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Dispute Settlement Body
21 March 2017

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 21 MARCH 2017

Chairman: Mr. Xavier Carim (South Africa)

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1.1. The Chairman noted that there were three 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". The Chairman invited delegations to provide up-to-date information about compliance efforts and to focus on new developments, suggestions and ideas on progress towards the resolution of disputes. He also reminded delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record". He then 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.170)

1.2. The Chairman drew attention to document WT/DS184/15/Add.170, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.3. The representative of the United States said that the United States had provided a status report in this dispute on 9 March 2017, 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. Japan called on the United States to fully implement the DSB's recommendations and rulings so as to resolve this matter.

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

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.145)

1.6. The Chairman drew attention to document WT/DS160/24/Add.145, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.7. The representative of the United States said that the United States had provided a status report in this dispute on 9 March 2017, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the EU, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

1.8. The representative of the European Union said that his delegation thanked the United States for its status report and its statement made at the present meeting. The EU referred to its previous statements on this matter and said that it would like to resolve this case 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.108)

1.10. The Chairman drew attention to document WT/DS291/37/Add.108, 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 the draft authorisation decision for one type of genetically modified maize[1] (for food and feed uses), and the draft proposals for the authorisation of three types of maize[2] (for cultivation), had been submitted for vote at the member States committee on 27 January 2017, with a "no opinion" result. These measures would now be submitted for discussion and possible opinion to the Appeal Committee on 27 March 2017. The draft authorisation decision for one type of genetically modified maize[3] (for food and feed uses) and one type of genetically modified cotton[4] (for food and feed uses) would be submitted for a vote at the member States committee on 27 March 2017. The EU said that it continued to be committed to acting in line with its WTO obligations. More generally, and as it had stated previously on many occasions, 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 the United States thanked the EU for its status report and its statement at the present meeting. The EU measures affecting the approval and marketing of biotech products continued to result in lengthy, unpredictable, and unexplained delays in approvals. The delays and uncertainty in approvals caused adverse effects on trade. The failure to approve biotech corn products was a source of particular concern to the United States. The EU's scientific review process was subject to increasingly long delays. Many corn and soybean products had now been under consideration by the EU's scientific authority for many years. For example, in 2016, the EU had released seven scientific opinions for new products. The average period of review for these products was more than six years. Furthermore, the EU had recently proposed regulations that would create more, rather than less, uncertainty with regard to the information required for scientific evaluation of biotech products. The United States also strongly encouraged the EU to ensure that it required only the scientific information relevant to the type of risk assessment being conducted. For example, scientific information on environmental effects should only be required where applicants sought authorization to conduct field trials or to cultivate biotech products. In closing, the United States encouraged the EU to ensure that, as required by EU regulations and WTO rules, products in the biotech approval pipeline were considered without unnecessary delays.

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

[1] Maize Bt11 × 59122 × MIR604 × 1507 × GA21.
[2] Bt11, 1507 and MON810 (renewal).
[3] DAS 40278-9.
[4] GHB 119.

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

A. Statement by the European Union

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

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

2.3. The representative of Brazil said that his country thanked the EU for keeping this item on the DSB Agenda. As a party to the Byrd Amendment disputes, Brazil referred to its previous statements on this matter. In particular, Brazil wished to refer to its statements regarding the continuation of illegal disbursements, which should cease immediately. Brazil renewed its call on the United States to fully comply with the DSB's recommendations and rulings in this dispute. Until then, the United States was under an obligation to submit status reports, pursuant to Article 21.6 of the DSU.

2.4. The representative of Canada said that his country thanked the EU for placing this item on the DSB Agenda. Canada shared the view that the Byrd Amendment should be kept under the surveillance of the DSB until the measure ceased to be applied.

2.5. The representative of China said that her country thanked the EU for placing this item on the Agenda of the present meeting. China urged the United States to fully implement the DSB's recommendations and rulings on this matter as soon as possible.

