RESTRICTED

WT/DSB/M/383

11 October 2016

(16-5451)

Dispute Settlement Body
21 July 2016

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 21 JULY 2016

Chairman: Mr. Xavier Carim (South Africa)

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1.1. The Chairman noted that there were five 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 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 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". He turned to the first status report under this Agenda item.

A. United States – Anti–dumping measures on certain hot–rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.162)

1.2. The Chairman drew attention to document WT/DS184/15/Add.162, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Anti-dumping measures on certain hot-rolled steel products from Japan.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 9 July 2016, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration

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

1.4. The representative of Japan said that his country thanked the United States for its statement and its status report submitted on 9 July 2016. Japan wished to refer to its previous statements that this matter be resolved as soon as possible.

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

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.137)

1.6. The Chairman drew attention to document WT/DS160/24/Add.137, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.7. The representative of the United States said that his country had provided a status report in this dispute on 9 July 2016, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

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

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

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.100)

1.10. The Chairman drew attention to document WT/DS291/37/Add.100, 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.

1.11. The representative of the European Union said that two GMOs[1] had been voted on, with a no opinion result, in the Standing Committee on 8 July and at the Appeal Committee on 2 June 2016. In accordance with the applicable regulations, the authorizing decisions would be submitted to the Appeal Committee for a vote. 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.

1.12. 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 at past DSB meetings, the EU measures affecting the approval and marketing of biotech products remained of substantial concern to the United States. The EU's delay of approval for pending applications was having a dramatic impact on trade. For years, the delays had been restricting US exports of key agricultural products to the EU. In the past, this had primarily affected corn, but this year, US exports of soybeans were being negatively impacted. As it had noted at a number of previous DSB meetings, the United States had serious concerns with the EU's significant delay in approving the applications of three varieties of biotech soybeans. These varieties were critical for US farmers because they included important technologies that promoted weed control, and the varieties were grown across the United States. The EU's scientific body had concluded extensive scientific reviews of these soybean varieties in June and July 2015. Those reviews had confirmed that these biotech products were safe for use in the EU. The EU, however, had continued to delay

[1] Maize MON 810 (renewal for food and feed uses) and cotton DAS-24236-S^{X}DAS-21023-SxMON-88913-8 (food and feed uses)

approval of these products, without any legitimate basis. The United States again asked the EU to ensure that its biotech approval measures were consistent with its obligations under the SPS Agreement.

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

D. United States – Anti–dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.48)

E. United States – Anti–dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS429/15)

1.14. The Chairman said that it was his understanding that the two sub-items to which he had just referred would be taken up together.

1.15. The representative of the United States said that his delegation would address both disputes involving anti-dumping measures on shrimp from Viet Nam together. The United States was pleased to inform the DSB that, on Monday 18 July 2016, the United States and Viet Nam had reached a mutually agreed solution in both disputes. The United States and Viet Nam had submitted the mutually agreed solution to the DSB, which should be circulated shortly. The resolution of these two disputes was an element of an agreement between the United States and Viet Nam resolving a number of outstanding issues involving the anti-dumping duty order on shrimp from Viet Nam. The successful resolution of these disputes demonstrated the commitment of the United States to compliance with the DSB recommendations and to securing positive solutions to outstanding disputes. The resolution also demonstrated the ability of the United States and Viet Nam to work together in a constructive manner to resolve difficult trade issues. The United States looked forward to the continued enhancement of its bilateral trade relationship with Viet Nam.

1.16. The representative of Viet Nam said that her country thanked the United States for its statement and its status report on implementation of the DSB's recommendations and rulings in two disputes regarding the US anti-dumping measures on certain shrimp imported from Viet Nam (DS404 and DS429). At the present meeting, Viet Nam wished to confirm that the United States and Viet Nam had reached a mutually agreed solution in both the DS404 and DS429 disputes, which had been initiated in 2009. While Viet Nam did not achieve all it had desired from either the results of the Panel decisions or the resolution with the United States, the result was nevertheless important. First, it demonstrated that the WTO dispute settlement system continued to work by imposing international disciplines, which only few multilateral institutions had been able to accomplish. Second, the solution avoided further litigation at the time when the dispute settlement system was under serious resource constraints. Finally, it recognized that the dispute settlement process was essential for solving disputes among Members. In that spirit, Viet Nam hoped that the implementation of the mutually agreed solution would be recognized as serving the interests of both parties to the dispute and of the dispute settlement system. Viet Nam thanked the Panels in the DS404 and DS429 disputes, the Appellate Body members and the respective Secretariats.

1.17. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Viet Nam. Venezuela took note of the US statement regarding recent progress in this dispute and the fact that a mutually satisfactory solution had been found in these disputes. This was a positive development that underscored the credibility of the dispute settlement system and its ability to resolve disputes. Venezuela hoped that the implementation of the mutually agreed solution would serve the interests of both parties to these disputes.

1.18. The representative of Cuba said that her country supported the statement made by Viet Nam. Cuba took note of the fact that a mutually agreed solution had been found in these disputes. Cuba hoped that similar solutions could also be found in the other unresolved disputes currently pending on the DSB Agenda.

1.19. The DSB took note of the statements.

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

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 had to 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 June 2016, the DSB had adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, pertaining to the dispute on: "Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear". He invited Colombia to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

2.2. The representative of Colombia said that, in accordance with Article 21.3 of the DSU, his delegation wished to inform the DSB that Colombia intended to implement the DSB's recommendations and rulings resulting from the Appellate Body and Panel Reports in the dispute: "Colombia - Measures Relating to the Importation of Textiles, Apparel and Footwear" (DS461). Colombia would need a reasonable period of time in order to do so since a rigorous analysis and administrative coordination by the Colombian Government were necessary to bring the disputed measure into conformity with the covered agreements. It was important to bear in mind that, as had been demonstrated during the dispute settlement proceedings, the measure that had to be brought into conformity was essential for Colombia to achieve its objective of combating money laundering, on the grounds of Colombia's vital social interests. Currently, Colombia was engaging in discussions with Panama in order to reach an agreement on a reasonable period of time for the implementation of the DSB's recommendations and rulings in this dispute.

2.3. The representative of Panama said that his country welcomed the opportunity to express its views on this matter. Colombia's compound tariff on imports of textiles, apparel and footwear exceeded the bound-tariff level, which had previously been agreed for these products. Panama noted Colombia's statement on its intentions with regard to implementation, but could not agree with Colombia's statement on this matter. Panama referred to its statement made at the 22 June 2016 DSB meeting that Colombia should comply with the DSB's recommendations by not extending the measure found to be WTO-inconsistent. The measure in question would expire on 30 July 2016, in accordance with the recent decree, which had extended it in March 2016 for another four months. In that regard, Panama urged Colombia to comply in good faith with the first objective of the dispute settlement mechanism, provided for in Article 3.7 of the DSU, and withdraw the measure. In Panama's view, no further action was required by Colombia since the measure in question would expire by the end of the month. Panama reiterated the importance of prompt compliance with the DSB's recommendations and rulings in order to ensure effective resolution of disputes to the benefit of all Members, as provided for in Article 21.1 of the DSU. Prompt compliance was also essential for maintaining the trust in, and credibility of, the dispute settlement system. Panama believed that it was feasible for Colombia to comply immediately with the DSB's recommendations in this dispute, as was stipulated in Article 21.3 of the DSU. If the measure continued to be in place after 30 July 2016 this would imply an extension of the WTO-incompatible measure. Panama noted that this was the third dispute that had been filed in the WTO with regard to the measures put in place by Colombia over the prior ten years. All these disputes had involved similar measures, which had affected the same trade flows, and which had been declared incompatible with the agreements in question and with Colombia's specific commitments. Panama reserved its right to have recourse to Articles 21 and 22 of the DSU regarding this matter.

2.4. The DSB took note of the statements and of the information provided by Colombia 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, and he invited the respective representatives to speak.

