RESTRICTED

WT/DSB/M/368

23 November 2015

(15-6177) Page: 1/17

**Dispute Settlement Body**
**28 September 2015**

# MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 28 SEPTEMBER 2015

*Chairman: Mr. Harald Neple (Norway)*

**Table of Contents**

## 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.153)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.153)

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.128)

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.91)

E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.39)

F. European Communities – Measures prohibiting the importation and marketing of seal products: Status report by the European Union (WT/DS400/16/Add.6 – WT/DS401/17/Add.6)

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, the Chairman invited delegations to provide up-to-date information about compliance efforts and to focus on new developments, suggestions and ideas on progress towards the resolution of disputes. Furthermore, he reminded delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record".

### A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.153)

1.2. The Chairman drew attention to document WT/DS176/11/Add.153, 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 17 September 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 to resolve this matter with the EU.

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, once again, that Section 211 had had a negative impact on Cuba. Section 211 prevented certain Cuban trademarks and patents from being recognized by the US courts, and was a serious obstacle to the external sector of Cuba's economy. Under the guise of this legislation and pursuant to a number of political decisions, the Cuban entity, Cuba Export, was denied a licence that would have enabled it to renew the registration of the Havana Club trademark in the United States. The continued US non-compliance in this dispute reflected the US measures and laws in support of the economic, commercial and financial embargo that the United States had maintained against Cuba for more than 50 years. A number of bills had been submitted in the US legislature in an effort to repeal or amend Section 211, such as S.757, submitted before the US Senate on 17 March 2015. As in the case of its predecessors, however, it was highly unlikely that S.757 would become law, and it would have no impact on the enforcement of Section 211. In spite of measures implemented by the United States that modified certain aspects of the embargo, and despite appeals to Congress to lift the embargo, the laws and regulations underlying this policy were still in force and were applied rigorously by the agencies of the United States. This obsolete policy which, among other serious consequences, prevented compliance with the DSB's recommendations and rulings in this dispute, had also been expressly rejected by the international community for 23 consecutive years before the UN General Assembly. In 2014, 188 UN member States, almost all of which were also WTO Members, voted in favour of the General Assembly resolution entitled "Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States of America against Cuba". On 27 October 2015, this resolution would be put to the vote for the 24th consecutive year in the UN General Assembly. Cuba was confident that it would receive the support of the international community in its legitimate demand to put an end to the economic, commercial and financial embargo imposed by the United States.

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

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

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

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

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

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

1.12. The representative of India said that, like other delegations, his country noted that there was no progress made in this dispute. India, once again, was compelled to stress that the principle of prompt compliance was missing in this dispute. India renewed its systemic concerns about the continuation of non-compliance, especially in the context of a developing-country Member seeking compliance. Continued non-compliance by Members eroded the confidence and the credibility of the WTO dispute settlement system. India urged the United States to report compliance in this dispute without further delay.

1.13. The representative of Trinidad and Tobago said that his country thanked the United States for its status report and Cuba for its statement. Trinidad and Tobago recalled its statements made under this Agenda item at previous DSB meetings. Trinidad and Tobago regretted that the circumstances of this dispute had not changed. In that regard, Trinidad and Tobago supported the call for prompt compliance with the DSB's rulings and recommendations regarding Section 211, in line with Article 21.1 of the DSU. The prolonged situation of non-compliance with the DSB's rulings and recommendations in this dispute negatively affected all Members, in particular small developing-country Members such as Cuba. Consequently, the slow rate of progress in this matter eroded Members' confidence in the multilateral trading system. Trinidad and Tobago, once again, supported the call for prompt compliance with the DSB's rulings and recommendations in this dispute.

1.14. The representative of Brazil said that her country thanked the United States for its status report which confirmed that no concrete progress had been made in this dispute. Brazil shared the concerns expressed by other Members about the lack of compliance in this dispute and urged the parties to the dispute as well as the United States and Cuba, in light of the recent and positive bilateral developments, to cooperate in finding a solution to this dispute.

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

1.16. The representative of China said that her 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.

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

1.18. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Cuba. Venezuela wished to express its concerns about the content of the US status report, which did not provide any information on progress regarding US compliance in this dispute. Venezuela reiterated that the US status report was not in line with Article 21 of the DSU, which required Members to report on progress towards compliance and not just repeat the same information. Venezuela wished to reiterate the concerns expressed by previous speakers

regarding the systemic implications of non-compliance with the DSB's recommendations and rulings, which undermined Members' confidence in the DSB and the dispute settlement system as well as the credibility of the multilateral trading system. The ongoing lack of compliance in this dispute demonstrated that the United States wished to maintain the commercial, trade and economic embargo against Cuba. This embargo, which was illegal, was rejected by the UN General Assembly as a violation of international law. Venezuela urged the United States to comply with the DSB's recommendations and rulings and to fully repeal Section 211.

