compliance efforts. She also reminded delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "[r]epresentatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record".

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.185)

1.2. The Chairperson drew attention to document WT/DS184/15/Add.185, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.3. The representative of the United States said that the United States had provided a status report in this dispute on 9 July 2018, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that his country thanked the United States for the latest status report and the statement made at the present meeting. Japan, once again, called on the United States to fully implement the DSB's recommendations and rulings so as to resolve this matter.

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

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.160)

1.6. The Chairperson drew attention to document WT/DS160/24/Add.160, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.7. The representative of the United States said that the United States had provided a status report in this dispute on 9 July 2018, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

1.8. The representative of the European Union said that his delegation thanked the United States for its status report and its statement made at the present meeting. The EU referred to its previous statements on this matter and reiterated that it would like to resolve this case as soon as possible.

1.9. The representative of China said that the United States had submitted the 161st status report in this dispute, which was not different from the reports provided by the United States at previous DSB meetings, including its first report in November 2004. No further progress towards implementation had been registered since then. China was curious about the reasons as to why the United States had failed to implement the DSB's recommendations and rulings for more than ten years. As a result of the US non-compliance, Section 110(5) of the US Copyright Act, which the Panel had found to be inconsistent with the requirements of the Berne Convention and the TRIPS Agreement, was still in effect. The United States failed to provide intellectual property right holders the minimum standards of protection as required by the TRIPS Agreement. The United States remained the only WTO Member who failed to implement the DSB's recommendations and rulings with regard to the TRIPS Agreement, long after the expiry of the reasonable period of time. Article II.2 of the Marrakesh Agreement Establishing the World Trade Organization provided that: "[t]he agreements and associated legal instruments included in Annexes 1, 2 and 3 are ... binding on all Members". China urged the United States to faithfully honour its commitments under the DSU and the TRIPS Agreement by implementing the DSB's recommendations and rulings in this dispute. China, once again, strongly advised that the United States should consider including in its next status report the specific reasons as to why it had failed to implement the DSB's recommendations and rulings in this case, for this long.

1.10. The representative of the United States said that by intervening under this item, China attempted to give the appearance of concern for intellectual property rights. At recent DSB meetings, the United States had discussed at some length some significant and trade distorting shortcomings in China's treatment of intellectual property. If China was interested in discussing the protection of intellectual property rights, the United States was certainly willing to cooperate by bringing that matter to the DSB's attention again. For now, the United States could say that, as the companies and innovators of China and other Members well knew, the intellectual property protection that the United States provided within its own territory equalled or surpassed that of any other Member. Indeed, as China also well knew, none of the damaging technology transfer practices of China that the United States had discussed at recent DSB meetings were practices that Chinese companies or innovators faced in the United States.

1.11. The representative of China said that the United States intervened again to shift Members' focus away from this Agenda item. The issue under this Agenda item was whether the United States had implemented the DSB's recommendations and rulings in this dispute, and the answer was negative. As before, China continued to urge the United States to comply with the DSB's rulings.

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

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.123)

1.13. The Chairperson drew attention to document WT/DS291/37/Add.123, 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.

1.14. The representative of the European Union said that the EU continued to progress with the authorizations in respect of which the European Food Safety Authority had finalized its scientific opinion and concluded that there were no safety concerns. The EU continued to be committed to acting in line with its WTO obligations. But more generally, and as had been stated many times before, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.15. The representative of the United States said that the United States thanked the EU for its status report and its statement at the present meeting. The United States also thanked the EU for hosting recent discussions on these and related issues, and the United States looked forward to continued engagement. Nonetheless, the United States remained concerned with the EU's measures affecting the approval of biotech products. Delays in approvals continued to affect the dozens of applications that had been awaiting approval. Further, even when the EU finally approved a biotech product, EU member States continued to impose bans on the supposedly approved product. The United States again urged the EU to ensure that all of its measures affecting the approval of biotech products, including measures adopted by individual EU member States, were based on scientific principles, and that decisions were taken without undue delay.

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

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.7)

1.17. The Chairperson drew attention to document WT/DS464/17/Add.7, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning anti-dumping and countervailing measures on large residential washers from Korea.

1.18. The representative of the United States said that the United States had provided a status report in this dispute on 9 July 2018, in accordance with Article 21.6 of the DSU. On 15 December 2017, the United States Trade Representative had requested the US Department of Commerce to make a determination under Section 129 of the Uruguay Round Agreements Act to address the DSB's recommendations relating to the Department's countervailing duty investigation of washers from Korea. On 18 December, the Department of Commerce had initiated a proceeding to make such determination. Following initiation, Commerce had issued initial and supplemental questionnaires seeking additional information. On 4 April 2018, Commerce had issued a preliminary determination revising certain aspects of its original determination. Following issuance of the preliminary determination, Commerce had provided interested parties with the opportunity to submit comments on the issues and analysis in the preliminary determination and rebuttal comments. Commerce had reviewed those comments and rebuttal comments and had taken them into account for purposes of preparing the final determination. On 4 June 2018, Commerce had issued a final determination, in which Commerce had revised certain aspects of its original determination. Specifically, Commerce had revised the analysis underlying the CVD determination, as it pertained to certain tax credit programs, in accordance with findings adopted by the DSB. The United States continued to consult with interested parties on options to address the recommendations of the DSB relating to anti-dumping measures challenged in this dispute.