2.6. The representative of the United States said that, as the United States had noted at previous DSB meetings, the Deficit Reduction Act – which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 – had been enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that the EU had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, over nine years ago. With respect to the EU's request for status reports in this matter, as the United States had already explained at previous DSB meetings, there was no obligation under the DSU to provide further status reports once a Member announced that it had implemented the DSB's recommendations and rulings, regardless of whether the complaining party disagreed about compliance. The EU had demonstrated repeatedly that it shared this understanding, at least when it was the responding party in a dispute. At the 20 February 2017 DSB meeting, the United States had pointed out that the EU was not providing status reports in the "EC – Large Civil Aircraft" (DS316) dispute, despite the fact that the United States did not agree that the EU had implemented the DSB's recommendations. Nor had the EU provided such a status report for the present meeting. Once again, if the EU actually believed the position it was taking under this Agenda item, it could demonstrate this by submitting a status report in DS316 for the next month's DSB meeting.

2.7. The representative of the European Union said that, in relation to the comment made by the United States concerning the "EC – Large Civil Aircraft" (DS316) dispute, his delegation noted that DS316 was currently under compliance proceedings before the Panel and that an appeal had been submitted. This was not the case with the Byrd Amendment that was being discussed under the present Agenda item.

2.8. The DSB took note of the statements.

3 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. Statement by the United States

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

3.2. The representative of the United States said that the DSB had adopted its recommendations in this dispute in August 2012, and the reasonable period of time had long since expired. China, however, continued to authorize only one entity to provide electronic payment services (EPS) in China. That one entity was China's pre-existing, long-time state champion EPS supplier, known as China UnionPay. The entity had been formed by a consortium of Chinese government policy banks and Chinese state-owned banks. The United States urged China to ensure that foreign EPS suppliers could apply for and receive permission to operate in China, in accordance with China's WTO obligations.

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

3.4. The DSB took note of the statements.

4 UNITED STATES – CERTAIN MEASURES RELATING TO THE RENEWABLE ENERGY SECTOR

A. Request for the establishment of a panel by India (WT/DS510/2)

4.1. The Chairman recalled that the DSB had considered this matter at its meeting on 20 February 2017 and had agreed to revert to it. He drew attention to the communication from India contained in document WT/DS510/2, and invited the representative of India to speak.

4.2. The representative of India said that the present request for the establishment of a panel had been first considered by the DSB at its meeting on 20 February 2017. The request for the establishment of a panel was contained in WT/DS510/2. At that meeting, the United States had stated that India had chosen to launch this dispute for purely political reasons. India said that it was disappointed that its valid concerns regarding the domestic content requirements in certain renewable energy programmes maintained by the United States were being presented as political retaliation to the findings of the DSB in the DS456 dispute. India denied these assertions and reiterated that the request for establishment of a panel was driven by the sole desire to ensure that measures maintained by Members did not negate the desired objectives and expected benefits to other Members under the WTO. In fact, India had been raising its concerns about the domestic content requirements in some of the renewable energy programmes maintained by the United States before the TRIMs Committee and the SCM Committee since 2013, long before the US had requested the establishment of the panel in DS456. Though these programmes were WTO-inconsistent, India had refrained from filing a dispute challenging these programmes and had, in good faith, sought to seek information from the US through these Committees. Since the efforts through the Committees had not yielded satisfactory responses, India had requested consultations with the United States on 9 September 2016 to resolve the matter. Consultations had been held on 16-17 November 2016 but, unfortunately, had failed to resolve the matter. As a result, India had requested the DSB to establish a panel in accordance with the DSU provisions. He recalled that at the 20 February 2017 DSB meeting, the United States had also stated that India had no commercial interest in the dispute. These assertions were patently incorrect. India had, in the past, exported renewable energy equipment to the United States. Subsequently the exports had been rendered commercially unviable due to reasons which included the trade distortionary effects of the measures maintained by the United States. India reiterated that each of the programmes referred in the panel request offered subsidies which were contingent on domestic content requirements and were inconsistent with United States' obligations under the SCM Agreement of the GATT 1994 as well as the TRIMs Agreement. Hence, India requested that the DSB establish a panel, in accordance with Article 6 of the DSU, to examine India's complaint in

the DS510 dispute and make appropriate findings in order to resolve this dispute as soon as possible.