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

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

3.4. The representative of India said that his country shared the concerns of the EU and Japan. The WTO-inconsistent disbursements continued to the US domestic industry. In India's view, this item should continue to remain on the DSB's Agenda until such time that full compliance was achieved in this dispute.

3.5. The representative of Brazil said that her country thanked the EU and Japan for keeping this item on the DSB's Agenda. Brazil, as one of the parties to these disputes, wished to refer to its previous statements made under this Agenda item regarding the continuation of illegal disbursements. Brazil renewed its call on the United States to fully comply with the DSB's recommendations and rulings in this dispute.

3.6. The representative of Canada said that his country wished to refer to its previous statements made under this Agenda item. He said that Canada's position on this matter had not changed.

3.7. 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 urged the United States to fully comply with the DSB's recommendations and rulings in this dispute.

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

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

4.2. The representative of the United States said that the DSB had adopted its recommendations and rulings in this dispute in August 2012, and the reasonable period of time had expired in July 2013. As the United States had noted at past meetings of the DSB, China's sole domestic supplier continued to maintain control of the domestic electronic payment services ("EPS") market. In accord with its WTO obligations, China had to adopt measures necessary and take the required steps to allow the operation of foreign EPS suppliers in China. The United States took note that last month, nearly four years after the DSB had adopted its recommendations and rulings in this dispute, China had issued a regulation that appeared to set out a licensing application process for electronic payment service suppliers to obtain authorization to do business in the Chinese market. The United States was in the process of reviewing these regulations and their operation, with a view to determining whether the regulations would allow for the approval of foreign EPS suppliers without further delays.

4.3. The representative of China said that her country regretted that the United States had, once again, brought this matter before the DSB. China wished to refer to its statements made at previous DSB meetings and emphasized that it had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute. China was pleased that the United States had referred to the issuance of the regulation. 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. Nor was the DSB meeting an appropriate forum to discuss China's domestic regulatory action; which was irrelevant to this dispute.

4.4. The DSB took note of the statements.

5 UNITED STATES - COUNTERVAILING DUTY MEASURES ON CERTAIN HOT-ROLLED CARBON STEEL FLAT PRODUCTS FROM INDIA

A. Statement by India

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

5.2. The representative of India said that, as his country had pointed at the 22 June 2016 DSB meeting, the United States had not filed a status report in this matter in accordance with its binding obligation under Article 21.6 of the DSU. The issue of the non-submission of the status report was important since there was a domestic law in this dispute that had been found to be inconsistent with a covered agreement. That law continued to remain on the US statute book. The United States had made no efforts to repeal or amend 19 USC 1677(7)(G)(iii) of its domestic law so as to bring it into conformity with Articles 15.1, 15.2, 15.3 and 15.5 of the SCM Agreement, in disregard of the DSB's recommendations. While the United States might have taken some steps with regard to the CVD determinations or "as applied" claims, it was abundantly clear that no steps had been taken to address the "as such" claims by either repealing or modifying the law. This was not a minor procedural issue but a serious systemic issue for the dispute settlement mechanism. Ignoring this aspect would render Article 21.6 of the DSU ineffective and would seriously undermine the surveillance mechanism under the DSU. India reiterated that the recently issued findings of the USDOC and USITC, purportedly issued to remove the inconsistencies noted by the Panel and the Appellate Body Reports in the DS436 dispute, were also not in full conformity with the covered agreements. While India would consider and pursue appropriate legal remedies in this respect, it urged the United States to accord more serious consideration to implementing the DSB's recommendations through a status report on the issue of inconsistency of its law.

5.3. India noted that the United States had clarified at the previous DSB meeting that the provisions of the domestic law had never been utilized in any investigation. In India's view, the issue of non-utilization of a provision of a law was irrelevant in the context of implementation of

the DSB's rulings and recommendations and did not detract from the finding that the provisions of the law had been found to be inconsistent and still remained on the statute book. Thus, the United States continued to have provisions inconsistent with the SCM Agreement in spite of the unambiguous DSB rulings and recommendations. India urged the United States to fully comply with the DSB's rulings and recommendations in this dispute and to submit a status report in this dispute as it had done under sub-items 1(a) and 1(b) of the Agenda of the present meeting.

5.4. One other aspect that India wished to touch upon at the present meeting was the practice of entering into agreed sequencing procedures. India and the United States had entered into a sequencing agreement in this dispute, which essentially sequenced compliance proceedings and suspension of obligations. India had entered into such an agreement with the United States considering the logical nature and practical effectiveness of the procedures, which was common practice adopted by WTO Members, even though technically India could have argued that it had an option of seeking suspension of concessions since it did not agree with the US's view of compliance. However, the appropriate approach in such scenarios would be a sequencing agreement. India urged the United States to do so in the DS430 dispute to avoid inefficient and avoidable legal uncertainties in that dispute, which were alluded to in the previous DSB meeting.

5.5. The representative of the United States said that, as his country had explained at previous DSB meetings, the United States had completed implementation with respect to the DSB's recommendations and rulings in this dispute. The United States was prepared to confer further with India should it have any questions, but India had not contacted the United States prior to or since proposing this item for the Agenda of the present meeting. Therefore, it would not appear that resolving its concerns was India's intent in taking the time of the DSB at the present meeting. With respect to the "as such" finding on Section 1677(7)(G)(i)(III) of the Tariff Act of 1930, the United States had explained both to India and to the DSB that no further US action was needed. As the United States had explained previously, under US law, Commerce had discretion with respect to the timing of a self-initiated investigation, and Commerce had confirmed its commitment to exercise this discretion in a manner that was consistent with the international obligations of the United States. Indeed, this provision of US law had never been applied at all. Therefore, India had no basis for its insistence that US law must be changed in order for the United States to comply with the DSB's recommendations in this dispute. Given that the United States had fully complied in this dispute, the United States was not required to submit further status reports in this matter. Regarding the subsidies determinations, as described in previous DSB meetings, on 14 April 2016, the US Department of Commerce had issued a new CVD determination rendering its determination with respect to subsidization and the calculation of countervailing duty rates consistent with the DSB's recommendations in this dispute. Commerce's determination fully complied with the findings of the Panel and the Appellate Body in this dispute regarding subsidization and the calculation of countervailing duty rates. As also described in previous DSB meetings, on 7 March 2016, the US International Trade Commission had issued a new CVD injury determination rendering the findings with respect to injury in the underlying CVD proceeding on hot-rolled steel from India consistent with the DSB's recommendations in this dispute. Regarding the issue of sequencing agreements that India had raised, the United States, and presumably India, had entered into a sequencing agreement in the DS436 dispute based on an assessment of this dispute. Both parties had appeared to agree that a sequencing agreement could help them in resolving this dispute. With respect to the DS430 dispute, that matter was not on the Agenda of the present meeting, but as had been explained at the previous DSB meeting, the United States had considered that the circumstances warranted moving forward with a request under Article 22.2 of the DSU. The United States remained engaged with India on issues of procedure and substance and sought to find a positive solution in that dispute.

5.6. The representative of the European Union said that it was clear that there was a disagreement on compliance in this dispute. He noted that the EU did not have any position on this issue. However, the EU recalled that previously the DSB had collectively agreed to revert to this matter. That agreement had a consequence. In other words, there would be a status report at the next meeting at which a Member could then claim full compliance. The EU did not understand why, in this particular instance, this practice had not been followed. The EU found it surprising that in one case Members acted in one way and in other cases they acted differently. In the EU's view, it would be in good order for Members to follow certain established practices so that there would be no surprises. This however was not the case in this dispute.

5.7. The DSB took note of the statements.

6 UNITED STATES – COUNTERVAILING MEASURES ON SUPERCALENDERED PAPER FROM CANADA

A. Request for the establishment of a panel by Canada (WT/DS505/2)

6.1. The Chairman recalled that the DSB had considered this matter at its meeting on 22 June 2016 and had agreed to revert to it. He drew attention to the communication from Canada contained in document WT/DS505/2 and he invited the representative of Canada to speak.