1.19. The representative of Korea said that his country thanked the United States for its status reports and its statement made at the present meeting. In its two recent status reports, the United States had informed the DSB that the US Department of Commerce had issued a final determination to address the DSB's recommendations and rulings relating to the Department of Commerce's countervailing duty investigation of washers from Korea. Nonetheless, in Korea's view,

it was questionable whether the results of the final determination properly reflected the DSB's recommendations and rulings. At the same time, Korea, once again, expressed serious concern about the absence of US implementation efforts to date relating to its anti-dumping measures, more than 22 months after the adoption of the Panel and Appellate Body Reports in this dispute. In this regard, Korea, once again, called on the United States to faithfully implement the DSB's recommendations and rulings in this dispute in order to fully comply with its obligations under the covered agreements.

1.20. The representative of Canada said that his country was concerned that the United States had not implemented the DSB's recommendations and rulings in this dispute. In particular, Canada was deeply disappointed that, despite the expiry of the reasonable period of time, the United States continued to collect cash deposits from Canadian exporters based on a methodology that had been found to be "as such" inconsistent with WTO obligations in this dispute.

1.21. The representative of the United States said that with respect to Korea's statement on the anti-dumping measures, the United States had explained to Korea the special challenges arising from the recommendations in this dispute. Nevertheless, Korea had requested authorization pursuant to Article 22.2 of the DSU to suspend concessions and other obligations. Korea's decision to proceed in that regard was disappointing, and not constructive. As the United States had objected to the level of suspension proposed by Korea, the matter had been referred to arbitration pursuant to Article 22.6 of the DSU.

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

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

A. Statement by the European Union

2.1. The Chairperson said that this item was on the Agenda of the present meeting at the request of the European Union. She then invited the representative of the EU to speak.

2.2. The representative of the European Union said that, once again, his delegation requested that the United States stop transferring anti-dumping and countervailing duties to the US industry. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations and rulings. The EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit status reports in this dispute. The EU would continue requesting this Agenda item for as long as the United States had not implemented the WTO ruling.

2.3. The representative of Canada said that his country thanked the EU for keeping this item on the Agenda of the DSB. Canada agreed that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

2.4. The representative of Brazil said that, as an original party to this dispute, her country thanked, once again, the EU for keeping this item on the Agenda of the DSB. More than 15 years after the DSB's recommendations in this dispute, and more than 12 years after the Deficit Reduction Act had repealed the Byrd Amendment, millions of dollars' worth of anti-dumping and countervailing duties charged on Brazilian and other WTO Members' exports were still being illegally disbursed to US domestic petitioners. Brazil, thus, called on the United States to fully comply with the DSB's recommendations and rulings in this dispute.

2.5. 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 – had been enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that the EU had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, more than 10 years ago. With respect to the EU's request for status reports in this matter, as the United States had already explained at previous DSB meetings, there was no

obligation under the DSU to provide further status reports once a Member announced that it had implemented the DSB's recommendations and rulings, regardless of whether the complaining party disagreed about compliance. And, as the United States had noted many times previously, the EU had demonstrated repeatedly it shared this understanding, at least when it was the responding party in a dispute. Once again, this month the EU had provided no status report for disputes in which there was a disagreement between the parties on the EU's compliance. For example, as the United States would note in a statement made later at this meeting, the EU had not submitted a status report this month in the "EC – Large Civil Aircraft" dispute (DS316), despite the fact that the DSB had recently adopted two further reports finding that the EU had not complied. The United States failed to see how the EU's behaviour was consistent with the alleged systemic view it had been espousing under this item for more than 10 years. As the EU was aware, the United States had announced in this dispute that it had implemented the DSB's recommendations and rulings. If the EU disagreed, there would simply appear to be a disagreement between the parties to the dispute about the situation of compliance.

2.6. The representative of the European Union said that the EU had provided status reports in all cases in which it was involved. Earlier in the course of the present meeting, the EU had provided a status report in respect of the "EC – Approval and Marketing of Biotech Products" (DS291) dispute. As explained in detail during the previous DSB meeting, the EU believed that the "US – Offset Act (Byrd Amendment)" dispute differed from the "EC – Large Civil Aircraft" dispute (DS316), since the former dispute had been adjudicated and no further compliance proceedings were pending.

2.7. The DSB took note of the statements.

3 CANADA – MEASURES GOVERNING THE SALE OF WINE IN GROCERY STORES (SECOND COMPLAINT)

A. Request for the establishment of a panel by the United States (WT/DS531/7)

3.1. The Chairperson recalled that the DSB had considered this matter at its meeting on 22 June 2018 and had agreed to revert to it. She then drew attention to the communication from the United States contained in document WT/DS531/7, and invited the representative of the United States to speak.