4.3. The representative of the United States said that, as the United States had explained at the 20 February 2017 DSB meeting, it appeared that India had launched this dispute for purely political reasons. Indian government officials had been quoted in the press as characterizing this dispute as a response to the successful challenge of the United States to India's domestic content requirements in the solar energy sector. But under Article 3.10 of the DSU, complaints and counter-complaints "should not be linked". Furthermore, India did not export significant amounts of renewable energy equipment to the United States, and the state-level programs identified in India's request appeared to have virtually no effect on commerce at all. Accordingly, the United States did not consider that India's complaint was warranted and questioned whether the establishment of a panel was an appropriate use of the dispute settlement system's resources. If India nonetheless determined to pursue this matter further, the United States would vigorously defend US measures before the panel.

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

4.5. The representatives of Brazil, China, Chinese Taipei, the European Union, Indonesia, Japan, Korea, Norway, the Russian Federation, Singapore and Turkey reserved their third-party rights to participate in the Panel's proceedings.

5 RUSSIA – MEASURES CONCERNING TRAFFIC IN TRANSIT

A. Request for the establishment of a panel by Ukraine (WT/DS512/3)

5.1. The Chairman recalled that the DSB had considered this matter at its meeting on 20 February 2017 and had agreed to revert to it. He drew attention to the communication from Ukraine contained in document WT/DS512/3, and invited the representative of Ukraine to speak.

5.2. The representative of Ukraine reiterated her country's concerns over the measures imposed by the Russian Federation that prohibited or otherwise restricted traffic in transit from Ukraine, through Russia, to third countries. As had been discussed at the 20 February 2017 DSB meeting, and explained in detail in Ukraine's panel request (WT/DS512/3), since 1 January 2016, Russia had been prohibiting traffic in transit from Ukraine, through Russia, to Kazakhstan. Since 1 July 2016 the same applied to traffic in transit from Ukraine to the Kyrgyz Republic. Such traffic in transit could only originate from Belarus. Traffic in transit also had to comply with the requirement of affixing identification seals, functioning on the basis of the GLONASS technology, to units of road and rail transport. Furthermore, all road transport drivers transporting goods from Ukraine had to obtain registration certificates when entering Russia. In July 2016, Russia had also imposed separate bans on the traffic in transit of specific types of goods from Ukraine, through Russia, to Kazakhstan and to the Kyrgyz Republic. In fact, those measures also appeared to have been applied to traffic in transit destined for other countries in Central and Eastern Asia and the Caucasus. In 2014, prior to the introduction of the 2016 measures prohibiting or otherwise restricting traffic in transit from Ukraine through Russia, her country had prohibited the traffic in transit of certain goods through its territory. These measures had had very detrimental economic consequences for Ukraine. They were also inconsistent with several provisions of the GATT 1994 and the Protocol on the Accession of the Russian Federation to the WTO. Since Ukraine had submitted its request for the establishment of a panel on 20 February 2017, the Russian measures on traffic in transit remained in force and continued to violate several provisions of the WTO covered agreements. Therefore, Ukraine requested that the DSB establish a panel, with standard terms of reference, to examine its complaint in the DS512 dispute.

5.3. The representative of the Russian Federation reiterated his country's disappointment with Ukraine's decision to request the establishment of a panel, for the second time, to examine Ukraine's complaint in the DS512 dispute. As had been stated at the 20 February 2017 DSB meeting, Russia affirmed its continuing respect for WTO rules and its accession commitments. Russia expressed its disappointment that Ukraine had failed to assess whether referral of this dispute to the DSB would be fruitful. However, in any event, Russia stood ready to defend its rights under the covered agreements.

