



Dispute Settlement Body
20 May 2015

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 20 MAY 2015

Chairman: Mr. Harald Neple (Norway)

Prior to the adoption of the Agenda¹

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Prior to the adoption of the Agenda

The item concerning the adoption of the Panel Report in the dispute on: "China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes from Japan" (DS454) was removed from the proposed Agenda, following Japan's decision to appeal the Report. Also, the item concerning the adoption of the Panel Report in the dispute on: "China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes from the European Union" (DS460) was removed from the proposed Agenda, following China's decision to appeal the Report.

Also prior to the adoption of the Agenda

The representative of China said that his country wished to make a short statement under "Other Business" regarding implementation in the dispute: "China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum" (DS431-DS432-DS433).

The representative of the European Union said that the EU was concerned about China's intention to make a statement under "Other Business" on an issue that involved a dispute in which the EU was a complaining party. The EU had just learned about it at the present meeting. Rule 6 of the Rules of Procedure for meetings of the DSB stated that an advance notice should be given and the EU had not received such a notice. The EU would not object to China raising this matter at this time but noted that the EU would appreciate if Members, when submitting items under "Other Business", respected the letter and the spirit of the Rules of Procedure.

The Chairman said that Rule 6 of the Rules of Procedures also stated that such notice shall be given "wherever possible", and therefore while taking note of the EU's statement, the item raised by China would be added to the Agenda of the present meeting under "Other Business".

The representative of Japan said that his country shared the concern raised by the European Union.

The DSB took note of the statements and adopted the Agenda, as amended.

1 SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.149)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.149)

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.124)

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.87)

E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.35)

F. European Communities – Measures prohibiting the importation and marketing of seal products: Status report by the European Union (WT/DS400/16/Add.2 – WT/DS401/17/Add.2)

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

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.149)

1.2. The Chairman drew attention to document WT/DS176/11/Add.149, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 7 May 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.

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

1.5. The representative of Cuba said that her country noted that the 149th US status report stated that: "On 2 February 2002, the Dispute Settlement Body (DSB) adopted its recommendations and rulings in 'United States - Section 211 Omnibus Appropriations Act of 1998' (WT/DS176)" and specified that: "At the subsequent DSB meeting, the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in connection with this matter". Cuba noted that the United States had continued to inform the DSB of its intention to bring itself into compliance in this dispute since March 2002, without any result. The continued failure of the United States to comply with the DSU provisions and the DSB decision, which had been rendered more than 13 years ago, with regard to the inconsistency of Section 211 with the

TRIPS Agreement and the Paris Convention was both unjustified and unnecessary. Section 211 allowed for violations against Cuban patents and trademarks in the United States and, most notably, legalized the theft of the Havana Club rum trademark. Cuba, on the other hand, respected, without any discrimination, its obligations under international legal instruments relating to industrial property. Cuba had ensured that more than 5,000 US trademarks and patents benefitted from their registration in Cuba. The United States had the obligation to take concrete steps aimed at ensuring compliance, and to submit substantive information instead of reiterating the phrases such as: "relevant legislation has been introduced" and "will continue to work on a solution that would resolve this matter". Cuba stressed that the concerns expressed by Cuba and other Members each month that such non-compliance undermined the credibility and effectiveness of the dispute settlement system, should not be ignored. Cuba, once again, called on the United States to repeal Section 211 and to end the economic, commercial and financial embargo against Cuba. It urged the United States, a frequent user of the dispute settlement system, to act in a manner consistent with its obligations. Cuba hoped that the United States was aware of the serious implications of its actions and recognized that it was setting a negative precedent by failing to comply with the DSB's recommendations and rulings in this dispute. The prolonged US non-compliance seriously affected and undermined the security and predictability of the dispute settlement system.

1.6. The representative of Nicaragua said that his country supported the statement made by Cuba and thanked the United States for its status report. Nicaragua noted that the US status report did not indicate that this long-standing matter would be resolved. Like previous speakers, Nicaragua was also concerned about the continued non-compliance by the United States with the DSB's recommendations and any systemic consequences of such non-compliance, which had a negative impact on Cuba, a country with a small economy. Furthermore, this non-compliance undermined the credibility of the DSB and the multilateral trading system and set a negative precedent which could affect other Members, in particular developing countries.

1.7. The representative of Jamaica said that her country thanked the United States, the EU and Cuba for their statements, updates and the US status report under this Agenda item. Jamaica referred to its previous statements made at previous DSB meetings under this Agenda item and requested that the statement made by Jamaica at the 22 April DSB meeting² be reflected in the record of the present meeting. Jamaica remained dismayed at the slow rate of progress towards a resolution to this dispute and urged the parties concerned to take the necessary steps to ensure that the DSB's rulings and recommendations in this dispute are implemented. Jamaica hoped that this matter would be soon resolved and removed from the DSB's Agenda. After 13 years of non-compliance, it was more than reasonable to expect that this this dispute would be resolved.

1.8. The representative of El Salvador said that his country thanked the United States for its status report. El Salvador was concerned about the lack of compliance with the DSB's recommendations and rulings in this dispute and hoped that the United States would soon meet its obligations.

1.9. The representative of the Dominican Republic said that this matter had been discussed for more than a decade, yet there was nothing new. The Dominican Republic thanked the United States for its status report concerning the bills presented to the US Congress which would bring the United States into compliance with the DSB's recommendations and rulings regarding the inconsistency of Section 211 with the TRIPS Agreement. The Dominican Republic, once again, called on the United States to step up its internal procedures so as to comply with the DSB's rulings. The prolonged situation of non-compliance undermined the credibility of the DSB.