3.2. The representative of the United States said that as had been stated at the 22 June 2018 DSB meeting, the United States had serious concerns with British Columbia regulations governing the sale of wine in grocery stores. The British Columbia (BC) regulations excluded all imported wine from grocery store shelves, an important retail channel for wine sales in BC. It was obvious that such discriminatory measures limited sales opportunities for US wine producers and provided a substantial competitive advantage for BC wine. The US panel request explained that the measures at issue appeared to be inconsistent with Article III:4 of the GATT 1994 because they accorded less favourable treatment to imported products than to like products of national origin. Accordingly, the United States requested at the present meeting, for the second time, the DSB to establish a panel to examine the matter set out in the US panel request with standard terms of reference.

3.3. The representative of Canada said that his country regretted that the United States had decided to make a second panel request at the present meeting with respect to Canadian measures governing the sale of wine in grocery stores in British Columbia. Canada questioned the commercial rationale of the US request as imported wines accounted for almost 90 per cent of wine sales in Canada. In BC alone, there were over 1,000 points of sale where imported wine was sold. As had been indicated in the statement at the June DSB meeting, Canada had made efforts, and continued to be open, to resolving this matter through consultations with the United States. Nevertheless, Canada was prepared to defend the Canadian measures governing the sale of wine in grocery stores in British Columbia before a panel.

3.4. 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.

3.5. The representatives of Argentina, Australia, Chile, China, the European Union, India, Israel, Korea, Mexico, New Zealand, the Russian Federation and Chinese Taipei reserved their third-party rights to participate in the Panel's proceedings.

4 UNITED STATES – ANTI-DUMPING MEASURES ON FISH FILLETS FROM VIET NAM

A. Request for the establishment of a panel by Viet Nam (WT/DS536/2)

4.1. The Chairperson recalled that the DSB had considered this matter at its meeting on 22 June 2018 and had agreed to revert to it. She then drew attention to the communication from Viet Nam contained in document WT/DS536/2, and invited the representative of Viet Nam to speak.

4.2. The representative of Viet Nam said that her country thanked the DSB for having allowed it to address Viet Nam's second request for the establishment of a panel in this dispute. The first request for the establishment of a panel had been made and considered at the DSB meeting on 22 June 2018. Viet Nam would, thus, not repeat the procedural and substantive history of this dispute, which it had fully addressed in its statement made at the previous DSB meeting. Nevertheless, Viet Nam wished to reiterate the principal point that it had made in its previous statement in support of its first request for the establishment of a panel, namely, that each of the claims in its request for consultations had been the subject of prior dispute settlement proceedings and that all claims had been resolved in a manner favourable to Viet Nam. Given that the dispute settlement system was already overburdened, Viet Nam believed that this case should be settled without proceeding to the panel stage. However, after filing its first request for the establishment of a panel, Viet Nam had not received a positive response from the United States to resolve this case. Viet Nam was, therefore, left with no other choice than to submit a second request for the establishment of a panel in this dispute. Viet Nam, thus, looked forward to the establishment of a panel at the present meeting.

4.3. The representative of the United States said that the United States was disappointed that Viet Nam had chosen to move forward with a request for the establishment of a panel. As the United States had explained to Viet Nam, the determinations identified in Viet Nam's request for the establishment of a panel were fully consistent with US obligations under the WTO Agreement. Additionally, as the United States had noted at the DSB meeting held on 22 June 2018, Viet Nam sought to challenge certain items that were not measures and would not fall within the scope of a dispute settlement proceeding. In the panel proceeding that Viet Nam had requested, the United States would vigorously defend its rights to adopt anti-dumping measures with respect to unfairly traded imports.

4.4. 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.

4.5. The representatives of Canada, China, the European Union, Egypt, India, Japan, Malaysia, the Russian Federation, Singapore and Thailand reserved their third-party rights to participate in the Panel's proceedings.

5 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/625)

5.1. The Chairperson drew attention to document WT/DSB/W/625, which contained two additional names proposed by Singapore for inclusion on the Indicative List of Governmental and Non-Governmental Panelists, in accordance with Article 8.4 of the DSU. She then proposed that the DSB approve the names contained in document WT/DSB/W/625.

5.2. The DSB so agreed.

6 APPELLATE BODY APPOINTMENTS: PROPOSAL BY ARGENTINA; AUSTRALIA; THE PLURINATIONAL STATE OF BOLIVIA; BRAZIL; CANADA; CHILE; CHINA; COLOMBIA; COSTA RICA; DOMINICAN REPUBLIC; ECUADOR; EL SALVADOR; THE EUROPEAN UNION; GUATEMALA; HONDURAS; HONG KONG, CHINA; ICELAND; INDIA; INDONESIA; ISRAEL; KAZAKHSTAN; KOREA; MEXICO; NEW ZEALAND; NICARAGUA; NORWAY; PAKISTAN; PANAMA; PARAGUAY; PERU; THE RUSSIAN FEDERATION; SINGAPORE; SWITZERLAND; THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU; TURKEY; UKRAINE; URUGUAY; THE BOLIVARIAN REPUBLIC OF VENEZUELA AND VIET NAM (WT/DSB/W/609/REV.4)

6.1. The Chairperson said that this item was on the Agenda of the present meeting at the request of Mexico, on behalf of several delegations. In this regard, she drew attention to the proposal contained in document WT/DSB/W/609/Rev.4, and invited the representative of Mexico to speak.