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

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

1.21. The representative of Viet Nam said that her country thanked the United States for its status report. Viet Nam noted that the US status report did not provide information on progress in this dispute. Viet Nam noted that this matter had remained unresolved for more than a decade and urged the United States to promptly comply with the DSB's recommendations and rulings.

1.22. The representative of Zimbabwe said that his country supported the statements made by previous speakers regarding this dispute. Zimbabwe, once again, noted that there was no change. Members were faced with a situation where one Member had delayed the implementation of the DSB's recommendations and rulings. This was contrary to the objective of prompt compliance, in particular since the economic interests of a developing-country Member were concerned. In that regard, Zimbabwe joined other delegations that had supported Cuba and continued to urge the United States to comply with the DSB's recommendations and rulings.

1.23. 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.153)

1.24. The Chairman drew attention to document WT/DS184/15/Add.153, 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.

1.25. The representative of the United States said that his country had provided a status report in this dispute on 17 September 2015, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.26. The representative of Japan said that his country thanked the United States for its statement and a status report submitted on 17 September 2015. Japan wished to refer to its previous statements made under this Agenda item to the effect that this issue should be resolved as soon as possible.

1.27. 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.128)

1.28. The Chairman drew attention to document WT/DS160/24/Add.128, 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.

1.29. The representative of the United States said that his country had provided a status report in this dispute on 17 September 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.

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

1.31. 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.91)

1.32. The Chairman drew attention to document WT/DS291/37/Add.91, 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.

1.33. The representative of the European Union said that, in recent meetings, the EU had already reported on authorization decisions and other actions towards approval decisions taken up to May 2015. One further draft decision for the authorization of genetically-modified food and feed had been voted in the Standing Committee on 14 September 2015.[1] The result was "no opinion" and the draft decision would be sent to the Appeal Committee. More generally, and as stated many times before, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.34. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. As the United States had noted repeatedly since the adoption of the DSB's recommendations and rulings in this dispute, the United States remained concerned about the EU's measures affecting the approval and marketing of biotech products. Dozens of biotech applications remained pending in the EU approval system. One of these applications had been pending for well over a decade. The ongoing backlog and delays remained a serious impediment to trade in biotech products. Further, even when the EU did approve a biotech product, the approval may not apply within one or more EU member states. Instead, EU member States had banned such products, and had done so without any apparent scientific basis.

1.35. Instead of taking steps to address this problem, the EU Commission had proposed an amendment to EU biotech approval regulations that would facilitate the adoption of additional EU member-State bans on biotech products approved at the EU-level. The United States was concerned about the relationship of such a proposal to the EU's obligations under the SPS Agreement, and on the negative impacts of this proposal with respect to the movement and use of biotech products throughout the entirety of the EU. The United States urged the EU to ensure that its biotech approval measures were consistent with its obligations under the SPS Agreement. To the extent that the EU considered revisions to its biotech approval regulations, the EU should ensure that any revisions were consistent with its WTO obligations and should notify these revisions to the SPS Committee pursuant to Article 7 of the SPS Agreement.

[1] MON87427 maize.

1.36. The representative of the European Union said that, as the EU had already stated at previous DSB meetings, the proposal that the United States had referred to fell outside the responsibilities of the DSB under Article 21.6 of the DSU. There was no basis for a discussion in the DSB on the consistency of the proposal with the EU's WTO obligations.

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

### E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.39)

1.38. The Chairman drew attention to document WT/DS404/11/Add.39, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain shrimp from Viet Nam.

1.39. The representative of the United States said that his country had provided a status report in this dispute on 17 September 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.

1.40. The representative of Viet Nam said that her country thanked the United States for its statement and the status report in this dispute. As Members recalled, Viet Nam considered that those actions found by the Panel in this dispute to be WTO-inconsistent should be addressed in the context of US implementation of the DS429 dispute. In particular, the WTO-inconsistent margins of dumping found in each of the reviews at issue in this dispute must be revised based on a WTO-consistent methodology in order for the United States to take the WTO-consistent action required by the DS429 dispute, in particular to conduct a redetermination of the sunset review on frozen warm water shrimp from Viet Nam and to re-examine individual company requests for revocations based on the continued absence of dumping. Viet Nam believed that the United States was prepared to fully implement the recommendations in this dispute and that after the expiry of the reasonable period of time for implementation it would inform the DSB that it had fully complied in the DS429 dispute.

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

1.42. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Viet Nam and took note of the US status report. However, Venezuela wished to stress the importance of prompt compliance with the DSB's rulings and recommendations. As Venezuela had mentioned at previous DSB meetings, the prolonged situation of non-compliance undermined the credibility of the multilateral trading system and the dispute settlement system. Venezuela urged the United States to take the necessary measures to end this situation of non-compliance and to inform the DSB at its next meeting of the measures it intended to take to resolve this dispute.