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

5.5. The representatives of Brazil, Canada, China, the European Union, India, Japan, Korea, Norway, Paraguay, Singapore, Turkey and the United States reserved their third-party rights to participate in the Panel's proceedings.

6 EUROPEAN UNION – MEASURES RELATED TO PRICE COMPARISON METHODOLOGIES

A. Request for the establishment of a panel by China (WT/DS516/9)

6.1. The Chairman drew attention to the communication from China contained in document WT/DS516/9, and invited the representative of China to speak.

6.2. The representative of China said her country had requested consultations with the EU in this dispute on 12 December 2016. These consultations had been held on 23 January 2017. Although they had assisted in clarifying some of the issues between the parties, they had failed to resolve the dispute. China said that it attached great importance to resolving this dispute promptly. China therefore requested the DSB to establish a panel at the present meeting. She recalled that upon its accession to the WTO in 2001, China had agreed with other WTO Members that, for a transitional period of 15 years, special China-specific treaty provisions would apply to the determination of certain elements of "price comparability" in anti-dumping proceedings involving Chinese imports. China and other WTO Members, including the EU, had thus agreed on a time-bound and temporary basis that special rules could apply in proceedings involving Chinese imports. The legal provision that provided for special treatment of Chinese imports was found in paragraph 15(a) of China's Accession Protocol. Under paragraph 15(a)(ii), importing WTO Members were, subject to conditions, exceptionally permitted to depart from generally applicable WTO rules. For 15 years, therefore, WTO Members could accord differential treatment to Chinese imports when determining normal value in anti-dumping proceedings.

6.3. The EU had made use of these provisions and, indeed, had denied China advantages that had been accorded to other WTO Members. The discrimination was embodied in Articles 2(1) to 2(7) of the EU Basic Anti-Dumping Regulation ("the Basic Regulation"). Articles 2(1) to 2(6) of the Basic Regulation set out rules, in EU law, for determining normal value in anti-dumping proceedings. Article 2(7) of the Basic Regulation set out a different regime that applied to the calculation of normal value for imports from, so-called, "non-market economy" countries. Article 2(7)(b), which expressly named China, provided that the rules set forth in Articles 2(1) to 2(6), for calculating normal value for a specific producer, could only apply if that producer was able to substantiate that, so-called, "market economy" conditions prevailed in respect of the manufacture and sale, by that producer, of the like product concerned. To do so, the producer had to establish that it met the criteria set out in Article 2(7)(c). Article 2(7)(b) provided that, for all producers unable to make this showing, the normal value calculation rules set forth in Article 2(7)(a) would apply. Under Article 2(7)(a), normal value had to be determined on the basis of prices or constructed value in a surrogate "market-economy" third country. Therefore, Chinese imports had been denied the advantage of the rules set forth in Articles 2(1) to 2(6) regarding the determination of normal value, and instead faced the less favourable rules set forth in Article 2(7), unless Chinese producers demonstrated that "market economy" conditions prevailed.

6.4. While the EU was permitted to derogate from the generally applicable rules for the determination of normal value in cases involving imports from China for the first 15 years of China's WTO membership, that transitional period had come to an end on 11 December 2016 when the relevant provision of China's Accession Protocol had expired. This meant that, consistent with the shared understanding of WTO Members, as of 11 December 2016, the generally applicable WTO rules governing the determination of all elements of price comparability now applied to imports from China. Chinese exporters therefore could not now be subjected to discriminatory treatment in the calculation of normal values. Chinese exporters, who had suffered great harm as a result of the discriminatory treatment, were entitled to enjoy the same treatment as exporters from other WTO Members. Despite the deal agreed between China and WTO Members in 2001, the EU continued, through Articles 2(1) to 2(7) of the Basic Regulation, to deny China the same treatment that it afforded other WTO Members under the WTO covered agreements. China was concerned that, as it had explained in document WT/DS516/9, the measures at issue were

inconsistent with the relevant provisions of the GATT 1994 and the Anti-Dumping Agreement. China was disappointed that it had to have recourse to the dispute settlement mechanism in order for the EU to remedy the WTO-inconsistency of its measures. Regrettably, however, China said that it saw little choice but to request that this matter be referred to a panel.