6.2. The representative of Mexico said that the delegations mentioned in document WT/DSB/W/609/Rev.4 had agreed to submit the joint proposal, dated 17 May 2018, to launch the selection processes to fill the vacancies in the Appellate Body. At the present meeting, Mexico wished to make a statement on behalf of those 67 Members. Mexico said that the considerable number of Members submitting this joint proposal reflected the common concern about the current situation in the Appellate Body, which was seriously affecting its work, as well as the work of the overall dispute settlement system, against the best interest of WTO Members. Mexico underlined that WTO Members had a responsibility to safeguard and preserve the Appellate Body, the dispute settlement system and the multilateral trading system. Thus, it was the Members' duty to launch the selection processes for new Appellate Body members, as set out in the proposal submitted to the DSB at the present meeting. That proposal sought, first, to start the three selection processes, namely, one to replace Mr. Ricardo Ramírez-Hernández, whose second term of office expired on 30 June 2017; a second process to fill the vacancy that had arisen following the resignation of Mr. Hyun Chong Kim with effect from 1 August 2017; and a third process to replace Mr. Peter Van den Bossche, whose second term expired on 11 December 2017. Second, to establish a Selection Committee. Third, to set a 30-day deadline for the submission of candidates. Fourth, to request that the Selection Committee circulate its recommendation within 60 days after the deadline for the nomination of candidates. While the proponents were flexible with regard to the deadlines for the selection processes, these should, however, reflect the urgency of the situation. The proponents continued to urge all WTO Members to support the proposal in the interest of the multilateral trading system and the dispute settlement system.

6.3. The representative of the United States said that the United States thanked the Chairperson for the continued work on these issues. As the United States had explained in prior meetings, the United States was not in a position to support the proposed decision. The systemic concerns that the United States had identified remained unaddressed. For example, an individual who was not currently a member of the Appellate Body continued to decide appeals. As the United States had explained many times, it was for the DSB, not the Appellate Body, to decide whether a person who was no longer an Appellate Body member could continue to serve on an appeal.¹ The United States referred back to its statements at earlier DSB meetings for more elaboration on its concerns. The United States therefore would continue its efforts and its discussions with Members and with the Chairperson to seek a solution on these important issues.

6.4. The representative of South Africa, speaking on behalf of the African Group, said that the African Group wished to reiterate its previous statements made at the WTO on this matter. The African Group also remained concerned about the current impasse and the developments that undermined the functioning of the dispute settlement system and posed unprecedented systemic risks to the multilateral trading system. The African Group reiterated its readiness to consult with Members on how to take matters forward.

6.5. The representative of Canada said that his country deeply regretted that the DSB had been unable to fulfil its legal obligation under Article 17.2 of the DSU to appoint Appellate Body members as vacancies arose. Canada agreed that it was time to start a process or, if necessary, several processes to select new Appellate Body members for the three current vacancies. Canada was pleased to join the proposal and urged the DSB to adopt it without further delay. Like other Members,

¹ Understanding on Rules and Procedures Governing the Settlement of Disputes, Articles 17.1, 17.2 ("DSU").

Canada was disappointed that the United States had linked the start of the Appellate Body selection processes to the resolution of certain procedural concerns it had shared with the WTO Membership. Canada invited the United States to engage in discussions with interested Members with a view to expeditiously developing a solution to the concerns that it had raised. Canada remained committed to working with other interested Members – including the United States – with a view to finding a way to address those concerns, so as to allow the selection processes to start and be completed as soon as possible.

6.6. The representative of the European Union said that his delegation referred to its statements made on this matter at previous DSB meetings, from February 2017 onward. With each passing month, the gravity and urgency of the situation increased. WTO Members had a shared responsibility to resolve this issue as soon as possible. The EU thanked all Members that co-sponsored the proposal, and invited all other Members to endorse this proposal, so that the appointment of new Appellate Body members could take place as soon as possible. The EU referred, once again, to its statement made at previous DSB meetings. The EU was very clear that – even though it considered Rule 15 of the Working Procedures for Appellate Review as legitimate – the EU was ready to engage in discussions on the said rule, if this would help to unblock the appointment of new Appellate Body members. The EU was still awaiting an engagement by the delegation that was blocking the selection processes of new Appellate Body members.

6.7. The representative of Japan said that his country welcomed the proposal, which it supported, and referred to its previous statements made on this matter.