6.2. The representative of Canada said that, at the previous regular DSB meeting, Canada had made its first request for the establishment of a panel to assess the US countervailing duties on imports of supercalendered paper from Canada. As it had explained then, and as was set out in its request in document WT/DS505/2, Canada considered the US measures to be inconsistent with its obligations under the SCM Agreement and the GATT 1994. Canada would not repeat at length the details of its claims. However, Canada would again request that the DSB establish a panel in this dispute with standard terms of reference. Canada remained open to continuing its dialogue with the United States in order to find a way to resolve this dispute.

6.3. The representative of the United States said that his country regretted that Canada had chosen, for a second time, to request the establishment of a panel with regard to this matter. As it had explained both to Canada and to the DSB, the US actions described in Canada's request were fully consistent with US obligations under the WTO Agreement. The United States was prepared to engage in these proceedings and to explain to the panel that Canada had no legal basis for its claims. Further, the US statement was without prejudice to whether each of the items cited in Canada's panel request constituted a measure for purposes of the DSU, and therefore was subject to examination by 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 Brazil, China, the European Union, India, Japan, Korea, and Turkey reserved their third-party rights to participate in the Panel's proceedings.

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

A. Recourse to Article 21.5 of the DSU by the Philippines: Request for the establishment of a panel (WT/DS371/18)

7.1. The Chairman drew attention to the communication from the Philippines contained in document WT/DS371/18 and he invited the representative of the Philippines to speak.

7.2. The representative of the Philippines recalled that, at the 22 June 2016 DSB meeting, the Philippines had reported on constructive consultations held between the Philippines and Thailand in Bangkok on 2 June 2016. The Philippines had also reported on Thailand's commitment to provide the Philippines with specific documents and information pertinent to the Philippines' concerns. In particular, Thailand had committed to provide an explanation of the specific allegations underlying criminal charges Thailand was pursuing against a Thai importer of Philippine exports, ostensibly for under-declaration of customs value. Thailand had committed to provide this material no later than 27 June 2016. In return, and in recognition of the relationship between the two countries, the Philippines had agreed to postpone any request for establishment of a panel until the 27 June deadline. No material had been received from Thailand by the 27 June deadline. Furthermore, the Philippines understood that active steps had been taken in the domestic proceedings to prevent sharing with the Philippines the documents and information related to the criminal charges that Thailand itself had earlier committed to provide to the Philippines. The Philippines had been exceedingly solicitous of its ASEAN partner over the course of the many years that had elapsed since the expiry of the reasonable period of time in this matter. Over that extended period, the Philippines had demonstrated its good faith by allowing time and offering Thailand opportunities to explain and substantiate its position. However, with Thailand failing entirely to carry through on its own commitments, the Philippines considered that its only remaining option was to request the establishment of a compliance panel. In that regard, the Philippines noted again Thailand's

agreement, in a sequencing arrangement concluded between the parties, not to object to the establishment of a compliance panel at the first DSB meeting at which the request appeared on the Agenda. While the Philippines returned to multilateral review of the disagreement between the parties, its readiness to seek an amicable solution to this dispute with its valued ASEAN partner remained undiminished.

7.3. The representative of Thailand said that his country was disappointed that the Philippines had chosen to move forward with an Article 21.5 panel request at the present meeting. However, since the Understanding between the Philippines and Thailand on Sequencing provided that: "Thailand shall not object to the establishment of that panel at the first DSB meeting at which the request appears on the agenda", Thailand did not object to this request. Thailand was strongly supportive of the existence of a binding system of dispute settlement in the multilateral trading system, on which Thailand had successfully relied in the past to vindicate its rights and obligations under WTO law. Thailand would continue to work cooperatively with the Philippines.

7.4. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by the Philippines in document WT/DS371/18. The Panel would have standard terms of reference.

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

8 UNITED STATES – COUNTERVAILING DUTY MEASURES ON CERTAIN PRODUCTS FROM CHINA

A. Recourse to Article 21.5 of the DSU by China: Request for the establishment of a panel (WT/DS437/21)

8.1. The Chairman drew attention to the communication from China contained in document WT/DS437/21 and invited the representative of China to speak.

8.2. The representative of China said that, on 13 May 2016, China had requested consultations with the United States with respect to the US failure to implement the DSB's recommendations and rulings in the DS437 dispute. The parties had held consultations on 27 May 2016, pursuant to the sequencing agreement, but the consultations had failed to resolve the dispute. China, therefore had requested, in document WT/DS437/21, that the DSB establish a compliance panel to examine this matter. The sequencing agreement provided that the United States would accept the establishment of a panel at the present DSB meeting. In its panel request, China made claims against a number of the Section 129 determinations, periodic review determinations and sunset reviews determinations made by the USDOC as its measures to implement the rulings in the DS437 dispute. These measures were related to the continued and ongoing application by the USDOC of unlawful standards and methodologies for determining public body, specificity, benefit and facts available, etc., which, in China's view, led to the US failure to bring the measures in dispute into compliance with the SCM Agreement. China requested that the DSB establish a panel to consider the matter described in its panel request.

8.3. The representative of the United States said that his country was disappointed that China had chosen to request the establishment of a compliance panel in this matter. As the United States had stated at the June meeting of the DSB, contrary to China's view, there was no basis for suggesting that US compliance was inadequate. The United States maintained that the measures identified in China's request for establishment of a panel were fully WTO-consistent. Nevertheless, the United States recognized that the procedures set forth in the sequencing agreement between China and the United States provided that the United States would accept the establishment of a compliance panel at the first DSB meeting in which China's request appeared on the Agenda. The United States was prepared to engage in these proceedings and to explain to the compliance panel that China had no legal basis for its claims. The US statement was without prejudice to whether each of the items cited in China's panel request constituted a measure for purposes of the DSU, and therefore was subject to examination by the panel.

8.4. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by China in document WT/DS437/21. The Panel would have standard terms of reference.

8.5. The representatives of Australia, Canada, the European Union, India, Japan, Korea, the Russian Federation and Viet Nam reserved their third-party rights to participate in the Panel's proceedings.

9 STATEMENT ON A MECHANISM FOR DEVELOPING, DOCUMENTING AND SHARING PRACTICES AND PROCEDURES IN THE CONDUCT OF WTO DISPUTES (JOB/DSB/1)

9.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Canada. He drew attention to document JOB/DSB/1 and invited the representative of Canada to speak.

9.2. The representative of Canada said that, as all Members would agree, the WTO dispute settlement system was a critical pillar of the multilateral trading system. Its undeniable appeal was confirmed by the fact that it had been asked to deal with more than 500 disputes in 20 years, making it by far the most prolific and successful forum for international dispute settlement in history. From the very outset, WTO Members had agreed that this new treaty-based system of dispute resolution might need to be modified and improved over time. Almost from the very outset, Members had been discussing various ways that it might be improved, without thus far having reached agreement on any major changes. In recent years, the need for the system to evolve in response to experience, the changing nature of disputes, and the changing expectations of Members, had become increasingly apparent. The increase in both the volume and complexity of disputes had placed a heavy burden on the resources that supported dispute settlement, such that Members now experienced delays in finishing disputes and even queues in getting disputes started. These developments threatened both the objective, and the reputation, of WTO dispute settlement for timely resolution, and risked putting the system even further out of the reach of smaller and developing countries that already had to overcome their own internal barriers to have effective access. While the Director-General had increased the Secretariat's capacity to support this growing demand and complexity, he had also called upon Members to do more to ensure the sustainability and success of the system in the long run. For a while now, Members had been discussing potential collective responses to the Director-General's call to action, but had thus far not been able to agree on any solutions. Some incremental change was being pursued, and was happening, at the level of individual disputes. But, bringing about change in this way would be a slow and unpredictable process.