6.5. The representative of the European Union said his delegation regretted that China had decided to request the establishment of a panel. After China had filed its request for consultations, both parties had held constructive consultations in which the EU had provided extensive explanations. As the EU had previously explained to China, the EU very much regretted that China had chosen to bring panel proceedings with respect to a measure (Article 2(7) of Regulation (EU) 2016/1036, as it related to China) that was currently the subject of a legislative process which could result in its withdrawal. The EU considered that such action was unnecessary and ultimately incapable of being fruitful within the meaning of Article 3.7 of the DSU. As such, the EU considered that it was an inappropriate use of the already strained resources of the WTO dispute settlement system. The EU particularly regretted that, notwithstanding the clarifications provided by the EU, China persisted in attacking the ongoing internal legislative processes of the EU. However, neither the EU, nor China, or the DSB, or any WTO adjudicator, was in a position to predict what the specific outcome of those democratic processes could be. China's request was, in this respect, premature and incapable, as a matter of principle, of being fruitful. That being so, the EU could only conclude that China's objective was, in fact, to attempt to interfere in the internal legislative processes of the EU. This should be a matter of grave concern to all Members.

6.6. Similarly, the EU noted China's thinly veiled and self-serving attempt to create and maintain an unlawful short-cut between the current dispute as it related to Article 2(7) of Regulation (EU) 2016/1036, and an unknown outcome of the EU's internal legislative processes. The EU had already explained to China why this was inconsistent with various provisions of the DSU, and would constitute a serious breach of the EU's due process rights. As and when the EU completes its internal legislative processes, should China wish to seek WTO review of the resulting measure, China would be obliged to follow and fully respect the specific procedures set out in the DSU for that purpose. That was the very essence of due process. It was not amenable to shortcuts. In this respect, upon receipt of the consultations request, at the earliest possible opportunity, the EU had immediately informed China, in writing, of its position with respect to this matter. Specifically, the EU had drawn China's attention to the fact that no consultations could be held with regard to currently inexistent future possible measures of indeterminate and substantively different content. China, which in this context, was under an obligation to accord sympathetic consideration to any representations made by the EU, raised no objection to the clarifications provided by the EU nor to the EU's specific and express delimitation of the scope of the consultations. It was on the basis of this consensus *ad idem*, and this basis only, that the parties had agreed to proceed to consultations. China had to accept the consequences of its own actions and omissions. Accordingly, the EU called upon China, again, to respect both the letter and the spirit of the DSU, and to withdraw this panel request, or at least to take appropriate steps to eliminate the procedural defects in its consultations request and its panel request. The EU, therefore, did not support the establishment of a panel at the present meeting. In any event, should a panel be established in this dispute, the EU would defend its legislation vigorously.

6.7. The representative of the United States said that the United States was intervening to express its support for the right of the EU and other WTO Members to use a non-market economy methodology in anti-dumping proceedings involving China. WTO Members had long recognized that government intervention in a country's home market could be so significant that prices and costs were distorted and unsuitable for purposes of calculating an anti-dumping margin. Among other places, this recognition was reflected in the second Supplementary Provision to paragraph 1 of the GATT 1994 Article VI, in GATT working party reports for several Contracting Parties that joined the GATT in the 1960s and 1970s, and in WTO Accession Protocols. As Members knew, it was also reflected in China's Accession Protocol. When China joined the WTO, Members had agreed that Chinese prices and costs could be rejected and that a non-market methodology could be used, as long as the facts showed that China remains a non-market economy. China's argument that the EU had to cease using a non-market economy methodology regardless of the facts had no legal merit. China's argument failed to take account of the remaining provisions of China's Protocol. China's argument was also divorced from reality. As many Members were aware, China's government continued to intervene heavily in its economy, resulting in serious distortions to the international trading system. To cite just one example, China's intervention in the steel sector had

significantly distorted prices and led to severe overproduction and excess capacity, with the resulting surplus dumped all over the world.