6.8. The representative of Costa Rica, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), said that the WTO was undergoing a delicate period due to the blockage in appointing new Appellate Body members. First of all, the GRULAC wished to acknowledge the Chairperson's efforts in seeking a solution to this problem and for providing opportunities to Members to express their views on this situation. In this regard, the GRULAC stated its deep concern about the situation, which affected the functioning of one of the WTO's principal bodies. If this problem was not resolved, it would lead practically, in the short term, to the paralysis of the Appellate Body, putting the entire dispute settlement system at risk. The GRULAC noted that the delay in launching the selection processes, with three vacancies at present, meant that WTO Members were failing to comply with an existing mandate, and thus, amounted to a flagrant breach of a legal obligation under a covered agreement. This had serious systemic consequences and set a bad precedent for the WTO, causing damage and affecting the image and credibility of the WTO. In particular, in light of the complex international context that adversely affected the multilateral trading system. The GRULAC had heard the concerns raised with regard to the functioning of the Appellate Body and the specific issues regarding decision-making processes, which hindered the launch of the selection processes. The GRULAC could not accept that the concerns raised were linked to current or future AB selection processes, and thus, prevented the WTO Membership from fulfilling its legal obligation. The dispute settlement system could not be prevented from operating until the concerns raised by some Members had been addressed. The GRULAC further noted that it seemed that a proper interpretation of Article 17 of the DSU, together with Article 2 of the DSU, would not warrant the view that a consensus decision was necessary to launch the Appellate Body selection processes. Therefore, the GRULAC did not understand why these processes had not yet been initiated. The GRULAC called for the attention of all Members with regard to the seriousness of a continued blockage of the selection processes of new Appellate Body members. The GRULAC also reiterated that the selection processes of new Appellate Body members should not be linked to the systemic concerns raised by one Member, which should be addressed on their own merit. In this regard, the GRULAC called on the entire WTO Membership to find a solution as soon as possible, in order to meet the previously mentioned legal obligation of Members. Finally, the GRULAC asked the Chairperson to continue to actively seek a solution to this problem.

6.9. The representative of Pakistan said that his country wished to refer to its previous statements made on this matter, and wished to register its concern on the current impasse and the consequences to the multilateral trading system. Pakistan renewed its call on Members to work together and show flexibilities, so as to move forward in a direction that would benefit the multilateral trading system. Pakistan supported the proposal, put forward by Mexico at the present meeting, to launch the selection processes to fill the vacancies in the Appellate Body. Pakistan was one of the co-sponsors of the proposal and called on other Members to agree to it.

6.10. The representative of Australia said that her country referred to its previous statements made on this matter and reiterated, once again, its serious concerns regarding the DSB's inability to commence the selection processes of new Appellate Body members. Australia remained committed to resolving this impasse as a priority, and stood ready and willing to work with others on pragmatic solutions.

6.11. The representative of New Zealand said that as her country had previously stated, New Zealand was pleased to co-sponsor the proposal presented by Mexico. New Zealand sought to launch the processes to fill the vacancies in the Appellate Body as soon as possible. While New Zealand disagreed with the linkages drawn, it remained ready to work constructively with Members to try and address any issues that might be preventing them from allowing this to occur.

6.12. The representative of Norway said that her country referred to its previous statements made at the DSB, under the same Agenda item. Norway continued to encourage all Members to support the proposal to launch the processes of filling the vacancies in the Appellate Body without further delay. Although Norway disagreed that there was a link between filling the Appellate Body vacancies and solving the procedural issues raised before the DSB, Norway reiterated its continued openness and willingness to engage constructively with all and any Member on their grievances with the system.

6.13. The representative of Switzerland said that, like others, his country referred to its previous statements made on this matter. Switzerland emphasized once again its deep systemic concerns. The mounting insecurity surrounding the future of the WTO's dispute settlement mechanism was increasingly affecting all dimensions of the multilateral trading system. Switzerland believed that it was a shared responsibility of all WTO Members – and particularly major ones – to engage seriously and constructively in order to address the present challenges and move beyond this impasse without further delay.

6.14. The representative of the Russian Federation said that her country referred to its statements made at the previous DSB meetings regarding this issue.

6.15. The representative of Chinese Taipei said that his delegation simply referred to its statements made at the previous DSB meetings. As one of the original co-sponsors of the proposal, Chinese Taipei hoped that Members could work together to find a solution to this impasse as soon as possible.

6.16. The representative of Hong Kong, China said that her delegation referred to its statements made at the previous DSB meetings on this matter. Hong Kong, China reiterated its deep concern about the prolonged impasse over the Appellate Body selection processes. Hong Kong, China was prepared and committed to engage with all Members constructively in further discussions on a possible way forward that might address the procedural concerns raised by one Member. Hong Kong, China invited the concerned Member to submit a concrete proposal to facilitate a meaningful discussion.

6.17. The representative of China said that his country referred to its previous statements made on this matter. China believed that when Members had different views on a specific issue, discussions and negotiations were the only way to move forward. The United States, however, constantly refused to engage in a meaningful discussion after raising its concerns with respect to the functioning of the Appellate Body. China, once again, urged the United States to fulfil its commitments under the WTO Agreements and interpret all WTO rules in good faith.