1.10. The representative of Trinidad and Tobago said that his country thanked the United States for its status report and Cuba for its update. Trinidad and Tobago referred to its statement made at the DSB meeting on 22 April 2015 in which it had noted the lack of positive movement towards prompt compliance with the DSB's rulings and recommendations regarding Section 211. Trinidad and Tobago regretted that the status quo remained the same. In that regard, Trinidad and Tobago continued to advocate for the prompt compliance with the DSB's recommendations and rulings, pursuant to Article 21.1 of the DSU. As indicated in previous statements, non-compliance with the DSB's rulings and recommendations negatively affected both developed and developing-country Members. In addition, non-compliance also affected the efficient functioning of the dispute

² See WT/DSB/M/360, page 4.

settlement mechanism. In that regard, Trinidad and Tobago supported the call for prompt compliance with the DSB's rulings and recommendations in this dispute.

1.11. The representative of Zimbabwe said that his country thanked the United States for its status report in this dispute. Zimbabwe, once again, regretted that there was no new development in this dispute. This continued stalemate was a result of US non-compliance with the DSB's rulings and recommendations. Such non-compliance undermined the integrity of the DSB and had far-reaching economic implications for the affected small and developing-country Member. In that regard, Zimbabwe joined previous speakers who had supported Cuba and had urged the United States to comply with the DSB's rulings and recommendations.

1.12. The representative of Dominica, speaking on behalf of the OECS countries, said that the countries in question thanked the United States and Cuba for their respective statements. The OECS countries referred to their statement made at the DSB meeting on 26 January 2015 regarding this matter. The OECS countries supported Cuba and remained concerned about the lack of progress and the continued non-compliance with the DSB's rulings and recommendations in this dispute. This non-compliance was inconsistent with the requirements for prompt and effective implementation of the DSB's recommendations and rulings. The OECS countries were particularly concerned that non-compliance in this dispute continued to have a negative economic impact on the economy of a small developing-country Member. Small countries relied on having a well-functioning, rules-based multilateral trading system, including its dispute settlement mechanism, and sought the protection and predictability provided under the DSU provisions. Therefore, this prolonged situation of non-compliance undermined the WTO and the dispute settlement system, as the custodian of the multilateral trading system. In that context, the OECS countries, once again, urged prompt compliance with the DSB's rulings and recommendations in order to resolve this dispute.

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

1.14. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Cuba at the present meeting. Like previous speakers, Venezuela was concerned about the continued non-compliance in this dispute. It called on the United States to implement the DSB's recommendations and rulings. This prolonged situation of non-compliance was inconsistent with the multilateral trading system and undermined the credibility of the WTO and of the multilateral trading system. It also set a negative precedent and could affect other Members, in particular developing countries. In Venezuela's view, the continued non-compliance in this dispute could be interpreted to mean that there was no need to comply with the DSB's decisions, and that the United States could continue to maintain its illegitimate and illegal embargo against a developing-country Member. The US embargo had been almost unanimously rejected by the UN General Assembly as a violation of international law. Venezuela called on the United States to put an end to this non-compliance by repealing Section 211, and to inform Members at the next DSB meeting of the measures it intended to take to resolve this matter.

1.15. The representative of India said that his country thanked the United States for its status report and the statement made at the present meeting. India noted with grave concern that there had been no implementation of the DSB's recommendations for over a decade now. India noted that, at the DSB meeting of 26 March 2013, the then Chairman of the DSB had rightly highlighted with concern, the habit of submission of status reports that generally provided very limited information about specific efforts undertaken to achieve compliance and that the surveillance function was one of the unique and distinguishing features of the dispute settlement mechanism. In India's view, the surveillance function was currently under test. India joined the previous speakers in renewing its systemic concerns about the continuation of non-compliance as this undermined the confidence the Members reposed in a predictable, rules-based multilateral system, especially in the context of a developing-country Member seeking compliance. India noted that continued non-compliance by Members eroded the confidence and the credibility of the WTO dispute settlement system. India urged the United States to report compliance to the DSB without further delay.

1.16. The representative of Ecuador said that her country supported the statement made by Cuba. Ecuador noted, once again, that Article 21 of the DSU referred specifically to the prompt

compliance with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Ecuador hoped that the United States would step up its current work and efforts and promptly comply with the DSB's recommendations and rulings by repealing Section 211. The prolonged situation of non-compliance for over 10 years in this dispute showed the US lack of will to comply with the DSB's recommendations and rulings.

1.17. The representative of Uruguay said that his country thanked the United States for its status report and its statement as well as Cuba for its statement. Uruguay regretted that there was no new information on progress in this dispute, which had lasted for 13 years. This prolonged situation of non-compliance negatively affected the dispute settlement system.

1.18. The representative of Brazil said that his country thanked the United States for its status report in this dispute. Brazil regretted that the US status report did not contain any information on concrete progress achieved in this dispute. Brazil shared the concerns expressed by the EU, Cuba and other delegations regarding the lack of compliance in this dispute. In light of new political developments, Brazil urged the United States to adopt meaningful measures towards compliance. Such compliance would certainly strengthen the multilateral rules.

1.19. 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 an example of non-compliance with, and disregard for, the DSB's recommendations and rulings. Russia believed that due and timely implementation of the DSB's rulings 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.

1.20. The representative of Viet Nam said that her country thanked the United States for its status report, as well as the EU and Cuba for their statements. 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 regarding the US non-compliance in this dispute. Viet Nam urged the United States to step up its efforts and to fully comply with the DSB's recommendations and rulings.

1.21. 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. As Argentina had stated in the past, this lack of progress was inconsistent with the principle of prompt and effective compliance with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were concerned. Argentina, therefore, supported Cuba as well as the previous speakers and urged both parties to this dispute, the EU and in particular the United States, to adopt the necessary measures to finally resolve this dispute.