6.8. China appeared to believe that it could use the WTO dispute settlement system to take away the tools that other Members had under WTO rules to address China's distortions. This was wrong. WTO rules permitted Members to use a non-market economy methodology for purposes of addressing China's distorted prices and costs. The WTO dispute settlement system could not change the rights of WTO Members. The United States and many other Members affected by China's distortions used their own, different measures to treat China as a non-market economy, as they were entitled to under existing WTO rules. If China wished to discuss those rules, it could engage with other Members and explain how it would eliminate the distortions its government policies were causing. If China did not address those distortions that were causing harm to so many Members' industries and workers, however, there was no basis to insist that Members could not use appropriate WTO tools to address China's injurious dumping practices. The United States said that in its statement at the present meeting, it also wished to comment on China's attempt to bring an EU draft measure into the dispute. By their very nature, draft measures were subject to change, and it was not the appropriate role of WTO panels or the Appellate Body to offer speculative findings on such draft measures.

6.9. In closing, the United States suggested that there was no reason for China to move forward with a dispute with the EU, the United States, or any other Member. If China truly believed that it was a market economy, it should take advantage of Members' respective laws, which permitted China to show that it was a market economy or that an industry was market-oriented, based on the facts. On the other hand, if China did not believe that it had become a market economy, then it should finally follow through with the reforms it had promised WTO Members when it had joined the WTO.

6.10. The representative of Japan said that his country took note of the statements made by China, the EU and the United States. Japan was generally supportive of the EU's and United States' respective positions on the interpretive issues raised by China in this dispute and shared their concerns with respect to China's interpretations of the various provisions at issue in the WTO Agreement, including China's Accession Protocol. In particular, Japan was of the view that the WTO Agreement, including China's Accession Protocol, continued to allow WTO Members to use a methodology that was not based on a strict comparison with domestic prices or costs in China.

6.11. The representative of China said that paragraph 12 of China's request for the establishment of a panel (WT/DS516/9) stipulated as follows: "This request for panel establishment also concerns any modification, replacement or amendment to the measures identified above, and any closely connected, subsequent measures". The footnote to this paragraph (i.e. footnote 2) further clarified that "China is aware of two legislative processes implicating potential changes to relevant provisions of the Basic Regulation. This request includes any changes made to the Basic Regulation pursuant to the legislative processes initiated by these proposals".

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

7 INDIA – CERTAIN MEASURES ON IMPORTS OF IRON AND STEEL PRODUCTS

A. Request for the establishment of a panel by Japan (WT/DS518/5)

7.1. The Chairman drew attention to the communication from Japan contained in document WT/DS518/5 and invited the representative of Japan to speak.

7.2. The representative of Japan said that this dispute concerned India's WTO-inconsistent safeguard measures, in the form of duties, on imports of iron and steel products into India. India had initiated its safeguard investigations on 7 September 2015 and had imposed a provisional measure on 14 September 2015. Since then, India had been maintaining the safeguard measures, initially on a provisional basis, and then, from 29 March 2016 onwards, on a definitive basis. The measures had significantly compromised the commercial interests of the Japanese exporters and producers of the products that had been subject to the safeguard measures in question. In order to address the concerns of these exporters and producers, and to resolve the matter amicably,

Japan had been engaged in constant dialogue with India, beginning immediately after the measures had been announced. Japan had made a sincere effort in this regard ever since, in the hope that India would repeal the WTO-inconsistent safeguard measures. Unfortunately, the measures were still in place. It was only after this extensive effort that Japan had decided to have recourse to the formal dispute settlement process under the DSU.