6.18. The representative of Chile said that his country fully endorsed the statement made by Costa Rica, on behalf of the GRULAC, and Mexico, on behalf of the co-sponsors. Chile reiterated its concern with regard to the highly negative systemic implications for the WTO that were generated by the failure to comply with the obligation to fill the current Appellate Body vacancies. For this reason, Chile, once again, called on the WTO Membership to launch the selection processes of new Appellate Body members as soon as possible, and without linking them to other matters, which should be considered separately. Chile reiterated its readiness to explore options, which would seek to improve the functioning of the dispute settlement system.

6.19. The representative of Thailand said that her country, once again, thanked Mexico and all Members that co-sponsored the proposal for this Agenda item. Thailand referred to its statements made at the previous DSB meetings. Thailand supported the launch of the selection processes to appoint new Appellate Body members and stood ready to engage constructively with all Members in order to find solutions to fill the vacancies in the Appellate Body as soon as possible.

6.20. The representative of Brazil said that his country thanked Mexico for its statement, on behalf the proponents, and reiterated its previous statements made on this matter. Brazil believed that a lot had been said on the importance of restoring the Appellate Body to its full composition as required by Article 17 of the DSU. Unfortunately, no action had been taken due to the current deadlock. The concerns raised by the United States at the present meeting, systemic or not, in no way justified the blocking of the selection processes for new Appellate Body members. In fact, this blockage worsened and deepened the very concerns that the United States wished to resolve. Brazil noted at the same time, however, new consultation and panel requests were being filed by many Members, including by the United States. Based on a rough perusal of the latest figures with regard to disputes, there were currently more than 30 disputes in which panels had been established or consultations had been requested. If the current impasse was not addressed urgently, the system would soon come to a halt. Members would not be able to appeal panel reports in most cases, and would, thus, not be able to adopt them either. This was a scenario that clearly constituted a serious and concrete nullification and impairment of the rights of Members under the DSU, who spent a considerable amount of resources initiating dispute settlement proceedings and submitting disputes to the rule of law. This scenario deprived Members, and their private sectors, of a trusted, independent and efficient means of resolving trade disputes. This extreme fallout from the current impasse was simply one that Members could not afford to accept. Brazil hoped that all Members would work together to overcome any sustained reluctance towards initiating the selection processes for new Appellate Body members.

6.21. The representative of Singapore said that his country referred to its past statements made on this matter, and reiterated its serious systemic concerns with regard to the lengthy delays in launching the Appellate Body selection processes. The clock was ticking and the term of another Appellate Body member was set to expire on 30 September 2018. Singapore appreciated the Chairperson's efforts regarding the possible reappointment of this Appellate Body member and launching the selection processes for the other vacancies. Singapore welcomed any positive efforts in this regard. The dispute settlement mechanism would be paralysed if Appellate Body vacancies were not filled as they arose, since panel reports once appealed to a non-functioning Appellate Body could not be adopted by the DSB and would be, thus, rendered unenforceable. Singapore called on the WTO Membership to fill all Appellate Body vacancies immediately. Systemic issues, which had been raised, could be discussed in a separate process. Singapore stood ready to engage constructively and work with other Members, as well as the Chairperson, to help resolve this impasse.

6.22. The representative of Ecuador said that his country supported the statement made by Mexico. Ecuador was a co-sponsor of the proposal contained in document WT/DSB/W/609/Rev.4. Ecuador also supported the statement made by Costa Rica on behalf of the GRULAC. Ecuador noted that one of the basic principles governing the multilateral trading system was compliance with the rules, which had been adopted by Members. By not having initiated the selection processes for new members of the Appellate Body when the vacancies arose, the WTO Membership was clearly failing to comply with those rules. Ecuador considered that it was inappropriate to link the initiation of the AB selection processes with other procedural issues. For Ecuador, it was clear that the application of Article 17.2 of the DSU required that vacancies were to be filled as soon as possible. Therefore, Ecuador reiterated that it was the prerogative of the DSB Chairperson to take a decision to launch the selection processes to fill the Appellate Body vacancies as soon as possible. The text of Article 17.2 of the DSU did not stipulate that a decision was required in order to initiate the selection processes for new Appellate Body members.

6.23. The representative of Korea said that his country supported the statement made by Mexico, on behalf of the proponents of the joint proposal. He also referred to his country's previous statements made on this matter. Korea encouraged all Members to make constructive efforts to resolve the current deadlock.

6.24. The representative of Mexico, speaking on behalf of the 67 co-sponsors of the proposal, said that the proponents regretted that, for the thirteenth time, WTO Members had still not achieved

consensus to start the selection processes for the Appellate Body vacancies. WTO Members had, thus, failed to fulfil their duties as WTO Members. No discussion should prevent the Appellate Body from continuing to function properly. WTO Members should comply with their obligation under the DSU to fill the Appellate Body vacancies as they arose. By failing to act at the present meeting, the WTO Membership would maintain the current situation, which was seriously affecting the work of the Appellate Body against the best interest of WTO Members.

6.25. The representative of Uruguay said that her country wished to express its concern about the current impasse regarding the selection processes to appoint new Appellate Body members. Uruguay fully supported the statements made by Mexico and Costa Rica at the present meeting, and reiterated its previous statements made at past DSB meetings under the same Agenda item.