1.22. The representative of Peru said that his country thanked the United States for its status report. Peru noted that, as in any other dispute, the parties to this dispute needed to take all necessary measures, within a reasonable period of time, to implement the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were concerned. Peru, therefore, joined the previous speakers who had expressed concern about the lack of progress in the implementation of the DSB's recommendations and rulings in this dispute.

1.23. 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. Angola also recognized the goodwill that the United States had displayed thus far as well as different actions undertaken in the US legislative branch to find a solution to this long-standing dispute. However, Angola was concerned about the prolonged situation of non-compliance with the DSB's recommendations in this dispute, which affected the interests of a vulnerable country. Angola called on the parties involved to find a fair solution to this dispute so as to safeguard the credibility of the dispute settlement system. Angola, like previous speakers, supported Cuba and urged the parties to this dispute to continue to work towards resolving this matter.

1.24. The representative of China said that his country thanked the United States for its status report and the 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.

1.25. The representative of Paraguay said that, like previous speakers, his country was also concerned about the non-compliance and reiterated the importance of implementing the DSB's recommendations and rulings. Paraguay urged the parties to this dispute to find a solution as soon as possible.

1.26. 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.149)

1.27. The Chairman drew attention to document WT/DS184/15/Add.149, 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.

1.28. The representative of the United States said that his country had provided a status report in this dispute on 7 May 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 DSB's recommendations and rulings 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.

1.29. The representative of Japan said that his country thanked the United States for its statement and its status report submitted on 7 May 2015. Japan, once again, requested that this long standing issue be resolved as soon as possible.

1.30. 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.124)

1.31. The Chairman drew attention to document WT/DS160/24/Add.124, 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.

1.32. The representative of the United States said that his country had provided a status report in this dispute on 7 May 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.

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

1.34. 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.87)

1.35. The Chairman drew attention to document WT/DS291/37/Add.87, 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.

1.36. 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 February 2015. On 24 April 2015, the Commission had adopted 19 Decisions³ authorizing genetically modified products for use as food and feed, whose applications for approval were pending (17 GMOs for food and feed and 2 cut flowers). The decisions had been published in the Official Journal of the European Union on 30 April 2015. The products just referred to were identified in the written version of the EU's statement. For the sake of transparency, the EU wished to also briefly mention that there was a new legislative proposal of the European Commission regarding the use of GM food and feed in the EU. The proposal concerned the possible amendment of the legislation on GM food and feed, with a view to allowing EU member States to make decisions on possible restrictions of use of GM food and feed in their respective territories. Such decisions would be based on legitimate reasons unrelated to health and environmental impacts, which would continue to be assessed at the EU level. The proposal was thus concerned with the level of government at which certain decisions were made in the European Union. The proposal did not, in itself, introduce any requirements for products or for economic operators. The European Parliament and the Council of the EU would now consider the proposal and decide on its possible adoption. The current legislative framework, including the authorization process for new GM food and feed products, would continue to apply until that time. This legislative development was however not related to the implementation of the DSB's recommendations and rulings, and, therefore, it fell outside the remit of the DSB's responsibilities under Article 21.6 of the DSU. As the EU had said, this was only mentioned at the present meeting for the sake of transparency. For the same reason, a notification to the WTO was envisaged. 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.

1.37. 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. In particular, the United States welcomed the EU's recent approval of 19 pending applications, some of which had received scientific approval over two years ago. The United States hoped that this action signalled that the EU would begin to make timely approvals, based on the risk assessments of the EU's own scientific authority. At the same time, however, the fact that 19 products had reached the final stage of approval, without any prior decisions by the EU, illustrated the delays in the EU approval measures. The United States noted with concern that despite these recent approvals, dozens of biotech applications remained pending in the EU approval system. One of these applications, in fact, 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 was further concerned about an EU proposal for major change in the EU approval measures, which the EU had talked about at the present meeting. If adopted, that measure would result in even greater disruptions in trade in agricultural products. As the United States had noted at the April 2015 DSB meeting, the EU Commission had proposed to adopt an amendment to EU biotech approval procedures that would allow individual EU member States to ban biotech products within their territory, even for use as animal feed, and even where the EU had approved the product based on a scientific risk assessment. The United States was concerned about the relationship of such a proposal to the EU's obligations under the SPS Agreement. Indeed, the United States would recall that product-specific EU member State bans were among the EU measures subject to the DSB's recommendations in this dispute. The United States was also concerned that one or more EU member State bans would serve as a major impediment to the movement and use of biotech products throughout the entirety of the EU. As a result, the United States urged the EU to ensure a regular biotech approval process that operated in accordance with the EU's own laws and

³ Ten new authorisations: MON 87460 maize, MON 87705 soybean, MON 87708 soybean, MON 87769 soybean, 305423 soybean, BPS-CV127-9 soybean, MON 88302 oilseed rape, T304-40 cotton, MON 88913 cotton, LLCotton25xGHB614 cotton; seven renewals: T25 maize, NK603 maize, GT73 oilseed rape, MON 531 x MON 1445 cotton, MON 15985 cotton, MON 531 cotton and MON 1445 cotton; two GM cut flowers (carnations).

regulations. To the extent that the EU considered revisions to its approval process, the EU should ensure that these revisions were consistent with its WTO obligations.

1.38. The representative of the European Union said that the EU wished to revert to the recent proposal referred to in its statement and to respond to the concerns expressed by the United States. The proposal set out strict conditions to ensure compliance with the EU law and its international obligations. Indeed, any national measure adopted should be based on compelling grounds and be in accordance with the principles of proportionality and non-discrimination. In light of these strict conditions, it would not be appropriate to draw a list of compelling grounds to be invoked by EU member States. In any event, this matter was not related to the DSB's recommendations and rulings in this dispute and it should not be discussed under this Agenda item.

1.39. 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.35)

1.40. The Chairman drew attention to document WT/DS404/11/Add.35, 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.

1.41. The representative of the United States said that his country had provided a status report in this dispute on 7 May 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.