7.3. Japan said that, as it had explained in detail in its panel request, it considered India's safeguard measures to be inconsistent with India's obligations under the GATT 1994 and the Agreement on Safeguards. Japan said that India had failed to provide reasoned and adequate findings and conclusions in its determination as to the unforeseen developments as well as the effect of the obligations incurred by India under the GATT 1994. India had also failed to provide reasoned and adequate findings and conclusions in its determination with respect to: (i) the alleged increased imports of the products concerned; (ii) the alleged existence of a serious injury and threat thereof to the domestic industry; and (iii) the alleged causal link between the alleged increase in imports and the alleged serious injury or threat thereof. Furthermore, India had failed to observe several notification and consultation requirements under Article 12 of the Agreement on Safeguards. Japan had requested consultations on 20 December 2016 and had held consultations with India on 6 and 7 February 2017 with a view to reaching a mutually satisfactory solution. Unfortunately, Japan and India had been unable to settle the dispute.

7.4. Japan therefore requested, pursuant to Article 6 of the DSU, Article XXIII of the GATT 1994 and Article 14 of the Agreement on Safeguards, that a panel be established to examine the matter as set out in its panel request, with standard terms of reference, in accordance with Article 7.1 of the DSU. Before concluding, Japan highlighted that the safeguard measures in question would expire on 13 March 2018. This meant that there would be less than a year between the establishment of the panel and the expiration of the measure. As it had explained, since the announcement of these safeguard measures, Japan had wasted no time in engaging in discussions with India to bilaterally resolve this matter. The timing of Japan's panel request reflected Japan's serious and persistent effort to reach a solution mutually acceptable to both Japan and India, as was preferred under Article 3.7 of the DSU. Given this historical background, Japan hoped that the panel would examine its complaint in DS518 as a matter of urgency and would endeavour to issue its report as early as possible, with a view to securing a prompt and satisfactory resolution of this dispute.

7.5. The representative of India said that his country was deeply disappointed that Japan had sought the establishment of a panel in this matter despite the fact that India had held constructive consultations with Japan on 6 and 7 February 2017. In the context of those consultations India had replied to Japan's questionnaire and had provided the required information to Japan. India had also demonstrated during the consultations how the safeguard measures in question were consistent with India's obligations under the Safeguards Agreement. During the consultation process, India had diligently explained the legal framework as well as the exceptional circumstances which necessitated the safeguard measures. Moreover, the duration of India's safeguard measures was shorter than the time-period provided for under the Safeguards Agreement. This was in line with the intention of safeguard measures, which required that the measures should be applied for a period that was necessary to prevent or remedy serious injury and to facilitate the adjustment of the domestic industry. Though the WTO Safeguard Agreement set out broad guidelines, a number of issues had to be decided by the investigating authority based on the facts and circumstances of the case. With the passage of time, international trading operations were becoming more complex. This made it more difficult for investigating authorities to follow a fixed pattern in each case. As a result, differences in views existed between the investigating country and the country of export on the correct application of provisions of the Safeguard Agreement in specific cases. This was despite best efforts made to articulate the facts made available and the accompanied reasoning thereof. India considered that such issues could be better clarified and resolved on a bilateral basis, rather than overloading the WTO dispute settlement mechanism at this stage. Thus before filing its panel request at the present meeting, Japan could have considered these facts. India believed that its actions were consistent with the provisions of the relevant WTO Agreements. For all these reasons, India said that it was not in a position to agree to Japan's request for the establishment of a panel in DS518 at the present meeting.