9.3. To foster a more-organic evolution of dispute settlement practices in response to growing challenges and the changing environment, Members must find a systematic way to do more. Therefore, as announced at the June 2016 DSB meeting, at the present meeting, Canada was formally inviting willing Members to join together in efforts to develop, document, and share new approaches designed to streamline, strengthen and improve the dispute settlement system. This invitation was set out in the document circulated as JOB/DSB/1, which contained a "Statement on a Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes". A companion document, circulated as JOB/DSB/1/Add.1, further set out a list of the 17 Members that had thus far endorsed this Statement, and in doing so had endorsed this approach to experimenting with new ideas. These Members included: Australia, Canada, Colombia, Costa Rica, the European Union, Guatemala, Hong Kong, China; Japan, Korea, New Zealand, Norway, Singapore Switzerland, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Uruguay, Ukraine and Viet Nam. As the title suggested, the circulation and endorsement of the Statement launched an informal Mechanism for the development, documentation and sharing of novel practices and procedures. Specifically, at paragraph 6, the Statement invited Members to develop and circulate documents in at least three different formats. First, agreements between Members that set out their intentions to follow certain practices and procedures in their future disputes. Second, bilateral agreements made in specific disputes that may serve as models for other Members. Third, sample, model or proposed practices and procedures for the purpose of provoking further discussion among the Membership.

9.4. As a first instalment in the development of sharing practices using this Mechanism, several Members had already cooperated to circulate Practice Documents in four areas. These included additional written notifications, the participation of third-parties in dispute proceedings,

transparency of dispute proceedings and streamlining and improving the panel process. These documents had been circulated as Addenda 2 through 5 of document JOB/DSB/1 that contained the original Statement. In addition to the four Practice Documents that corresponded to the invitation specified in paragraph 6(a) of the Statement, Canada had separately circulated, in JOB/DSB/1/Add.6, an annotated example of a Sequencing Agreement, corresponding to the invitation specified in paragraph 6(b) of the Statement. While this document had already been circulated in the document series of the dispute in which it had been agreed, circulating it again with background and annotations, provided for greater transparency of procedural issues that only got resolved on an ad hoc basis. The four Practice Documents set out the intention of the Members that endorsed them to act in the ways prescribed when they were in disputes with other endorsing Members. However, the specific issues set out in these four documents were not the end of the process, far from it. They were intended to provide, at least in part, examples of the kinds of practices that could be developed through this Mechanism. They were also meant to be living documents themselves that could be updated as experience grew and new Members signed on. More importantly, Canada encouraged Members to consider and advance other ideas. The initial focus should perhaps be on ideas that would help address the pressing issue of workload and capacity constraints. But Members should not discount even more ambitious and novel ideas for improvements, such as *ex ante* remand, post-retaliation procedures, procedures to simplify the fact-finding responsibilities of panels, and more complete elaborations of conciliation and mediation procedures under Article 5 or arbitration procedures under Article 25. Ideas need not just be developed by Members that were frequently involved in disputes. Those who used the system less frequently, or not yet at all, could propose approaches that might make it easier for them to have access to expedited proceedings that reflected the level of development or the value of trade at issue.

9.5. Canada wished to be clear, however, that efforts to develop practices under this Mechanism were not intended to replace either the discussions in the DSB in Special Session on binding improvements to the DSU, or discussions in organizational meetings of specific disputes on other potential case-specific innovations. On the contrary, the discussions and experiences generated by this exercise complemented and would facilitate those other efforts. Canada also wished to emphasize that the Members that endorsed the Statement did not intend any resulting practices to diminish the rights of third parties, nor did they intend that such practices would affect in any way the interpretation of any provision of any covered agreement, including the DSU. This process of experimentation should be allowed to proceed without raising concern that it would affect the rights and obligations of non-endorsing and non-participating Members or, for that matter, the rights of endorsing Members in other areas. Any attempt to give these documents legal status and effect beyond what was intended by the endorsing Members only risked putting a chill on experimentation with new approaches. For the purposes of the present meeting, Canada invited other delegations that had not yet done so to endorse the Statement, and put their voice behind efforts to experiment with approaches that may foster more organic evolution of the dispute settlement system. Canada also encouraged those who could, to endorse one or more of the four initial Practice Documents, either at the present meeting or in the near future. In the longer run, Canada hoped that delegations would use this Mechanism to develop and experiment with other creative and constructive ideas to improve the functioning of the system. Canada thanked all delegations it had worked with over the past year in developing this approach. Canada wished delegations the best in engaging in this process of experimentation to make the already great WTO dispute settlement system even greater.

9.6. The representative of the European Union said that the EU thanked Canada for its efforts and supported this Member-driven initiative. In part, this responded to the call by the WTO Director-General to Members to do more to address the workload issues. The EU agreed that additional practices and procedures exchanged via this mechanism could facilitate the resolution of disputes and reduce the scope for procedural disagreements and delays. The EU was pleased to be a founding endorser of the Statement on a mechanism circulated as JOB/DSB/1. As was clear from the other documents, the EU also endorsed three practice documents circulated under Paragraph 6(a) of the mechanism on the streamlining of procedures on transparency and third-party participation. That having been said, the EU wished to make it clear that it did not see this exercise as a substitute for the DSU negotiations. Rather, this exercise could generate practical experience with approaches that Members may choose to follow. As other endorsing

Members, the EU would continue to engage in the DSB Special Session with a view to identifying and codifying improvements and clarifications to the DSU.

9.7. The representative of Japan said that his country thanked Canada for its efforts in coordinating Members to produce a mechanism for documenting and sharing practices and procedures in the conduct of WTO disputes. Japan endorsed the mechanism as it would put together and accumulate good practices and procedures as a useful reference for all Members. Japan also endorsed a document for additional practices and procedures for written notifications along with the main document. Japan believed that the notifications set out in the document would improve information sharing about the status and progress of ongoing disputes. Japan acknowledged the initiative by Canada as a useful contribution to the improvement and the proper functioning of the WTO dispute settlement system. Japan reaffirmed its commitment to the advancement of the negotiations on the improvement and clarifications of the DSU.

9.8. The representative of Guatemala said that his country thanked Canada for its initiative and its efforts, which had finally materialized in document JOB/DSB/1, containing the mechanism for developing, documenting and sharing practices and procedures in the conduct of WTO disputes. Guatemala noted that currently, there was a diverse and increasing number of non-documented practices. For those Members that were less experienced in the use of the dispute settlement system, this was a challenge, as there was no single place where those practices could be found. Guatemala had endorsed the mechanism precisely because it was convinced that it was important for the DSB to facilitate and encourage the development, documentation and sharing of practices and procedures, with a view to increasing the transparency, predictability and efficiency of the WTO dispute settlement system. With this mechanism, Guatemala believed that Members would continue to engage in discussions of current practices or practices that they wished to see developed in the near future, based on their previous experiences. That would allow for the identification and/or creation of the best practices that could be found in document JOB/DSB/1 and its addenda. Considering the voluntary nature of this mechanism, and that any documented practice under such mechanism did not amend the DSU, it was important to recognize its limitations. Guatemala noted that there was no shortcut for the successful conclusion of the DSU negotiations and that Members also needed to work on this front. Guatemala encouraged those that had not yet endorsed the mechanism to do so as soon as possible.

9.9. The representative of Australia said that her country was pleased to join Canada, together with a significant number of other WTO Members, in endorsing the joint "Statement on a Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes". Australia thanked Canada for its initiative in guiding the development of this mechanism. In Australia's view, the proposed formal information sharing mechanism would promote transparency in the dispute settlement system and support the ongoing efforts of the WTO Secretariat to streamline dispute settlement processes. Australia hoped that, over time, the mechanism would facilitate improved common practices and procedures in WTO dispute settlement, leading to more predictable and harmonized dispute settlement practices, and reduce procedural delays and disagreements. All Members shared a responsibility to continue to work to support and improve the operation of the WTO dispute settlement system. With that in mind, Australia would further consider the individual practice documents that had been circulated by Canada under the Statement and looked forward to notifying its endorsement of these documents at future DSB meetings.