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

### F. European Communities – Measures prohibiting the importation and marketing of seal products: Status report by the European Union (WT/DS400/16/Add.6 – WT/DS401/17/Add.6)

1.44. The Chairman drew attention to document WT/DS400/16/Add.6 – WT/DS401/17/Add.6, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning the EU measures prohibiting the importation and marketing of seal products.

1.45. The representative of the European Union said that the EU 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 meetings, the European Commission had submitted a proposal to the Council and the European Parliament for amending those aspects of EC Regulation No. 1007/2009 on trade in seal products that had been found to be discriminatory. In particular, it proposed to remove the exception for maritime resource management hunts and provided for certain modifications to the exception of indigenous communities. This proposal had been, in its essence, approved by the European Parliament in its plenary session on 8 September 2015. The EU was confident that the Council would soon follow, so that the modifications would enter into force before the end of the reasonable period of time. In addition, and as the EU had reported in the previous DSB meeting, on 30 July 2015, an attestation system for Canadian Inuit was put in place through a Decision by the European Commission. This was the result of constructive cooperation with Canadian authorities, and provided the basis for Canadian Inuit to start using the IC exception.

1.46. The representative of Canada said that his country thanked the EU for its seventh status report regarding the implementation of the DSB's recommendations and rulings in this dispute. Since the conclusion of the agreement between Canada and the EU on a Joint Statement on "Access to the EU of Seal Products from Indigenous Communities of Canada", Canada had actively engaged with the EU to operationalize the indigenous communities' exemption, with the objective of ensuring practical market access for Canadian Aboriginal seal products. Canada was pleased that the Commission had, on 30 July 2015, adopted a decision recognizing the Government of Nunavut as an attestation body under the EU's Seal Regime. Nunavut was in the process of finalizing its reapplication in order to renew its recognized certifying body status upon the entry into force of the proposed amended Seal Regime. Canada expected that this process would be managed in such a way so as to ensure a smooth transition between the existing Seal Regime and the amended one. Canada had also been following closely the debate concerning amendments to the EU Seal Regime. Canada expected that any such amendments, to the Basic Regulation as well as to the Implementing Regulation, would be implemented consistently with the DSB's recommendations and rulings, and in a manner that would not adversely affect Inuit and other indigenous communities, in particular regarding the renewal of Nunavut's recognized certifying body status. Canada hoped that Nunavut's reapplication would proceed in a timely manner as this would be key to assessing compliance. Canada reiterated its view that Canada's seal harvests were humane, sustainable and well-regulated activities that provided an important source of food and income for coastal and Inuit communities.

1.47. The representative of Norway said that his country thanked the EU for its most recent status report concerning the implementation of the DSB's recommendations and rulings in this dispute. Norway continued to follow with interest the legislative process in the EU, including the proposal for an amendment of the Basic Seal Regulation. In that regard, Norway had noted that the European Parliament had approved the proposal, earlier this month with some minor amendments, approved the proposal, and that the proposal would be considered by the Council. In addition, Norway had noted that there would be a need for a new implementing regulation. Norway wished to reiterate its position that the Norwegian seal hunt was well-regulated, that it was conducted in a humane manner and contributed to the sustainable management of its living marine resources. Norway would continue to follow the legislative process as the end of the reasonable period of time was approaching.

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

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

### A. Statements by the European Union and Japan

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

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

2.3. The representative of Japan said that, since the distributions under the CDSOA had been continuing, Japan, once again, urged the United States to stop the illegal distributions in order to resolve this long-standing dispute. As it had stated in previous meetings, Japan was of the view that the United States was under obligation to provide the DSB with a status report in this dispute in accordance with Article 21.6 of the DSU. As stated in its communication (WT/DS217/68) submitted on 18 September 2015, Japan continued its non-application of suspension of concessions or other obligations in the form of the imposition of additional import duties, since Japan's level of authorization established through arbitration under Article 22.6 of the DSU continued to be marginal. However, as Japan acknowledged that a considerable amount remained not disbursed and that the United States might execute another round of disbursements to its domestic companies under the CDSOA, Japan reserved its rights under Article 22.7 of the DSU. Further, Japan's decision not to suspend concessions and related obligations did not mean at all that Japan accepted the contention of the United States that its measure found to be inconsistent with the covered agreements had been removed within the meaning of Article 22.8 of the DSU.

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

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

2.6. The representative of Canada said that his country agreed with the previous speakers and had nothing to add to what they had stated, in particular Canada supported the statement made by Brazil.

2.7. The representative of China said that her country thanked the EU and Japan for placing this item on the Agenda of the present meeting. China shared the concerns raised by previous speakers and joined them in urging the United States to fully comply with the DSB's rulings on this matter.