1.42. The representative of Viet Nam said that her country thanked the United States for its statement and its status report in this dispute. Viet Nam was pleased to once again address the implementation in the DS404 dispute. As Members were aware, at the April meeting, the DSB had adopted the Panel and Appellate Body Reports in the DS429 dispute and Viet Nam would address this dispute separately. As Members would recall from the previous DSB meeting, Viet Nam considered that the actions that the Panel in the DS404 dispute found to be WTO-inconsistent should be addressed in the context of US implementation in the DS429 dispute. Specifically, the WTO-inconsistent margins of dumping found in each of the reviews at issue in the DS404 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 re-determination 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 DS404 dispute in this context and looked forward to being able to address the DSB after the expiry of a reasonable period of time for implementation in the DS429 dispute and to announce that the DSB's recommendations and rulings in DS404 had been fully implemented.

1.43. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Viet Nam. Venezuela noted the importance of prompt and effective implementation of the DSB's rulings and recommendations. Failure to do so undermined the rules-based multilateral trading system and the ability of the DSB to resolve disputes. Venezuela supported Viet Nam and called on the United States to end this situation of non-compliance.

1.44. The representative of Cuba said that her country supported the statement made by Viet Nam. Cuba, once again, urged the United States to promptly comply with the DSB's recommendation and rulings in this dispute.

1.45. The representative of the United States said that Viet Nam had spent a significant amount of time in its statement at the present meeting discussing the DS429 dispute, which was a different dispute with different recommendations and rulings adopted by the DSB. As a result, the

United States would reserve most of its comments in relation to that dispute to the Agenda item dedicated to it at the present meeting. However, the United States noted more broadly that it appreciated Viet Nam's comment that it wanted to see these disputes resolved, and the United States remained open to discuss this issue bilaterally with Viet Nam. As it had previously noted, the United States continued to prefer that mode to resolve this matter rather than to continue litigating the issues, especially in light of the workload problems facing the dispute settlement system.

1.46. 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.2 – WT/DS401/17/Add.2)

1.47. The Chairman drew attention to document WT/DS400/16/Add.2 – WT/DS401/17/Add.2, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning the EU measures prohibiting the importation and marketing of seal products.

1.48. 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 at the previous DSB meeting, 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 proposal continued to be discussed by the legislators. Once the amendment to the Regulation on trade in seal products was adopted, subsequent changes would be made to Commission regulation No. 737/2010. As already reported at the previous DSB meeting, the European Union was confident that the very constructive cooperation with Canada on the access of Canadian Inuit products to the EU market would soon result in the setting up of the necessary attestation system for Canadian Inuit to start using the IC exception.

1.49. The representative of Canada said that his country thanked the EU for its third status report regarding the implementation of the DSB's recommendations and rulings in this dispute. As the EU indicated, Canada continued to engage with the EU to operationalize the indigenous exemption, with the objective of ensuring practical market access for Canadian aboriginal seal products. Separately, Canadian officials had submitted a formal application for the Territorial Government of Nunavut, one of Canada's northern territories, to become a recognised body under the existing regulations. Canada understood that the application was undergoing its final technical review and that Canada was working with Nunavut to clarify a few remaining questions from the Commission. Canada was hopeful that Nunavut could secure this status in the very near future. Canada, once again, 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. Canada expected that any amendments to the EU Seal Regime 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.

1.50. The representative of Norway said that his country thanked the EU for its status report on the implementation of the DSB's recommendations and rulings in this dispute. As it had noted in previous meetings, Norway followed with interest the discussions in the European Parliament on the proposal for an amendment of the Basic Seal Regulation. In that regard, Norway reiterated its view that Norway's seal hunt was well-regulated, conducted in a humane manner and contributed to the sustainable management of its living marine resources. Norway was disappointed that the EU had not taken this into account in its proposal for the amendment of the Basic Seal Regulation.

Norway would continue to monitor the legislative process, and trusted that the EU would fully implement the DSB's recommendations and rulings within the agreed reasonable period of time.

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

2 UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM

A. Implementation of the recommendations of the DSB

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 recalled that at its meeting on 22 April 2015, the DSB had adopted the Appellate Body Report and the Panel Report, as upheld by the Appellate Body Report, pertaining to the dispute on: "United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam". He invited the United States to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

2.2. The representative of the United States said that, on 22 April 2015, the DSB had adopted the Appellate Body and Panel Reports in the dispute: "United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam" (DS429). Pursuant to the first sentence of Article 21.3 of the DSU, the United States said that it would like to inform the DSB that it intended to implement the DSB's recommendations and rulings in a manner that respected its WTO obligations. The United States would need a reasonable period of time in which to do so.