9.10. The representative of Switzerland said that his country once again thanked Canada for its important and timely initiative and great work. The fact that Switzerland was not, at the present meeting, in a position to endorse the additional practices and procedures, but only the basic document, the Statement on a mechanism, did not mean or imply that Switzerland was in disagreement with the substance thereof. It was merely a reflection that Switzerland needed a bit more time to observe and evaluate how this mechanism would develop in practice. Switzerland recommended and encouraged all Members to engage in this process without neglecting the important DSU negotiations.

9.11. The representative of Norway said that her country thanked Canada for its efforts on this initiative, and for working with other Members in developing this mechanism. Norway trusted that the mechanism would be a useful contribution in facing some of the current challenges of the WTO dispute settlement system. Norway was therefore pleased to endorse the Statement contained in document JOB/DSB/1. Furthermore, Norway was also of the view that the four practice documents

covered topics of importance. In that regard, Norway was for the time being in a position to endorse the documents concerning transparency and written notifications. Norway would continue to assess the possibilities for also endorsing the other two practice documents, and looked forward to further discussions with Canada and other Members on this matter. Norway encouraged Members who had not yet already done so to endorse and use this mechanism.

9.12. The representative of the United States said that his country thanked Canada for circulating the various documents and for being willing to work with Members. However, the United States continued to have a number of questions about the Statement and accompanying documents. For instance, it was not clear to the United States what the legal effect was, if any, of "endorsing" the Statement or the individual practice documents. As a result, the United States was continuing to examine the Statement and individual practice documents. The United States looked forward to continuing to discuss these matters with interested Members.

9.13. The representative of Singapore said that his country welcomed and endorsed the "Statement on a Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes". Members were well aware of the importance of the dispute settlement system to the security and predictability of the multilateral trading system. However, the dispute settlement system was currently under stress due to issues such as the increased number and complexity of disputes, and the lack of resources. While this mechanism would not necessarily resolve the issues, it would help by developing, documenting and sharing practices and procedures for WTO disputes. This would in turn facilitate the resolution of disputes, reduce the scope for procedural disagreements and delays, and generate practical experience. In Singapore's view, it was critical to highlight two key safeguards in this mechanism which would allow for more Members to participate in the mechanism. First, it was clear that endorsement of the mechanism did not constitute endorsement of any documents, or acceptance of any of the terms of any documents, circulated by other Members via this mechanism. Members that endorsed this mechanism would not be deemed to endorse any document circulated via this mechanism unless they did so expressly. Second, there was provision that endorsement of this mechanism and any documents circulated via this mechanism was without prejudice to any endorsing Member's views on the correct interpretation of, or the need for and merits of amendments to, the DSU, and this mechanism and the documents circulated via this mechanism were not intended to affect in any way the interpretation of any provision of any covered agreement. Singapore looked forward to more Members participating in this mechanism. Singapore was of the view that this mechanism would provide all Members with more information and could help the on-going discussions in the DSB Special Session. With more information flowing through this mechanism, there could be greater awareness and acceptance of certain practices. This could lead in the long run to possible codification of certain practices with the agreement of all Members. Singapore thanked Canada for its efforts on this initiative.

9.14. The representative of Hong Kong, China said that Hong Kong, China thanked Canada for its efforts in circulating the document on the mechanism for developing, documenting and sharing practices and procedures in the conduct of WTO disputes to the DSB (JOB/DSB/1). Hong Kong, China was pleased to be one of the founding endorsers of the document, and it would examine and consider the additional practice documents as circulated in due course. Nonetheless, her delegation was committed to contributing to the ongoing discussion in the DSB Special Session to improve and clarify the DSU.

9.15. The representative of Colombia said that his country welcomed the opportunity to comment on this matter. Colombia considered that Canada's proposal was very important in preparing the ground for progress in the negotiations to improve and clarify the DSU. For the time being, Colombia supported only the creation and establishment of the mechanism. Nevertheless, Colombia was reviewing the documents on individual good practices that had also been proposed by Canada, in order for them to be codified under the recently created mechanism. Colombia considered that the establishment of this system for the codification of good practices would, in the future, allow for: (i) the establishment of a database of good practices in the WTO dispute settlement; and (ii) the establishment of a pilot system, which would enable the consolidation, in good faith, of developments in dispute settlement, similar to those achieved during the first years of the GATT. Colombia thanked Canada for the initiative.

9.16. The representative of Brazil said that his country thanked Canada for all the work it had put into elaborating this initiative. Brazil could only welcome the efforts by all users of the dispute

settlement system to search for better practices and more streamlined and efficient procedures. Brazil would follow closely the operation of this mechanism and, in the future, may also participate in the sharing and documenting of some practices that may be helpful to the parties involved in disputes. In Brazil's view, the transparency provided by the mechanism was positive. He said that while sharing and documenting practices may prove useful when dealing with procedural hurdles faced by Members in disputes, Brazil would remain attentive to the aspect of "developing practices and procedures", included in the mechanism. It would be important to monitor how this element would play out in the dispute settlement system in future. Brazil welcomed paragraphs 7 and 8 of the Statement on the mechanism, which invited Members to explain the notified practices and to discuss new practices in DSB meetings. These provisions would contribute to enabling other Members to better understand alternative procedures being used by the parties to a dispute and would, at the same time, create an opportunity for monitoring new practices. Members may wish to reflect on the scope and effects to be given to practices developed by just a few Members, and adopt safeguards so that they were not applied to others who had not supported them.

9.17. The representative of New Zealand said that her country thanked Canada for its work in driving forward this initiative on documenting and sharing practices and procedures in the conduct of WTO disputes. New Zealand agreed that the initiative would lead to enhanced transparency and information sharing, and as such, would have a positive influence on the development of the dispute settlement system and was therefore in the interest of all Members. That was the reason why New Zealand endorsed the joint Statement. New Zealand hoped that the Statement would not be the end of the process, but would be a contribution to responding to the real workload issues facing the dispute settlement system. But, it could not alone be the solution. Members needed to continue to participate in this mechanism and other initiatives that may come forward and to hope that the lessons learned through greater transparency of actual practice may assist Members in their broader efforts to take forward the DSU negotiations. New Zealand, like the previous speakers, encouraged others to endorse and use the mechanism and thanked Canada, once again, for its efforts.

9.18. The representative of the Dominican Republic said that her country thanked Canada for its efforts. The Dominican Republic supported the mechanism and would follow the discussions on the practices to be developed.

9.19. The representative of Chile said that her country welcomed Canada's efforts and commitment towards a mechanism for sharing practices. Chile would continue to follow up on the evolution of the mechanism in order to better understand its implications and effects. Chile hoped that these efforts would serve to support the work carried out in the Special Session of the DSB.

9.20. The representative of Korea said that his country was pleased to endorse the Statement on a mechanism for developing and sharing practices. Korea thanked Canada for its tireless efforts to improve the dispute settlement system and hoped that the sharing of experiences among Members, both good and bad, would facilitate greater efficiency, predictability and constructive cooperation in dispute settlement.

9.21. The representative of China said that her country wished to refer to its statement made at the DSB meeting of 22 June 2016 regarding this matter. Given the importance of prompt and effective settlement of trade disputes, China welcomed some Members' efforts to share best practices and procedures in the conduct of disputes. It was understood that the proposed mechanism was not agreed by the DSB, the WTO or all Members, but only by those voluntary participating Members. In order to avoid duplicating the proposals and work in the DSB Special Session, China encouraged the endorsing Members of the Statement to carefully and appropriately define the scope of its application and share what was common in many disputes and what Members considered to be good practices. As clarified in paragraph 3 of the Statement (JOB/DSB/1), this Statement and any documents circulated via this mechanism was without prejudice to the interpretation of the DSU, and could not be taken into account in the proper interpretation of any provision of the DSU according to Articles 31 and 32 of the Vienna Convention on the Law of Treaties. It also meant that this Statement and any documents circulated via the mechanism did not add new obligations, nor detract from Members' existing obligations under the DSU.