2.8. The representative of the United States said that as the United States had noted at previous DSB meetings, the Deficit Reduction Act, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000, was enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that the EU, Japan, and other Members had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, over seven and a half years ago. The United States therefore did not understand the purpose for which the EU and Japan had inscribed this item on the Agenda of the present meeting. With respect to comments regarding further status reports in this matter, as it had already explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports which would repeat, again, that the United States had taken all actions necessary to implement

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

the DSB's recommendations and rulings in these disputes. Indeed, as these very WTO Members had demonstrated repeatedly when they had been a responding party in a dispute, there was no obligation under the DSU to provide further status reports once a Member announced that it had implemented those DSB's recommendations and rulings, regardless of whether the complaining party disagreed about compliance. With respect to Japan's remarks, the United States continued to view Japan's statement that it would not apply the suspension of concessions in the coming year as a positive development. However, the United States regretted Japan's statement that it may renew the suspension of concessions in the future.

2.9. The DSB took note of the statements.

## 3 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

### A. Statement by the United States

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

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

3.3. The representative of China said that her country, once again, regretted that the United States brought this matter before the DSB. China referred to its statements made at previous DSB meetings and emphasized that China had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute. China reiterated that the regulation mentioned by the United States was not relevant for the implementation of the DSB's recommendations and rulings in this dispute.

3.4. The representative of the United States said that, as his country had stated before, it strongly disagreed with China's statement. The DSB's findings clearly stated that "China has made a commitment on market access concerning mode 3"[3] and that "China has made a commitment on national treatment concerning mode 3".[4] Indeed, China itself had noted that it was working on regulations that would provide access to foreign EPS suppliers. The United States urged China to move forward with these regulations and to allow the licensing of foreign EPS suppliers in China, consistent with China's WTO obligations.

3.5. The DSB took note of the statements.

[3] "China – Certain Measures Affecting Electronic Payment Services", WT/DS413/R (adopted 31 August 2012), paragraph 7.575.

[4] Idem, paragraph 7.678.

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

### A. Statement by the Philippines

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

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

4.3. The representative of Thailand said that his country noted the Philippines' statement and wished to refer to the statements made by Thailand under this Agenda item at previous DSB meetings.

4.4. The DSB took note of the statements.

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

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

5.1. The Chairman recalled that the DSB had considered this matter at its meeting on 31 August 2015 and had agreed to revert to it. He drew attention to the communication from Indonesia contained in document WT/DS491/3, and invited the representative of Indonesia to speak.

5.2. The representative of Indonesia said that, on 13 March 2015, her country had requested consultations with the United States regarding the US imposition of anti-dumping and countervailing duties on certain coated paper from Indonesia. Unfortunately, the consultations had

failed to resolve the matter and Indonesia had requested a panel, for the first time, at the DSB meeting on 31 August 2015. As noted in Indonesia's request for consultations and as stipulated in Indonesia's panel request, the US dumping, subsidy, and threat of injury determinations appeared to be inconsistent with the US obligations under the GATT 1994, the Anti-Dumping Agreement and the SCM Agreement. Consequently, Indonesia was requesting, for the second time, that the DSB establish a panel with standard terms of reference.

5.3. The representative of the United States said that, as the United States had stated at the August DSB meeting, the US actions described in Indonesia's request were fully consistent with US obligations under the WTO Agreement. Accordingly, the United States regretted that Indonesia had chosen, for a second time, to request the establishment of a panel with regard to this matter. The United States was prepared to engage in these proceedings and to explain to the panel that Indonesia had no legal basis for its claims.

5.4. 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.

5.5. The representatives of Canada, China, the European Union, Korea and Turkey reserved their third-party rights to participate in the Panel's proceedings.

## 6 KOREA – IMPORT BANS, AND TESTING AND CERTIFICATION REQUIREMENTS FOR RADIONUCLIDES

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

6.1. The Chairman recalled that the DSB had considered this matter at its meeting on 31 August 2015 and had agreed to revert to it. He drew attention to the communication from Japan contained in document WT/DS495/3, and invited the representative of Japan to speak.