2.3. The representative of Viet Nam said that her country welcomed the opportunity to address the DSB on the issue of implementation by the United States in the DS429 dispute. In light of Article 21.1 of the DSU which stated that "prompt compliance...is essential" and Article 21.3 which required a Member to "comply immediately", Viet Nam had provided the United States with a proposed schedule for compliance and a proposed sequencing agreement immediately following the DSB's adoption of the Panel and Appellate Body Reports in this dispute. It was Viet Nam's hope that those actions would facilitate a prompt agreement between the parties on the reasonable period of time. Under Article 21.3(b) of the DSU, the parties had 45 days to agree on a reasonable period of time starting from the date of adoption of the Appellate Body Report and Panel Report by the DSB on 22 April 2015. However, given that the Panel Report to be implemented had been issued over six months ago, Viet Nam would have expected the United States to be prepared to move quickly on agreeing to a reasonable period of time and on moving forward with its compliance. Viet Nam sought reaction from the United States to its proposed reasonable period of time. Viet Nam had proposed an overall reasonable period of time of 180 days, which was consistent with the time-period provided in Section 129(b)(2) of the Uruguay Round Agreements Act for implementation of adverse WTO rulings and recommendations when a redetermination in an anti-dumping or countervailing duty proceeding was required in order to effect compliance. Viet Nam did not see how the United States could object to this proposed reasonable period of time as it was consistent with its own law. Given that Viet Nam's proposed date for the start of the reasonable period of time had already passed, Viet Nam found that the starting date of 45 days from the date of the DSB's adoption of the Panel and Appellate Body Reports would be acceptable. The re-determinations of the margins of dumping without the application of zeroing and the elimination of the WTO-inconsistent country-wide rates must be completed before redeterminations could be made in the sunset review and individual respondent revocations. Viet Nam had proposed that this be accomplished within 60 days from the start of the reasonable period of time to allow sufficient time within the overall reasonable period of time to provide the parties with an adequate opportunity to submit information, to make legal arguments, and to comment on preliminary determinations by the Department of Commerce related to the sunset review and individual company revocations. This period of time was again consistent with US practice as it was the normal period provided to the Department of Commerce by the US Court of International Trade when remanding a determination to the Department requiring a recalculation of the margins of dumping.

2.4. The Panel had found that the application of a rate in excess of the weighted-average rate of individually examined respondents was "as such" inconsistent with the Anti-Dumping Agreement. As a result, the United States must also implement a policy change applicable to all cases in addition to the reviews subject to the Panel Report. Viet Nam had proposed that this be accomplished within 45 days of the start of the reasonable period of time. This was consistent with the time-frame in which policy bulletins had been issued by the Department of Commerce in the past. In addition, since the United States had been on notice that its country-wide rate practice was WTO-inconsistent after the DSB's adoption of the Panel Report in the DS404 dispute in September 2011, the United States should have been prepared long ago to address this issue. Viet Nam believed that its position was quite reasonable. While Viet Nam would certainly examine any US proposal at the meeting scheduled to discuss the reasonable period of time on 1 June 2015, given the reasonable basis for Viet Nam's proposals, any proposal of longer duration would unlikely be acceptable to Viet Nam. Finally, consistent with its statement at the previous DSB meeting, Viet Nam had requested the United States to implement in a manner which would allow it to address the so-called prior unliquidated entries, namely entries before the effective date of the implementation, which remained unliquidated as of the date of implementation. If, as the United States had stated before the Appellate Body, the United States had other mechanisms other than Section 129 of the Uruguay Round Agreements Act to effect implementation and include prior unliquidated entries in the implementation, it should use such other mechanisms in order to ensure WTO-consistent implementation. Given that the dispute settlement mechanism was increasingly unable to meet the deadlines for dispute settlement proceedings because of its heavy workload, Viet Nam believed it was the responsibility of every Member to avoid creating additional dispute settlement proceedings in implementation with respect to issues which had already been resolved in prior dispute settlement proceedings. In the DS429 dispute, the United States was not contesting the prior finding of the Appellate Body that implementation should apply with respect to entries made prior to the date of implementation, which remained unliquidated as of the date of liquidation. Nor was the United States contesting that Section 129 did not permit application of implementation to such entries. Rather, the United States was contesting Viet Nam's claim that Section 129 was the exclusive provision allowing redeterminations pursuant to adverse WTO findings and that its prohibition on applying the implementation to prior unliquidated entries was, as such, WTO-inconsistent. Both before the Panel and the Appellate Body, the United States had prevailed by claiming to have mechanisms other than Section 129, which it could use to effect a WTO-consistent implementation. In the DS429 dispute, implementation either by the United States or pursuant to an Article 21.5 compliance panel could result in full or partial revocation of the anti-dumping duty order on shrimp from Viet Nam. Under those circumstances, implementation would have to apply to entries imported before the date of implementation, which remained unliquidated as of the date of implementation. Proceeding under Section 129 would ensure that any full or partial revocation of the anti-dumping duties on shrimp would be WTO-inconsistent. Thus, to the extent that the United States proceeded with implementation of the revocation aspects of the DS429 dispute under Section 129, Viet Nam would urge Members to request the United States to explain how it would ensure that any full or partial revocation was WTO-consistent as to prior unliquidated entries. The same was true with respect to the broader implementation issue related to the country-wide rate, namely the change in policy required by the "as such" finding in the DS429 dispute. This change in policy should apply to assessment rates of the two companies to which the Department of Commerce had denied separate rate status in the current review ending in August and to the rate for cash deposits of estimated duties applicable to ongoing entries by the so-called country-wide entity. Since Viet Nam was unaware of any change in policy which had been implemented as to all prior unliquidated entries or which had led to a change in the cash deposit rate outside of a formal review, Viet Nam urged Members to closely monitor the US implementation in this regard.

2.5. The representative of China said that his country wished to address some issues related to the implementation in this dispute. China wished to make its comments because Chinese exports to the United States had been subject to the US practice on the so called "non-market economy (NME) country-wide single rate", practice which the Panel had found to be "as such" WTO-inconsistent and because of broader systemic concerns regarding the ability of the dispute settlement system to be effective in light of the large volume of cases which were currently before the system. The Appellate Body in the DS397 dispute and the Panel in the DS429 dispute had

made clear that Members were not permitted to presume that companies in a so called "non-market economy country" constituted a single entity and assigned all the companies a country-wide rate. With regard to the practical aspects of the implementation in the DS429 dispute as it affected China and the systemic concerns China had expressed, the United States also frequently applied similar "NME country-wide single rate" to the imports from China. In China's view, implementation of an "as such" determination of WTO-inconsistency was not confined just to implementation with respect to the complaining party. Rather, the practice or measure found to be WTO-inconsistent must be brought into conformity with the offending party's WTO obligations with respect to all WTO Members. It was China's hope that it would not have to further burden the dispute settlement mechanism with multiple complaints on an issue which had already been resolved. China appreciated the opportunity to clearly state its position on the implementation in this dispute.