9.22. The representative of El Salvador said that her country welcomed the mechanism for the sharing of good practices contained in document JOB/DSB/1. In El Salvador's view, the mechanism

was valuable. El Salvador thanked the proponents for their efforts, and in particular Canada. El Salvador believed that this was a good way forward in examining dispute settlement procedures and to making sure that the procedures were transparent, expeditious and reduced the workload. El Salvador was positively examining the documents and would continue to follow-up discussions on this matter with the aim of being in a position to fully support the mechanism in the future.

9.23. The representative of the Russian Federation said that his country thanked Canada for its presentation of a mechanism for developing, documenting and sharing practices and procedures in the conduct of WTO disputes. Russia acknowledged that the mechanism was intended to provide an additional platform for improving the dispute settlement process. Russia recognized the significance of such an opportunity and appreciated the discussions it had held with delegations on these documents. Russia would pay full attention to the implementation of this mechanism and the practices and procedures that would be developed, documented and shared by participating Members. At the same time, Russia wished to emphasize the importance of other ongoing efforts in improving dispute settlement procedures and practices, namely the ongoing work in the DSB Special Session. Russia believed that such efforts should in no way compromise each other, but should rather be complementary with a view to achieving consistent results that contributed to providing security and predictability to the multilateral trading system.

9.24. The representative of India said that his country thanked Canada for its statement and submission of a Statement on a mechanism for developing, documenting and sharing practices and procedures in the conduct of WTO disputes. Considerable intellectual effort and time had evidently gone into this exercise and many Members had been involved in varying degrees at varying stages in discussing these issues amongst themselves. India had also been actively engaged in these informal deliberations. India's comments on the Statement and documents were in no way a reflection of its assessment of Canada's and other Members' efforts and contributions to this process. India believed that sharing, explaining and documenting experiences that were not inconsistent with the DSU would be useful to the Membership as a whole. This provided an opportunity for Members to discuss their experiences as well as approaches to different situations that might arise in the context of a particular dispute. This was especially useful for Members who had little experience or limited resources in dispute settlement. India was analysing the Statement and additional documents submitted by Canada and other Members and looked forward to hearing from other Members. India did not intend to discuss substance at the present meeting. India agreed with Canada's assessment about the importance of the dispute settlement system and the need for improvement. Canada had referred to delays and workload. However, India noted that the additional documents referred to issues that may have no bearing on the workload issue and necessitated a close assessment. It was important to bear in mind that an exercise that could enhance acceptance of a wide Membership should ideally be a platform for information sharing and capacity building and not necessarily a pre-judging of eventual codification of practices and procedures, presently followed by a few Members. A practice and procedure followed by a few Members in some disputes should not be elevated to the level of codified rules that the entire Membership must follow as a *fait accompli* due to overwhelming endorsement. However, knowing them and discussing them in the spirit of understanding them and eventually using them in a particular dispute without a binding obligation to do so would be a more nuanced and pragmatic option.

9.25. India's initial assessment of the documents circulated at the present meeting was that many of these practices did not address the delay or workload issues. Some may also create more burden on the dispute settlement system rather than addressing it. Some were indeed controversial and Members had different views on them. While sharing of practices and models was useful in understanding the considerable experience and practice that had accumulated in the operation of the dispute settlement system, one must acknowledge that they should not replace the process of improving and clarifying the DSU. Improving and clarifying the DSU was an important task that India hoped Members would continue to pursue in the DSB Special Session in order to address issues of access, compliance and capacity. Members must be wary of repeating or transporting issues that had been discussed for a long time in the DSB Special Session into this process of sharing experiences where the same concerns would inevitably arise. Members may, based on their assessment and the context of a dispute, decide to engage with the shared practices. India looked forward to engaging positively in this information exchange exercise with the belief that this was not a norm setting or codification exercise, affecting the rights and obligations of Members under the DSU. India noted that a more non-formal process of exchange of practices would have perhaps achieved greater acceptance amongst Members.

9.26. The representative of Argentina said that his country thanked Canada for its efforts. Argentina was in the process of examining the practical and legal implications of these documents and would closely follow any further developments in this regard.

9.27. The DSB took note of the statements.

10 PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/572)

10.1. The Chairman drew attention to document WT/DSB/W/572, which contained one additional name proposed by the European Union (Denmark) for inclusion on the Indicative List of Governmental and Non-Governmental Panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the name contained in document WT/DSB/W/572.

10.2. The DSB so agreed.

11 APPELLATE BODY MATTERS

11.1. The Chairman recalled that, on 11 July 2016, he had circulated a fax regarding the Appellate Body matters. He then read out the following text for the record: "Members are aware that I have been consulting on current Appellate Body matters. Based on these consultations, it appears to me that Members are ready to pursue work on these matters based on the following understandings: First, beginning in September 2016, I will convene Dedicated Sessions for a focused discussion by Members on any issue that has been raised in respect of Appellate Body reappointments, including whether we wish to modify the rules governing reappointments. I wish to be clear that the purpose of these Dedicated Sessions is to discuss issues relating to reappointment only, with particular attention paid to assuring the independence and impartiality of the Appellate Body, and not to discuss any other issues including those raised in the DSU negotiations. I expect and encourage all Members to fully and actively engage in these Dedicated Sessions with a sense of urgency so as to reach an agreement on this matter at the earliest moment with a view to making recommendations to the DSB. Second, Members will adopt a decision in respect of the 2016 Appellate Body selection process at our next DSB meeting scheduled for 21 July 2016. That decision will contain five elements: (i) To launch a selection process to fill the vacancy left by the non-reappointment of one Appellate Body member; (ii) To invite Members to nominate candidates to fill that vacancy and to set a deadline of 14 September 2016 by 6 pm for Members' nominations; (iii) To agree that, should any of the candidates nominated for the 2016 process initiated by the DSB at its meeting on 25 January 2016 (WT/DSB/70) wish to participate in this selection process, the Member who nominated the candidate shall inform the Selection Committee of the candidate's intention to participate by the deadline stated in paragraph (ii), and that such candidate will not need to be interviewed by the Selection Committee for a second time; (iv) To agree that the 2016 Selection Committee should also carry out this new selection process; and (v) To request the Selection Committee to carry out its work, including conducting interviews of any new candidates and hearing the views of delegations on all candidates during the month of October in order to make recommendations to the DSB as soon as possible so that the DSB can take a decision to appoint the new Appellate Body member at the latest by its regular meeting in November 2016".

11.2. He said that all delegations were familiar with the approach being proposed in the fax, but he wished to clarify one point. The new selection process, concerning the non-reappointment of one Appellate Body member, was indeed separate from the selection process initiated in January 2016 to replace Ms. Zhang. He hoped that the Selection Committee would be in a position to make recommendations to fill both vacancies no later than November 2016. He trusted that this approach was now agreeable to all delegations.

11.3. The DSB so agreed.

11.4. The representative of Chinese Taipei said that Chinese Taipei wished to make a few comments on the new selection process adopted at the present meeting. Chinese Taipei understood that the current selection process for the vacant position left by Ms. Zhang was not yet completed. Therefore, allowing the current candidates to join the new selection process may create some uncertainty for the new process and the candidates themselves. Chinese Taipei urged

the Selection Committee to speed up the current process and make the recommendation as soon as possible. In the meantime, Chinese Taipei was concerned that putting the current unselected candidates into the new selection pool may undermine the credibility of the candidates and the Appellate Body. However, Chinese Taipei understood that it was a practical and efficient way to resolve the problem of vacancy.