6.2. The representative of Japan said that the matter in this dispute was well-known and was explained in the panel request and at the previous DSB meeting. In the interests of brevity, there was no need to repeat or further elaborate the matter. It sufficed to state for the present purpose that Korea had adopted and maintained certain SPS measures, which were inconsistent with several provisions of the SPS Agreement, in particular, its Articles 2.3, 5.5, 5.6 and 8 and Annex C, and Korea's omissions relating to its transparency obligations under the SPS Agreement were inconsistent with Articles 4, 5.8, 7 and Annex B of the Agreement. The panel request in this dispute had first appeared as an item on the DSB's Agenda on 31 August 2015. Following that meeting, Japan once again requested that, pursuant to Article 6 of the DSU, a panel be established to examine the matter, as set out in its panel request, with standard terms of reference in accordance with Article 7.1 of the DSU. Japan noted that, at the previous DSB meeting, Korea had expressed its concerns about delays in the dispute settlement process. Korea had stated, among others issues, that: "the principle of prompt settlement of disputes … is at the core of the DSU"; "but WTO disputes are not about abstract disagreements. There are people who are suffering real losses while a dispute is pending"; "Long delays create perverse incentives by lowering the cost of adopting and maintaining WTO-inconsistent measures. Interest groups seeking protection will pressure Members to adopt these measures, insisting, rightly, that they will not be subject to review by the WTO for years. We can therefore expect more protectionist measures and more, not fewer, disputes being brought to the WTO. These, in turn, will cause further delays, prompting a vicious, never-ending cycle". Japan shared the general concerns expressed by Korea with respect to the substantial delays in the dispute settlement process and their impact on the prompt resolution of individual disputes. Korea's observations appeared to equally apply in this dispute. Japan was ready to work and cooperate with Korea in this dispute to facilitate the panel process, which would be initiated at the present meeting, without any substantial delay so as to avert or put an end to the "vicious, never-ending cycle" and promote the principle of prompt settlement of a dispute.

6.3. The representative of Korea said that his country regretted that Japan had chosen, for a second time, to request the establishment of a panel with regard to this matter. As explained by Korea at the previous DSB meeting, the catastrophic Fukushima nuclear accident in 2011 had resulted in an extensive contamination of the environment. It continued to pose serious environmental and health risks because of, among other reasons, the ongoing leakage of

contaminated water. The scientific community was still struggling to understand the consequences of the accident, just as the operator of the Fukushima nuclear power plants was still struggling to ensure that it no longer constituted an environmental threat. Korea reiterated that Members had the right to take sanitary and phytosanitary (SPS) measures necessary for the protection of human, animal life or health, and Korea's measures were consistent with the SPS Agreement. Given the serious nature of the risks posed by radioactive contamination, Korea's measures were justifiable and necessary to protect the life and health of its people, animals and plants. However, Korea understood that a panel would be established at the present meeting in accordance with Article 6.1 of the DSU. Korea was convinced that its measures were in conformity with the WTO Agreement and was prepared to explain and defend them before the panel.

6.4. 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.

6.5. The representatives of China, the European Union, Guatemala, India, New Zealand, Norway, the Russian Federation, Chinese Taipei and the United States reserved their third-party rights to participate in the Panel's proceedings.

## 7 INDONESIA – SAFEGUARD ON CERTAIN IRON OR STEEL PRODUCTS

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

7.1. The Chairman recalled that the DSB had considered this matter at its meeting on 31 August 2015 and had agreed to revert to it. He drew attention to the communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) contained in document WT/DS490/2, and invited the representative of that delegation to speak.

7.2. The representative of Chinese Taipei said that, for the second time, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu wished to request that a panel be established by the DSB to examine the safeguard measure imposed by Indonesia. At the previous DSB meeting, Chinese Taipei had explained the inconsistency between these challenged measures and the WTO Agreements and the inconsistency had not yet been removed. Without any signalled intention to remove these challenged measures, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu was left with no choice, but to request a panel in this dispute in order to secure a solution to this dispute.

7.3. The representative of Indonesia said that her country wished to reiterate that Indonesia and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu had conducted consultations concerning this dispute on 16 April 2015 in Geneva. Indonesia believed that it had delivered a clear explanation regarding the safeguard measure imposed by Indonesia on imports of certain iron or steel products in order to resolve any misunderstanding on the safeguard measure. Although Indonesia understood that this was the second time that the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu had put its request for panel establishment on the Agenda. Indonesia asserted that the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu's panel request failed to satisfy the requirements of Article 6.2 of the DSU, specifically the requirement to identify the specific measure at issue and the panel request was therefore defective.

7.4. In Section LA.2 titled "Final Determination" of its request for the establishment of panel (WT/DS490/2), the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu identified the Regulation Number 137.1/PML.011/2014 of Indonesia's Minister of Finance as the measure at issue, which was inconsistent with certain provisions of the GATT 1994 and the Agreement on Safeguards. However, Indonesia had never issued such a regulation. In Indonesia's Notification to the Committee on Safeguard under Article 12.1(B), 12.1(c) and Article 9, footnote 2, dated 23 July 2014 (which had been circulated in 28 July 2014 in document G/SG/N/8/IDN/16/Suppl.1, G/SG/N/10/IDN/16/Suppl.1, G/SG/N/11/IDN/14) the Minister of Finance's Regulation number was different from what was stated in the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu's request for panel establishment (document WT/DS490/2 dated 20 August 2015 which had been circulated on 21 August 2015). Since the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu had misidentified the specific measure at issue and violated Article 6.2 of the

DSU, Indonesia, therefore, requested that the panel pertaining to the DS490 dispute should not be established at the present meeting until the panel request was fully consistent with the DSU.