2.6. The representative of Cuba said that her country thanked Viet Nam for its statement and noted the statement made by China. Cuba considered that this was yet another case of non-compliance by the United States and called on the United States to meet its obligations towards Viet Nam, a developing-country Member. Cuba reiterated its support for the statement made by Viet Nam.

2.7. The representative of the Bolivarian Republic of Venezuela said that her country supported the statements made by Viet Nam and Cuba. Venezuela also noted the statement made by China. In Venezuela's view, for the WTO to work efficiently, disputes had to be resolved, in particular disputes affecting the interests of developing-country Members. In that regard, Members needed to ensure that there was prompt compliance with the DSB's recommendations and rulings. Venezuela shared the concerns raised by Viet Nam and hoped that a solution to this dispute would soon be found.

2.8. The representative of the United States said that his country wanted to comment on a few things Members said at the present meeting, including Viet Nam's views on how the United States should implement the DSB's recommendations and rulings in this dispute and how the reasonable period of time should be negotiated between the parties. Viet Nam stated that the United States should have been ready to implement the findings in this dispute six months ago when the Panel Report was circulated. However, the United States said that it would like to remind Viet Nam that it was the only party that had appealed. The United States did not appeal the Panel Report and it would have been ready to have these discussions much earlier had Viet Nam not taken the action that it did. In that context, it may be useful to reflect on Viet Nam's comment at the present meeting that the United States should "avoid additional dispute settlement proceedings due to the workload issues facing the system". The United States agreed entirely. In light of the current situation, it was particularly important that Members were judicious with respect to how they used the system. Members should all think twice about what claims they brought and when they appealed issues so as not to exacerbate this problem further. With respect to the timeliness of the discussions on the reasonable period of time, the United States was moving on the usual timeframe that was common to all Members. The United States came to the present meeting to announce its intention to implement the DSB's recommendations and rulings and to state that it would need a reasonable period of time in which to do so. The United States was happy to engage with Viet Nam on these issues in the usual course following the present meeting. With respect to what the reasonable period of time should be, the United States appreciated Viet Nam's recognition that the United States would need a reasonable period of time to implement. However, it was not appropriate and was certainly not the most productive way forward to try to negotiate the reasonable period of time in public at the DSB, and the United States would not do so at the present meeting. Viet Nam had also made comments on the Section 129 process, which was the subject of Viet Nam's appeal. The Appellate Body had already disposed of this issue in this dispute, and it had done so in an appropriate manner in the high quality Report that it had produced. The United States had already made its views known on this issue, as had Viet Nam. Again, it was not appropriate to try to re-litigate this issue at the present meeting. With respect to China's comments, the United States noted that China was not a party to this dispute. The United States would, however, refer China's comments to capital. With respect to Cuba's and Venezuela's comments, the United States was of the view that it was not accurate to characterize this dispute as an example of prolonged non-compliance. That would be putting the cart before the horse. The DSB's recommendations and rulings were adopted 28 days ago and while the United States had announced at the present meeting that it fully intended to implement these recommendations and rulings, the United States had also noted that it would need a reasonable period of time in which

to do so. The United States looked forward to agreeing on that period of time with Viet Nam and coming into compliance, as it had indicated at the present meeting that it would.

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

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 wished to inform the DSB that the authorized level of retaliation against the United States had been adjusted as from 1 May 2015. The regulation containing the EU measures had been published on 30 April 2015 and had been circulated to the DSB. 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 stated at previous DSB meetings, Japan was of the view that the United States was under an 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 India said that his country shared the concerns of the EU and Japan. India believed that the WTO-inconsistent disbursements continued unabated to the US domestic industry. The latest data available⁴ in the CDSOA Annual Report of the US Customs and Border Protection for the fiscal year 2014 indicated that about US\$70 million was disbursed to the US domestic industry. India was concerned that non-compliance by Members led to a growing lack of credibility of the WTO dispute settlement system. In India's view, this item should continue to remain on the DSB's Agenda until such time that full compliance was reached in this dispute.

3.5. The representative of Brazil said that his country, as one of the parties to these disputes, thanked the EU and Japan for keeping this item on the DSB's Agenda. Brazil was of the view that the United States was under an obligation to discontinue disbursements made pursuant to the Byrd Amendment. The fact that disbursements currently being made may be related to investigations initiated before the repeal of the Act in February 2006 did not mean that they were somehow excluded from the US compliance obligations. Since the DSB had confirmed the illegal nature of the disbursement 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.

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

3.7. The representative of the United States said that, as his country had noted at previous DSB meetings, the Deficit Reduction Act, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000, 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, which was over seven and a half years ago. The United States, therefore, did not understand the purpose for which the EU and Japan had inscribed

⁴ <http://www.cbp.gov/sites/default/files/documents/FY2014%20Annual%20Report%20wHolds.pdf>

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 were a responding party in a dispute, there was no obligation under the DSU to provide further status reports once a Member announced that it had implemented those DSB's recommendations and rulings, regardless of whether the complaining party disagreed about compliance. Further, the United States said it would like to comment on the EU's statement with regard to the suspension of concessions. The United States regretted that the EU had decided to continue to apply its suspension of concessions and was disappointed with this decision. Indeed, previously the EU had made clear that its purpose in suspending concessions was to "induce compliance". As the United States had taken all steps necessary to comply with the DSB's recommendations and rulings, the United States failed to see how the continued suspension of concessions could further that purpose. As the United States had observed previously, the DSB only authorized the suspension of concessions or other obligations as provided in the Award of the Arbitrator. The United States continued to review the action that had been taken by the EU and would not accept any characterization of such continued retaliation as consistent with the DSB's authorization.