11.5. The representative of Korea said that, over the past few months, his country had witnessed the Membership come around a common purpose like never before. Virtually the entire dispute settlement community, the overwhelming majority of Members, the academia, the press, sitting members of the Appellate Body, every former member of the Appellate Body, was united in delivering a clear message that ousting an Appellate Body member for allegedly suspect decisions made on the bench would shake the bedrock of the dispute settlement system. There was a palpable and shared sense of urgency that too much was at stake for Members to simply sweep this matter under the rug and carry on. More recently, Members had been facing growing pressure to take into account the short-term convenience of the Appellate Body. For the record, Korea firmly believed that maintaining focus on preserving the long-term integrity and independence of the institution was paramount. But Korea had decided not to ignore the utilitarian demands by some Members for the practical approach. At the present meeting, Korea would not object to the launching of a selection process to fill the vacancy left by the non-reappointment of Professor Chang. Korea believed that the WTO deserved, at a minimum, an earnest effort from its Members to mend and improve the reappointment process whose pitfalls had now been plainly laid bare. The recent approach must not be allowed to become the gold standard for how a Member settled its grievances with the Appellate Body. Korea's fear was that the dispute settlement system would not be able to withstand another political decision of this kind packaged in legal reasoning. If what had happened could not be undone, Korea hoped that Members would convert this unfortunate event into a rare but singular opportunity to foster positive change. It was in this spirit that Korea welcomed the Dedicated Sessions to discuss issues relating to reappointment. Korea urged all Members, including those that were the most frequent users of the system and thus its main beneficiaries, to participate in the discussions with a deep sense of ownership. Korea's decision not to object to the launching of the selection process reflected its trust that these Dedicated Sessions, which should begin in September, would produce constructive results, particularly given the wide support among the Membership to review the reappointment process. Korea took the opportunity to extend its profound gratitude to Members and individuals who had recognized the crucial significance of this moment in the development of the dispute settlement system, and had responded in kind by lending Korea their support and guidance.

11.6. The representative of the European Union said that the EU thanked the Chairman for his efforts in exploring the way forward following the non- reappointment of Professor Chang. The EU had supported the reappointment of Professor Chang and remained seriously concerned about his non-reappointment. The EU referred to its statements made at previous DSB meetings regarding this matter. That being said, in the EU's view, the Appellate Body should be fully operational as soon as possible. The EU, therefore, supported the launching of a new selection process under the terms stipulated in the Chairman's fax, which had been circulated on 11 July 2016. As the EU had explained at previous meetings, it was its view that the non-reappointment of Professor Chang also had systemic implications, and it was of utmost importance that a systemic solution be found. Therefore, the EU supported the Chairman's initiative to convene Dedicated Sessions on this matter. The EU agreed that it was useful to focus the discussions on issues relating to reappointment, with particular attention paid to assuring the independence and impartiality of the Appellate Body and its members. The EU called on all Members to participate constructively in those discussions.

11.7. The representative of Mexico said that his country thanked the Chairman for his statement. Mexico welcomed the fax circulated on 11 July 2016, which indicated that a Dedicated Session would be held in September to discuss the issue of reappointment of Appellate Body members, with a particular focus on the independence and impartiality of the Appellate Body. Without prejudice to possible solutions, Members had already expressed several ideas such as establishing rules for the renewal of terms of appointment or introducing a longer non-renewable term of office (WT/DSB/W/117). Mexico reaffirmed its commitment to working together under the Chairman's leadership, and hoped that all Members would engage in these efforts, and that an outcome would be reached this year in order to resolve the systemic issues in question.

11.8. The representative of the United States said that his country thanked the Chairman for his work in outlining a process for the DSB to move forward to fill two vacancies in the Appellate Body. The United States looked forward to a prompt conclusion of that process. The appointment process was critical to ensure that Appellate Body reports were focused and of high quality, thereby strengthening Members' confidence in the dispute settlement system. The United States also looked forward to engaging with all Members on how to reinforce the aim and proper adjudicative approach of the dispute settlement system.

11.9. The representative of Guatemala said that his country appreciated the Chairman's consultations and ongoing efforts regarding the issues that had been raised in respect of Appellate Body reappointments. Guatemala was ready to engage actively and constructively in the Dedicated Sessions of the DSB that the Chairman intended to convene to discuss Appellate Body matters. Guatemala noted that the Chairman had, in his fax of 11 July 2016, explicitly indicated that "the purpose of these Dedicated Sessions is to discuss issues relating to reappointment only, with particular attention paid to assuring the independence and impartiality of the Appellate Body, and not to discuss any other issues including those raised in the DSU negotiations". Guatemala agreed that Appellate Body matters should be discussed separately from other issues, including those raised in the DSU negotiations. There was a need for an urgent solution to a problem that put in jeopardy the well-functioning dispute settlement system. Therefore, Members could not afford to have a solution to Appellate Body matters until they reached an agreement in the context of the DSU negotiations. However, Guatemala understood that by making an explicit reference to the issue of "reappointments", the Chairman was not precluding Members from discussing issues related to reappointments, for example, the rules governing appointments, the Appellate Body composition or the length of the term to serve as an Appellate Body member. In Guatemala's view, Members should have, at the very least, the opportunity to discuss these issues openly without prejudging the final recommendation to be made to the DSB.

11.10. The representative of Singapore said that his country welcomed the dedicated sessions for a focused discussion by Members on the issue of Appellate Body reappointments and the new selection process to fill the vacancy of one Appellate Body member. Singapore was pleased that a path forward had been found through dialogue and discussions amongst Members. Singapore looked forward to engaging actively in the Dedicated Sessions on the issue of Appellate Body reappointments. Singapore also noted the new selection process and the time-lines set out in the decision. Time was of the essence as there were currently two vacancies in the Appellate Body and the workload of the Appellate Body was expected to increase significantly in the latter part of that year and the following year. Members should decide on the appointment of two Appellate Body members by the November 2016 DSB meeting so that the Appellate Body would have a full membership to tackle the upcoming appeals. Singapore thanked the Chairman for his efforts in finding a solution to this matter.

11.11. The representative of Brazil said that his country thanked the Chairman for his update and for both the selection process for the new vacancy at the Appellate Body and of the dedicated sessions on issues relating to reappointment. At the previous DSB meeting, Brazil had recalled that WTO Members were faced with two equally important issues: (i) the current situation of the Appellate Body with only five members; and (ii) a systemic preoccupation with the fundamental tenets that upheld the Appellate Body, namely its impartiality and independence. Brazil had also shared its conviction that Members would know how to resist the temptation to allow the negative systemic implications of the current events simply to fade away, by focusing only on the need to fill the vacancies left open in the Appellate Body. The Chairman's process managed, on paper at least, to convey a sense of balance and urgency with respect to both issues. It was in the interests of all Members to not only select the best possible candidates to the two vacancies; but to also engage in the Dedicated Session with focus and good faith. This would allow the selected candidates to discharge their functions in an environment that was free from interference and was respectful of their independence. These were sine qua non conditions for any institutional body that was tasked with preserving and clarifying Members' rights and obligations under the covered agreements. Brazil was certain that all Members agreed that the Appellate Body, to properly serve its purpose, must be 100% independent. It could not be one-third independent or two-thirds independent. An independent Appellate Body was clearly in the interest of all Members. Brazil found it unfortunate that the reappointment of one sitting Appellate Body member was blocked on grounds of how some disputes had been decided. This was contrary to the notion of independence. Brazil hoped that Members would know how to remedy this situation in the Dedicated Sessions, so as to restore the full integrity of the Appellate Body. Several ideas on how to tackle the root

causes of the recent developments concerning reappointment had already been suggested by several Members, such as having a single mandate or having specific rules, for reappointment. With regard to the scope of the work of the Appellate Body, Brazil believed that the DSU, in particular Articles 3 and 17 already set the limits of the dispute settlement mechanism. Brazil hoped that Members could start discussing these and other suggestions in September, so that they could reach an agreement and make a recommendation to the DSB at the earliest possible moment.