6.26. The representative of Egypt said that his country thanked the Chairperson for her efforts in this regard. Egypt also thanked Mexico and the co-sponsors for their proposal. Egypt also supported the statement made by South Africa, on behalf of the African Group. As stated at the previous DSB meetings, Egypt was deeply concerned about the prolonged impasse with regard to the initiation of the Appellate Body selection processes. This situation threatened the proper functioning of the WTO dispute settlement system. Therefore, vacancies in the Appellate Body should be filled as quickly as possible without any further delay. Egypt was prepared to engage with all Members in future discussions on a possible way forward.

6.27. The representative of Turkey said that his country also wished to refer to its statements made at the previous DSB meetings. Turkey also reiterated that it was deeply disappointed with the current situation. Turkey said that it was ready to constructively engage in the process with other Members in order to overcome this impasse.

6.28. The representative of the Bolivarian Republic of Venezuela said that his country supported the statements made by Mexico, on behalf of the proponents, and by Costa Rica, on behalf of the GRULAC. Venezuela encouraged other Members to support the proposal, contained in document WT/DSB/W/609/Rev.4, to launch the selection processes to appoint new Appellate Body members, as quickly as possible.

6.29. The representative of New Zealand said that, unless his country had misunderstood the statement made by Brazil, New Zealand sought a clarification from Brazil with regard to its statement that a panel report that could not be appealed could not be adopted. It was New Zealand's understanding that if none of the parties to a dispute sought to appeal, then a panel report was adopted according to the normal DSU procedures.

6.30. The representative of Brazil said that New Zealand's understanding was correct. If both parties agreed, a panel report could be adopted. This, however, would only happen in approximately one fourth of all the cases, namely the less important cases. In most cases which involved important interests, one party, usually the losing party, would be tempted to appeal as it would have the legitimate right to do so. Without an appeal stage, however, the winning party would have an empty document in its hands after two or three years of panel proceedings. This would be extremely pernicious for all WTO Members.

6.31. The representative of Indonesia said that her country referred to its previous statements made in the past DSB meetings. In this regard, Indonesia was of the view that any systemic concerns raised by certain Members should not be linked to decision to fill the current vacancies in the Appellate Body. Indonesia hoped that this current impasse could be resolved soon.

6.32. The Chairperson thanked all delegations for their statements. She regretted that the DSB was, once again, not in a position to agree to launch the selection processes to fill the three vacancies in the Appellate Body. She understood that this matter required political engagement on the part of all Members. She said that she was in the hands of Members and that her door was open to any delegation wishing to share ideas or views on this matter. She then invited any delegations with views on this matter to contact her directly.

6.33. The DSB took note of the statements.

7 STATEMENT BY THE CHAIRPERSON REGARDING THE POSSIBLE REAPPOINTMENT OF ONE APPELLATE BODY MEMBER

7.1. The Chairperson said that, under this Agenda item, she recalled that the first four-year term of office of Mr. Shree Baboo Chekitan Servansing would expire on 30 September 2018. Pursuant to Article 17.2 of the DSU, he was eligible for reappointment to a second and final term of office. As all Members already knew, on 15 May 2018, the Chairperson had received a letter from Mr. Servansing, in which he had indicated that, as envisaged in Article 17.2 of the DSU, he would like to convey his interest to the DSB to be considered for reappointment as a member of the Appellate Body. As Members were already aware, the Chairperson had been consulting informally with delegations since May 2018 on the issue of the possible reappointment of Mr. Servansing, as well as on the process to be followed in this regard. These consultations were ongoing and she took the opportunity to invite any delegation with views on this matter to contact her directly. She would report back to delegations on this matter at the next regular meeting.

7.2. The DSB took note of the statement.

8 FOSTERING A DISCUSSION ON THE FUNCTIONING OF THE APPELLATE BODY

A. Statement by Honduras

8.1. The representative of Honduras, speaking under "Other Business", said that the DSB had just witnessed, under the previous Agenda item, another lengthy debate on Appellate Body matters. As a small country and as an active user of the dispute settlement system, Honduras attached great importance to the Appellate Body. In light of the current situation, Honduras believed that action was urgently needed. Therefore, Honduras had taken the initiative to present a non-paper entitled: "Fostering a Discussion on the Functioning of the Appellate Body" (JOB/DSB/2), for Members' consideration. The purpose of this non-paper was to foster a discussion among WTO Members on one of the current concerns surrounding the functioning of the Appellate Body. Like many other WTO Members, Honduras was of the view that the WTO dispute settlement system was crucial to the proper functioning of the WTO. Honduras firmly believed that it was vital that all Members engage constructively in finding a solution to the current impasse. Members should start a constructive discussion to address all Members' concerns and to respect the principle that "nothing was agreed until everything was agreed". Honduras was fully aware that there were several issues that had to be resolved but considered that Members' discussions should start by addressing two core concerns with regard to Rule 15 of the Working Procedures for Appellate Review. These two core issues were: (i) the parameters governing the extension of Appellate Body members' terms; and (ii) who should decide on the extension of Appellate Body members' terms, for the purpose of finishing an ongoing appeal. The representative of Honduras said that that non-paper was aimed at reflecting various positions on this matter. Honduras was, however, aware that there might be other possible approaches. He said that Honduras presented this non-paper to Members in an effort to make a positive contribution to the current discussion. Honduras believed that the only solution to the current situation was constructive dialogue and real engagement by all WTO Members. Honduras remained available for any questions and comments by Members.