7.5. The representative of Chinese Taipei said that with regard to the correct number of the Indonesian regulation, Chinese Taipei would further confirm with its database. Chinese Taipei believed that it may have been a typo. Chinese Taipei wished to reiterate that the DSB establish a panel at the present meeting.

7.6. The Chairman said that this item was on the Agenda of the DSB for the second time, and therefore, the DSB had no choice but to establish a panel. Indonesia was free to raise this issue before the panel once such a panel was established.

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

7.8. The representatives of Chile, China, the European Union, Korea, the Russian Federation, the United States and Viet Nam reserved their third-party rights to participate in the Panel's proceedings.

## 8 INDONESIA – SAFEGUARD ON CERTAIN IRON OR STEEL PRODUCTS

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

8.1. The Chairman drew attention to the communication from Viet Nam contained in document WT/DS496/3, and invited the representative of Viet Nam to speak.

8.2. The representative of Viet Nam said that, on 28 July 2014, WTO Members were notified of Indonesia's imposition of a safeguard measure on imports of certain flat-rolled product of iron or non-alloy steel. This measure had been imposed pursuant to a regulation adopted by Indonesia's Minister of Finance after a positive finding by Indonesia's investigating authority of threat of serious injury caused by increased imports of the said product. The safeguard measure consisted of a specific duty to be applied from 22 July 2014 and subsequently reduced in accordance with a prescribed timetable. Prior to the imposition of the safeguard measure, Viet Nam had a considerable share of the Indonesian market for flat-rolled iron or non-alloy steel products. The imposition of the safeguard measure was significantly affecting Viet Nam's industry. Viet Nam was concerned that Indonesia's measure was inconsistent with the relevant provisions of the GATT 1994 and the Agreement on Safeguards. In particular, Indonesia had failed to provide a reasoned and adequate explanation of the existence of unforeseen developments and of the effect of the GATT 1994 obligations in order to proceed with the imposition of the safeguard measure at issue. Indonesia had also failed to substantiate adequately its finding of serious injury (or threat thereof) caused by increased imports. Furthermore, it had failed to provide reasoned and adequate explanation of its determination of the causal link between the alleged serious injury (or threat thereof) and increased imports. Indonesia had also applied a safeguard measure on the basis of a product scope that was different from that on which it had conducted the analysis of imports increase. Viet Nam was concerned that Indonesia had failed to notify all interested parties of its actions properly and had failed to provide an opportunity to hold consultations prior to the imposition of a safeguard measure. Viet Nam had requested consultations with Indonesia on 1 June 2015. Consultations had been held on 28 July 2015 with a view to reaching a mutually satisfactory solution. Unfortunately, however, these consultations had failed to resolve the dispute. While Viet Nam remained hopeful that this matter could be resolved without resort to a panel, it also wished to ensure that its rights under the GATT 1994 and the Agreement on Safeguards were properly secured. Viet Nam was proceeding to the next stage of the dispute settlement process and was requesting that the DSB establish a panel with standard terms of reference to address the matters set out in its request for the establishment of a panel, circulated in document WT/DS496/3. If the DSB established a panel on this request at the present meeting, pursuant to Article 9.1 of the DSU, Viet Nam also requested that this complaint be examined by the same panel that would examine the complaint of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu regarding the same measure (DS490).

8.3. The representative of Indonesia said that her country had conducted consultations with Viet Nam concerning this matter on 28 July 2015 in Bali (Indonesia). Her country believed that it had delivered a clear explanation during the consultation concerning the legal and factual aspects of the safeguard measure imposed by Indonesia on imports of certain flat-rolled iron or non-alloy steel products in order to resolve any misunderstanding on the safeguard measure. Indonesia had also responded, in writing, to Viet Nam's outstanding questions after the consultation in writing. Despite Indonesia's efforts to clarify that the safeguard measure was consistent with not only the WTO Safeguard Agreement but also with Indonesia's domestic safeguard regulation, Indonesia was disappointed that Viet Nam was still requesting the DSB to establish a panel at the present meeting. As provided by the DSU, Indonesia opposed the establishment of panel at the present meeting.

8.4. The representative of Chinese Taipei said that, since this dispute related to the same matter raised in the DS490 dispute, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu supported Viet Nam's request that once a panel in this dispute was established, a single panel should examine both matters, pursuant to Article 9.1 of the DSU.

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

## 9 BRAZIL – CERTAIN MEASURES CONCERNING TAXATION AND CHARGES

### A. Request for the establishment of a panel by Japan (WT/DS497/3)

9.1. The Chairman drew attention to the communication from Japan contained in document WT/DS497/3, and invited the representative of Japan to speak.