11.12. The representative of the Russian Federation said that his country strongly believed that the independence and impartiality of the Appellate Body members was a guarantee of the proper functioning of the dispute settlement system. Russia welcomed Dedicated Sessions as a way for Members to reach an agreement on the issues relating to Appellate Body reappointments. Russia believed that Members could use this momentum in a constructive manner to reach concrete results that would help in providing security and predictability to the multilateral trading system. Russia thanked the Chairman for providing information on further steps in the selection process. Russia would welcome greater transparency and consistency of the process in order to secure the effective participation of Members as well as the independence and impartiality of the candidates and their equal opportunity to compete. Russia emphasized that the task of addressing the issues relating to Appellate Body reappointments should in no way be viewed as less important for the entire Membership than the task of filling the Appellate Body vacancies.

11.13. The representative of China said that her country thanked the Chairman for his consultations on the Appellate Body matters, and welcomed the Chairman's fax circulated on 11 July 2016. China would actively engage in the focused discussion regarding reappointments of Appellate Body members in the context of the Dedicated Sessions of the DSB. China agreed with the decision adopted by the DSB at the present meeting in respect of the 2016 Appellate Body selection process. China hoped that both processes would proceed well and be successful in order to ensure the well-functioning of the Appellate Body and the WTO dispute settlement mechanism.

11.14. The representative of India said that his country welcomed the Chairman's announcement of Dedicated Sessions for a focused discussion by Members with respect to Appellate Body reappointments. That discussion was extremely critical in the context of the need to ensure the independence and impartiality of the Appellate Body. It was evident, and had to be recalled, that many Members had raised serious systemic concerns about the independence and impartiality of the Appellate Body being severely jeopardized due to the recent non-reappointment of Mr. Chang. Several suggestions had been made in the past to address this issue. There was need to focus on the issue at hand and address it directly. India looked forward to the entire Membership actively and constructively engaging in September with a sense of urgency so as to reach an agreement on this critical issue of systemic importance, not only for the dispute settlement system, but for the WTO as a whole, in order to ensure the independence and impartiality of the Appellate Body. As regards filling the vacancy, India urged the Selection Committee to undertake the task assigned and make recommendations to the DSB.

11.15. The representative of Chile said that her country welcomed the Chairman's proposal on Appellate Body matters. First, Chile believed that the proposed process was essential in order to fill the new vacancy in the Appellate Body, which was supported by Chile. This process should be implemented while keeping in mind the first selection process. Given the imperative need for action and the delays experienced in the system, both vacancies should be addressed with the same level of urgency. Second, as it had pointed out at the previous DSB meeting, Chile believed that holding a Dedicated Session on reappointments in the Appellate Body was an effective way of leading discussions on an issue which had generated diverse reactions among Members. Chile considered that it would be a useful and necessary exercise for finding consensus; while ensuring the proper conduct of the system and disputes. Chile hoped that Members could move forward in a pragmatic manner with regard to discussions on the Appellate Body matters.

11.16. The representative of Australia said that her country welcomed the forward work plan set out by the Chairman to address the current issues regarding appointments to the Appellate Body. In particular, Australia supported the proposal to commence a process for filling the vacancy left by the non-reappointment of one Appellate Body member. As Australia had stated previously, restoring the full complement of seven Appellate Body members was essential for the efficient and effective functioning of the Appellate Body. Filling each of the current vacancies must be one of the DSB's highest priorities. Australia remained committed to working with other Members to consider

issues raised in respect of Appellate Body reappointments and looked forward to engaging in the proposed process.

11.17. The representative of Norway said that her country thanked the Chairman for his efforts in addressing current Appellate Body matters. Norway fully supported the Chairman's suggestions for the way forward and looked forward to working with the Chairman and other Members to address the situation.

11.18. The representative of Oman said that his country thanked the Chairman for his efforts in this matter and welcomed his initiative to hold Dedicated Sessions on matters related to Appellate Body appointments in September. Oman stood ready to engage actively in that process.

11.19. The representative of Colombia said that her country noted the fax circulated on 11 July 2016 containing the Chairman's proposal for action regarding the Appellate Body matters. Like the previous speakers, Colombia was pleased that the Chairman had made reference to Dedicated Sessions that would be held to discuss the reappointment of Appellate Body members, with a particular focus to ensuring the independence and impartiality of the Appellate Body. Colombia trusted that the process led by the Chairman would allow for: (i) the resolution to the impasse created by the non-reappointment of one Appellate Body members; and (ii) the selection of two candidates to be appointed to the Appellate Body, which would ultimately benefit Members, as they would have a fully composed Appellate Body to address the dispute settlement workload. Colombia reiterated its intention to actively and constructively participate in this process in order to resolve the issues currently faced by the Appellate Body.

11.20. The representative of Japan said that his country thanked the Chairman for his efforts in putting forward the proposal. Japan expected the decision taken at the present meeting to facilitate the filling of the current vacancies of the Appellate Body by no later than November 2016, given the expected high workload of the Appellate Body. In addition, Japan looked forward to engaging with other Members in the Dedicated Sessions to discuss the reappointment issue, as proposed by the Chairman.

11.21. The representative of Turkey said that his country welcomed the Chairman's suggestion regarding the convening of Dedicated Sessions on the matter of reappointments of Appellate Body members in September. Turkey looked forward to participating in the discussions so as to find a permanent solution to ensuring the independence and impartiality of the Appellate Body.

11.22. The representative of New Zealand said that her country thanked the Chairman for his work and for putting forward a pathway to resolve the many important issues before Members in relation to the current vacancies. New Zealand supported the process put forward in the Chairman's fax and would engage accordingly. New Zealand hoped that Members would be pragmatic and allow both vacancies to be resolved as soon as possible to ensure that the Appellate Body had the necessary resources to carry out its work.

11.23. The DSB took note of the statements.

12 DISPUTE SETTLEMENT WORKLOAD

A. Statement by the Chairman

12.1. The Chairman, speaking under "Other Business", said that he wished to provide information about the Appellate Body's workload, the number of disputes before panels, in the panel queue, and at the panel composition stage, and the ability of the Secretariat to meet expected demand over the coming period. On appeals, the Appellate Body was currently dealing with three appeals.[2] In addition, four panel reports were expected to be circulated in the next three months that may also be appealed[3], including the report of the Panel in the extremely complex compliance proceedings in the "EC and certain member States – Large Civil Aircraft" (Airbus) dispute. Given the limited number of staff available in the Appellate Body Secretariat, there was soon likely to be

[2]"India – Solar Cells" (DS456); "US – Washing Machines" (DS464); and "EU – Biodiesel" (DS473).

[3]"EC and certain member States – Large Civil Aircraft" (DS316); "Russia – Pigs" (DS475); "Russia – Tariff Treatment" (DS485); and "US – Anti-dumping Methodologies" (China, DS471).

a waiting period before appeals could be staffed and Appellate Body Members could turn to dealing with them. On panels/arbitrations, currently, there were 19 active panels (including three panels under Article 21.5 of the DSU) that had not yet issued a final report to the parties. He noted that he was counting multiple disputes that were being considered simultaneously by the same panel as one. As of the present day, there were two composed panels awaiting staff to assist them[4], which were composed after 31 October 2015 when the Director-General had undertaken to staff all panels in the queue at that time. As of the present day, there were eight panels at the composition stage. In addition, two matters had been referred to arbitration under Article 22.6 of the DSU.

12.2. The DSB took note of the statement.

[4] "EU – Biodiesel" (Indonesia, DS480); "China – Broiler Products" (Article 21.5 – United States, DS427).