3.8. The representative of the European Union said that his delegations wished to briefly respond to the statement just made by the United States. He said that the retaliation authorized by the DSB was still in place and this demonstrated that the matter was not resolved. The EU noted that certain procedures to resolve this issue were available if the United States so wished and noted that such procedures were under discussion in the context of the ongoing DSU negotiations.

3.9. 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 then invited the representative of the United States to speak.

4.2. The representative of the United States said that his country continued to have serious concerns that China had failed to bring its measures into conformity with its WTO obligations, despite repeated interactions between the United States and China in the DSB and elsewhere. As the United States had noted, China continued to maintain a ban on foreign suppliers of electronic payment services ("EPS") by imposing a licensing requirement on them, while at the same time not providing specific procedures to obtain that license. The United States took note of the recent decision by China's State Council that China would open the EPS market to qualified suppliers. However, specific regulations to implement the State Council's decision had still not been issued. As a result, an enterprise located in China still remained, at present, the only EPS supplier that could operate in China's domestic market. As required for consistency with its WTO obligations, China must adopt the regulations necessary for allowing foreign EPS suppliers to operate in China. The United States looked forward to the prompt issuance of those specific regulations.

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. He said that China had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute. China had also further explained that the actions sought by the United States were beyond the scope of China's compliance obligations. China hoped that the United States would reconsider the systemic implications of its position.

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 Thailand had repeatedly informed the DSB that it had done all it was required to do to secure full compliance with the DSB's recommendations and rulings in this dispute. Nonetheless, a series of outstanding compliance issues remained. The Philippines, once again, wished to highlight two of these issues due to their particular systemic impact on 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 clear WTO-inconsistency, in its statements made at the previous two DSB meetings, Thailand had explained that it "will take steps to ensure" the WTO-consistency of the criminal prosecution. While it appreciated the sentiment behind these statements, the Philippines wanted to understand precisely what steps Thailand would take to ensure the WTO-consistency of the criminal prosecution and asked Thailand to deliver expeditiously on its assurance, particularly in light of what the Philippines understood to be a June meeting to which the Thai public prosecutor had summoned the importer. Second, the Philippines was also concerned about a separate Thai BoA ruling rejecting transaction value for 210 entries from Indonesia that were covered by the DSB's rulings and recommendations in the original proceedings in this dispute. Thailand had submitted the BoA ruling as a declared measure taken to comply. However, as the Philippines had previously noted, the ruling was riddled with WTO-inconsistencies, and set out a methodology that put Thailand on the wrong course regarding customs valuation of related party transactions. In addition, as explained at the previous DSB meeting, the position that Thai Customs had recently taken in pending domestic judicial proceedings concerning the BoA ruling was disturbing. Thai Customs had explicitly advised the Thai court that it did not need to follow the WTO ruling because it supposedly bound only the Philippines, as the party that had brought the dispute, and not 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 that was not possible, the Philippines would reserve its right to return to dispute settlement procedures.

5.3. The representative of Thailand said that his country noted the Philippines' statement made at the present meeting. As stated in its status reports and at previous DSB meetings, Thailand had taken all actions necessary to implement the DSB's recommendations and rulings in this dispute. This was without prejudice to any other rights of the Philippines under the DSU provisions. With respect to the ongoing criminal matters, the outcome should not be prejudged. Thailand would continue to take necessary steps to ensure that all actions that may be taken would be consistent under the WTO law. At the present meeting, Thailand wished to reiterate that it had always been, and remained, available to discuss the concerns of the Philippines bilaterally, including those not addressed in the DSB's recommendations and rulings, as well as the necessary steps mentioned by the Philippines.

5.4. The DSB took note of the statements.

6 INDONESIA – IMPORTATION OF HORTICULTURAL PRODUCTS, ANIMALS AND ANIMAL PRODUCTS

A. Request for the establishment of a panel by New Zealand (WT/DS477/9)

B. Request for the establishment of a panel by the United States (WT/DS478/9)

6.1. The Chairman proposed that the two sub-items under this Agenda item be considered together. He recalled that the DSB had considered these matters at its meeting on 22 April 2015 and had agreed to revert to them. He then drew attention to the communication from New Zealand contained in document WT/DS477/9, and invited the representative of New Zealand to speak.

6.2. The representative of New Zealand said that, as outlined at the DSB meeting on 22 April 2015, this dispute related to prohibitions and restrictions imposed on the import of horticultural products, animals, and animal products into Indonesia. As detailed in its request for the establishment of a panel, New Zealand believed that Indonesia's measures undermined core WTO principles and were inconsistent with key obligations in the WTO agreements, including in particular, Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture. Therefore, New Zealand again requested that the DSB establish a panel pursuant to Article 6 of the DSU, with standard terms of reference as set out in Article 7.1 of the DSU, in order to examine the matters described in New Zealand's panel request. As the United States was also requesting the establishment of a panel related to the same matter, New Zealand further requested the DSB, pursuant to Article 9.1 of the DSU, to establish a single panel to examine both complaints.

6.3. The Chairman drew attention to the communication from the United States contained in document WT/DS478/9, and invited the representative of the United States to speak.

6.4. The representative of the United States said that, as his country had noted at the 22 April 2015 DSB meeting, the United States understood that Indonesia used its import licensing measures to prohibit or restrict the importation of horticultural products, animals and animal products, including fruits, vegetables, cattle, beef, poultry, and other animal products. Indonesia's import restrictions included strict application windows and validity periods for import permits; restrictions on the type, quantity, and country of origin of products that may be imported; requirements that importers actually import a certain percentage of the volume of products allowed under their permits; and prohibitions on the importation of certain cuts of beef and on chicken parts. These restrictions appeared to be in breach of core WTO obligations involving trade in goods, limiting opportunities for quality US products to reach Indonesian consumers. For several years, the United States had attempted to resolve its concerns through dialogue, but Indonesia had repeatedly revised or replaced its import licensing measures, without eliminating their restrictive effect. As these efforts had failed to resolve the dispute, the United States and New Zealand were now proceeding for the second time to request that the DSB establish a panel. The United States, therefore, respectfully requested that the DSB establish a panel to examine the matter referred to in the US panel request. The United States further requested, pursuant to Article 9.1 of the DSU, that a single panel be established to examine the complaints of the United States and New Zealand.