9.2. The representative of Japan said that this case concerned Brazil's measures concerning taxation and charges. As explained in Japan's panel request, Brazil had introduced a number of measures that enabled domestic companies to reduce their obligation to pay certain internal taxes and charges. Such measures included tax incentive programmes in the automotive and the ICT sectors, which lowered the burden of taxes and charges for domestic producers and incentivised the use of domestically sourced inputs. Coupled with Brazil's complex and heavy internal tax system in general, these measures had had a serious trade-restrictive effect on a broad range of products imported into Brazil from Japan and other Members. In Japan's view, these measures unjustifiably protected domestic industries, misguided investments, and manipulated the trade balance to the detriment of the legitimate interests of Japan and other Members. In addition, Brazil maintained tax advantages for certain exporting companies, which were contingent on their export performance. Japan considered Brazil's measures to be inconsistent with Brazil's obligations under the GATT 1994, the TRIMs Agreement and the SCM Agreement, as had clearly been explained in Japan's panel request. Japan had requested consultations on 2 July 2015 and had engaged in consultations in good faith with Brazil on 15 and 16 September 2015 with a view to reaching a mutually satisfactory solution. While the consultations had provided useful opportunities for the parties to better understand the respective positions on this matter, they were unable to resolve the dispute. Japan, therefore requested, pursuant to Article 6 of the DSU, that a panel be established to examine the matter as set out in its panel request, with standard terms of reference, in accordance with Article 7.1 of the DSU.

9.3. The representative of Brazil said that his country regretted Japan's decision to request the establishment of a panel to examine this dispute. As stated on previous occasions, Brazil wished to reaffirm that the programmes challenged by Japan were part of Brazil's efforts to promote economic development in line with the WTO's objectives and principles. These programmes had been conceived to foster innovation, safety, environmental protection and workforce capacity-building in Brazil, in highly technological and complex sectors, while at the same time increasing trade and promoting a dynamic relationship of the covered sectors with global trade and investment flows. The measures did not have any detrimental trade effects on imports from other WTO Members. On the contrary, they had paved the way for better and more solid partnerships with foreign companies. With regard to the ICT sector, a fruitful cooperation had been established with Japanese companies, concerning the development of the digital television system IDBT-T. In Brazil's view, Japan advocated, in its panel request, a very broad interpretation of the disciplines relating to national treatment and local content. If accepted, this vision of core WTO rules would unduly curtail Members' ability to promote social and technological development and

reduce their policy space more generally, thus contributing to preserve, or freeze, the status quo and its imbalances in terms of economic development. This was definitively not an expected outcome of the covered Agreements and one that Members should not endorse. The specific tax and regulatory regimes under the INOVAR-AUTO, the Informatics Law and the related legislation were not linked to the domestic origin of goods, but rather to the compliance, by interested companies, with targets related to technological innovation, workforce capacity-building, safety and sustainable development. The Special Regime for the Purchase of Capital Goods for Exporting Enterprises (RECAP) and the tax suspension to predominantly exporting companies (PEC), in turn, were simply mechanisms to improve tax administration by Brazilian authorities and tools to prevent the collection and the reimbursement of taxes structurally paid in excess by certain types of taxpayers. They encompassed exporting companies simply because these companies, under the Brazilian tax system, were those that mostly accumulated tax credits and had the greatest difficulties to offset them. Therefore, both programmes, irrespective of their denominations, were definitively not subsidies contingent on the exportation of goods. In sum, the measures at issue had been put in place to promote Brazil's development, though not at the expense of its multilateral obligations or other WTO Members' trade opportunities. Despite these considerations, and taking into account the agreement reached between Brazil and Japan on 28 July 2015 to regulate the consultation procedures, Brazil would not object to the establishment of the panel at the present meeting.

9.4. The representative of the European Union said that the EU shared Japan's concerns with respect to Brazilian programmes that conferred tax advantages, *inter alia,* to domestic automobiles and ICT products. As Members were aware, the EU had raised essentially the same matter against Brazil in the DS472 dispute. In that context, the EU wished to state its dissatisfaction with Brazil's rejection of the EU's request to join the consultations in this dispute brought by Japan, especially since Brazil had agreed that there were aspects of "genuine substantial trade interests of the European Union". In that regard, the EU considered that Brazil should have, in accordance with Article 4.11 of the DSU, accepted the EU's request.

9.5. The representative of Japan said that his country noted that Japan's complaint was related to the same matter raised in another on-going dispute: "Brazil – Certain Measures Concerning Taxation and Charges" (DS472). Japan further recalled that a panel had already been established and composed in that dispute. Under those circumstances, and in light of Article 9.3 of the DSU, Japan expressed its intention to accept the same persons serving on the Panel in the DS472 dispute to serve as panelists on the panel in the dispute under consideration. Furthermore, Japan was ready to cooperate with the panel and other relevant parties with a view to harmonizing the timetable for the panel process in these disputes to the greatest extent possible.