8.2. The representative of the United States said that the United States thanked Honduras for its engagement on this issue. The United States agreed with the view that the only solution to the current situation was dialogue and engagement from all WTO Members. The United States looked forward to reviewing the non-paper.

8.3. The representative of Canada said that his country thanked Honduras for this non-paper on one of the issues facing the WTO. Canada had consistently signalled its willingness to engage with other Members and the United States to resolve this issue. Canada was willing to engage in discussions with all interested Members in order to resolve the many issues facing the WTO.

8.4. The representative of Australia said that her country acknowledged the contribution from Honduras to the discussion of procedural and systemic concerns that had been raised in the WTO, including in relation to the operation of Rule 15 of the Working Procedures for Appellate Review. Australia remained willing to explore options for improving the functioning of the WTO dispute settlement system. Australia looked forward to reviewing the paper referred to by Honduras at the present meeting.

8.5. The Chairperson said that the proposal by Honduras would be circulated to all Members as JOB/DSB/2.

8.6. The DSB took note of the statements.

9 UNITED STATES – CERTAIN METHODOLOGIES AND THEIR APPLICATION TO ANTI-DUMPING PROCEEDINGS INVOLVING CHINA

A. Statement by China

9.1. The representative of China, speaking under "Other Business", said that his country had been closely monitoring actions taken by the United States regarding implementation in this dispute. China noted that the reasonable period of time for implementation of the DSB's recommendations and rulings would expire on 22 August 2018 according to the Arbitration award pursuant to Article 21.3(c) of the DSU. China was, thus, deeply concerned that no apparent step had been taken by the United States to comply with its implementation obligations so far. China, therefore, urged the United States to implement the DSB's recommendations and rulings in this dispute in order to fully comply with its obligations under the covered agreements, within the reasonable period of time.

9.2. The representative of the United States said that the United States was aware that the reasonable period of time as determined by the arbitrator under Article 21.3(c) of the DSU would expire on 22 August 2018. In accordance with Article 21.6 of the DSU, the United States would provide a status report in this dispute at the August DSB meeting. It was incorrect to suggest that the United States had taken no action in this dispute. If China sought information on the internal US process prior to the August DSB meeting, it could raise this issue bilaterally with the United States.

9.3. The DSB took note of the statements.

10 EUROPEAN COMMUNITIES AND CERTAIN MEMBER STATES – MEASURES AFFECTING TRADE IN LARGE CIVIL AIRCRAFT

A. Statement by the United States

10.1. The representative of the United States, speaking under "Other Business", said that at the June DSB meeting, the United States had noted that the EU had not provided a status report concerning the "EC – Large Civil Aircraft" dispute (DS316). The United States said that the EU had failed to provide such a report despite the recent adoption by the DSB of panel and appellate reports finding that the EU had failed to comply with the DSB's recommendations to bring its subsidies for Airbus into compliance with WTO rules. It was disappointing, if not entirely unexpected, that the EU had again this month failed to provide a status report. Members would recall that for many years, and again this month, the EU had taken the position that, under DSU Article 21.6, a responding party Member was required to provide a status report whenever a complaining party Member disagreed with the responding party's claim that it had complied. And yet, in this dispute, the United States disagreed with the EU's most recent claim that it had complied. Indeed, the EU had provided the United States with no information – and the United States meant, literally, no information – to support the EU's assertion that it had complied. The United States had therefore recently requested the WTO arbitrator to resume its work to determine the level of countermeasures in this dispute.² Given the disagreement on compliance between the parties, the EU should, to be consistent with the view it had taken when it was a complaining party, now be providing status reports. Instead, now that the EU was a responding party, the EU was choosing to contradict the reading of DSU Article 21.6 it had long promoted. Last month, the EU had stated that it need not provide a status report because it had requested consultations under DSU Article 21.5. But as the United States had asked last month, where could Members find this status report exception in the text of DSU Article 21.6? The answer, of course, was nowhere. The EU had simply invented a status report exception, just as it had invented the supposed status report obligation. Rather than disregard the text of the DSU, the EU should acknowledge that it was applying the same approach as every responding party in every other dispute: that was, a responding party had no obligation under

² See WT/DS316/37.

Article 21.6 of the DSU to continue supplying status reports once that Member announced that it had implemented the DSB's recommendations.

10.2. The representative of the European Union said that, as had been explained under Agenda item 2 and at previous DSB meetings, the EU did see a difference with the "EC – Large Civil Aircraft" dispute (DS316). The EU believed that since this dispute was under adjudication, and compliance proceedings were pending, no status report needed to be provided.

10.3. The DSB took note of the statements.