6.5. The representative of Indonesia said that her country, once again, regretted that New Zealand and the United States had requested the DSB, for the second time, to establish a single panel to examine these disputes. Indonesia reiterated that the policies identified by New Zealand and the United States in their respective requests were fully consistent with Indonesia's obligations under the WTO Agreement. In that regard, Indonesia stood ready to safeguard and defend its policies and measures before the panel.

6.6. The DSB took note of the statements and agreed to establish a single panel pursuant to Article 9.1 of the DSU, with standard terms of reference, to examine the complaint by New Zealand contained in document WT/DS477/9 and the complaint by the United States contained in document WT/DS478/9.

6.7. The representatives of Australia, Brazil, Canada, China, the EU, India, Japan, Norway, Paraguay, Singapore and Chinese Taipei reserved their third-party rights to participate in the Panel's proceedings.

7 CHINA – MEASURES RELATED TO THE EXPORTATION OF RARE EARTHS, TUNGSTEN AND MOLYBDENUM

A. Statement by China

7.1. The representative of China, speaking under "Other Business" said that, on 31 December 2014, the Ministry of Commerce of China and the General Administration of Customs of China had jointly promulgated the 2014 Catalogue of Goods Subject to Export Licensing Administration (Public Notice 2014 No. 94). On 14 April 2015, the State Council Customs Tariff Commission of China had promulgated the Notice on Adjusting export tariffs of some products (Tariff Commission 2015 No. 3). The two Notices had taken effect on 1 January 2015 and 1 May 2015, respectively. According to the notices, the application of export duties and export quotas to rare earths, tungsten and molybdenum as well as restriction on trading rights of enterprises exporting rare earths and molybdenum which were found inconsistent with the WTO rules by the Panel and Appellate Body in these disputes, had been removed. Through the measures, China had fully implemented the DSB's recommendations and rulings in these disputes within the eight months and three days of reasonable period of time agreed by the parties to the disputes, which had expired on 2 May 2015.

7.2. The representative of the United States said that, as an initial matter, the United States would like to associate itself with the comments made by the EU and Japan, prior to the adoption of the Agenda, regarding the importance of providing other Members directly concerned with advance notice of an item to be raised under "Other Business" pursuant to Rule 6 of the Rules of Procedure. Oddly enough, the United States had actually received advance notice and thus was able to provide some brief remarks. In making its remarks, however, the United States would also remain cognizant of Rule 25 of the Rules of Procedure, which indicated that Members should avoid unduly long debates or discussions on substantive issues under "Other Business". Moving to the substance, the United States thanked China for its statement made at the present meeting. The DSB's recommendations and rulings in this dispute affirmed that China had made a clear commitment to eliminate export duties when it acceded to the WTO. The DSB had further made clear that Members may only justify measures under Article XX(g) of the GATT 1994 that were legitimately aimed at conserving natural resources. The United States was encouraged by China's statement that it had eliminated the export duties and export quotas on the products at issue in this dispute by the end of the reasonable period of time. At the same time, the United States was concerned about China's imposition of a licensing requirement on the export of the same products. Such licensing requirements could potentially act as an export restriction. As a result, the United States was not yet in a position to share China's assessment that it had come into full compliance. The United States had already discussed this issue with China, and it appreciated the information that China had provided to date. The United States would be engaging further with China to understand the purpose of its licensing requirements and how those requirements operated in practice. Given the important systemic issues raised in this dispute, the United States invited China to rethink its continued widespread use of export restraints on products that were not subject to the findings of the "China – Raw Materials" dispute (DS394) or to these current disputes.

7.3. The representative of the European Union said that since the EU had not received any advance notice regarding China's intention to raise this matter under "Other Business", it could only take note of the statement made by China. The EU reiterated the importance of giving an advance notice by Members of items to be raised under "Other Business". An advance notice given to one of the co-complainants in these disputes was not enough.

7.4. The representative of Japan said that, although his country had heard that China might make a statement under "Other Business", Japan had not received any advance notice from China either. Japan had already expressed concern about this issue prior to the adoption of the Agenda.

Japan took note of the statement and thanked China. Japan was still analysing what China had done to date regarding the implementation of the DSB's recommendations and rulings and would continue to closely monitor China's implementation in these disputes.

7.5. The DSB took note of the statements.

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

8.1. The Chairman, speaking under "Other Business", said that as he had announced at the outset of the meeting, he wished to make a short statement concerning the issue of possible reappointments of two Appellate Body members. He recalled that at the 22 April 2015 DSB meeting, he had informed delegations that the first four-year terms of office of Messrs. Ujal Singh Bhatia and Thomas Graham would expire on 10 December 2015 and that both were eligible for reappointment to a second and final term of office, pursuant to Article 17.2 of the DSU. He had also informed delegations that both Messrs. Bhatia and Graham had expressed their willingness to serve for a second four-year term. In that regard, he had announced that he would consult informally with Members on these matters and he had invited delegations to contact him directly should they wish to inform him of their views. At the present meeting, he wished to report that the consultations were ongoing and he expected them to continue for the next few months. He intended to submit the matter for a decision by the DSB as soon as possible. In the meantime, his door was open and he would again invite any delegation with views on this matter to contact him directly.

8.2. The DSB took note of the statement.