9.6. The representative of the European Union said that, with regard to Japan's reference to Article 9.3 of the DSU, the EU had no objection to the proposed way forward. Indeed, given the current situation with the workload, the proposal seemed a sensible way forward.

9.7. The representative of Brazil said that his country was prepared to consult with the Panel and the parties to the disputes regarding this matter.

9.8. 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.

9.9. The representatives of Argentina, Australia, China, the European Union, India, Korea, the Russian Federation and the United States reserved their third-party rights to participate in the Panel's proceedings.

## 10 STATEMENT BY THE CHAIRMAN REGARDING SOME MATTERS RELATED TO THE APPELLATE BODY

10.1. The Chairman, speaking under "Other Business", recalled that at the previous regular DSB meetings, he had informed delegations that the first four-year terms of office of Mr. Ujal Singh Bhatia and Mr. 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 Mr. Bhatia and Mr. Graham had expressed their willingness to serve for a second four-year term. In light of this, he had announced that he would consult

informally with Members and he had invited delegations with views on these matters to contact him directly. At the present meeting, he wished to report that these consultations were still ongoing, and he would again encourage delegations with views on these matters to contact him directly. He reminded delegations that a decision on these matters would have to be taken by the DSB at the latest at the regular meeting scheduled for 25 November 2015.

10.2. The DSB took note of the statement.

## 11 STATEMENT BY THE CHAIRMAN REGARDING THE PRESENTATION BY THE DIRECTOR-GENERAL CONCERNING THE CURRENT CHALLENGES FACING THE DISPUTE SETTLEMENT SYSTEM

11.1. The Chairman, speaking under "Other Business". informed delegations that at the next DSB meeting scheduled for 28 October 2015, the Director-General would make a presentation on the current challenges facing the dispute settlement system, including delays in commencement of panel work in some cases due to the lack of available staff to assist panels in their work. In particular, the Director-General would brief delegations on the steps he had taken to address the situation following his presentation to the DSB meeting held on 26 September 2014. He would also speak about the current challenges and what he intended to do going forward. Accordingly, the item regarding these matters would be placed on the Agenda of the regular DSB meeting in October. The meeting would start in the morning with the usual business and then resume in the afternoon at 3 pm with the presentation by the Director-General. As delegations were well aware, for much of the past 20 years, Members had enjoyed a dispute settlement mechanism that had functioned remarkably well. Although there had been some instances where delays had been experienced in certain very large disputes or at certain stages of the proceedings, the system had generally been praised for its efficiency. However, it had now reached a point where disputes were of a different nature in terms of complexity and breadth than they had been even just a few years ago. The Director-General would provide more details in that respect. The Director-General had been working on solutions and ways to address this problem. But as the Director-General and several Members had made clear at the September 2014 DSB meeting, and what had also been clear from the discussions of this issue at the August 2015 DSB meeting, resolving this issue was not the task of the Director-General and the Secretariat alone. Members also had a role to play in finding solutions. Some Members had expressed their views and ideas at the August 2015 DSB meeting. The Chairman welcomed that input and was sure that there were more ideas out there. Therefore, he wished to invite delegations with views, ideas and suggestions to contact him directly. On his part, he was ready to hold informal consultations, if delegations so wished, to discuss any such suggestions on how the DSB could contribute to address the current situation as well as how to deal with the dispute settlement challenges going forward. Like the Director-General, the Chair was ready to assist Members in finding appropriate solutions and in identifying how to ensure that the dispute settlement system would continue to serve Members well in the future. He would encourage all Members to give some careful thought to this matter, to be creative and to come forward with inspired ideas on what could be done in the DSB to address these difficult challenges.

11.2. The representative of Korea said that his country thanked the Chairman for the information regarding the Director-General's plans. Korea thanked the Secretariat and the Director-General for their efforts to address the critical issue of delays facing the dispute settlement system. Korea looked forward to what it anticipated would be concrete proposals from the Director-General on what the Secretariat planned to do to address the issue, as well as what the Membership could do. In addition, Korea wished to note that this particular and very important issue had a direct bearing not just on the DS488 dispute to which Korea was a complainant, or on the DS495 dispute to which Korea was a respondent and in which a panel had been established at the present meeting, but on all disputes pending in the dispute settlement system. Korea thanked Japan for reminding Members at the present meeting of what Korea had said at the previous DSB meeting regarding delays. Korea looked forward to discussing ways to address the issue from a systemic standpoint, and in an unbiased and objective manner that would benefit all Members.

11.3. The DSB took note of the statements.

_____