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

8 RUSSIAN FEDERATION – MEASURES ON THE IMPORTATION OF LIVE PIGS, PORK AND OTHER PIG PRODUCTS FROM THE EUROPEAN UNION

A. Report of the Appellate Body (WT/DS475/AB/R and WT/DS475/AB/R/Add.1) and Report of the Panel (WT/DS475/R and WT/DS475/R/Add.1)

8.1. The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS475/12 transmitting the Appellate Body Report in the dispute: "Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union", which had been circulated on 23 February 2017 in document WT/DS475/AB/R and Add.1. The Chairman reminded delegations that the Appellate Body Report and the Panel Report pertaining to this dispute had been circulated as unrestricted documents. As Members were aware, Article 17.14 of the DSU required that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report".

8.2. The representative of the European Union said that his delegation welcomed the adoption of the Panel Report and the Appellate Body Report in this dispute. This dispute had hopefully put an end to Russia's WTO-inconsistent bans on live pigs, pork and certain pig products from the EU, due to the 2014 outbreak of African swine fever in four EU member States neighbouring Russia. The EU wished to recall certain aspects of this dispute given that Russia's SPS-inconsistent bans affected trade worth EUR 1.4 billion or 24% of the EU's total pork exports in 2013. Russia had been the biggest export destination for pork from the EU until 2013, before Russia had decided to block those imports. For the EU, this significant trade was a sign of the trust that had been built up between the EU and the Russian veterinary services over the years. Despite the years of trust that Russia's competent services had placed in the EU's control and surveillance systems, Russia had blocked trade not only from the affected EU member States near Russia, from where the disease had spread into the EU, either directly or via Belarus, but from the entire EU. This included places thousands of kilometres away from the outbreaks and regions that were historically free from the disease.

8.3. The EU noted that the Russian bans were not temporary, to be lifted once the technical experts had studied and verified all information that had been submitted by the EU in real time. These bans had been imposed permanently. They were still in place more than three years after their imposition – with no case of African swine fever having occurred in any other member State than the four affected member States. From Russia's press statements, it appeared that the bans were useful in the framework of Russia's overall policy of substituting imports for its own production. The Panel had found that the EU-wide ban neither conformed to, nor was based on, international standards and that Russia had not carried out a risk assessment. The Panel had also found that the EU-wide ban was more trade restrictive than necessary to protect animal health. Moreover, although the EU had objectively demonstrated to Russia that there were areas within the EU that were disease-free and were likely to remain disease-free, Russia had not adapted its SPS measures to the regional conditions in the EU and in Russia. The Appellate Body had confirmed this and was not distracted by Russia's attempt to forward some formal reasoning that, because the EU-Russia export certificate had not been endorsed in Russian legislation, the ban could not be attributed to Russia. In relation to the bans on the four affected member States, the Panel had found the same violations except in relation to non-treated products from Latvia where the EU had not submitted all necessary information on time to Russia by the date defined by the Panel as the cut-off date for the assessment of the case. This had been remedied in the meantime so that Russia was also in a position to make its assessment in relation to non-treated products from Latvia. The Appellate Body had also provided some helpful clarifications to the interpretations of Article 6.2 of the SPS Agreement by pointing out that a merely "abstract" recognition of the concept of regionalisation in the domestic legal framework was not sufficient as such to claim consistency with the obligation in Article 6.2 of the SPS Agreement in all cases. In light of those facts, the EU urged Russia to immediately bring itself into compliance and to allow trade of safe EU products to take place without further delay. The EU would not accept any attempt to unduly delay the implementation.

8.4. The representative of the Russian Federation said that her country wished to thank the Panel, the Appellate Body, and the Secretariat staff assisting them for their hard work in this dispute. The

Reports covered numerous issues under the SPS Agreement, some of which had not been clarified. This was the first dispute involving an active outbreak of a highly contagious disease that had continued to evolve rapidly in the course of the dispute. The unique features of this dispute had led to some important findings in relation to Article 6 of the SPS Agreement. In particular, the Appellate Body had clarified the balance between the rights and obligations of importing and exporting Members under Article 6 of the SPS Agreement, which was of systematic importance to all Members. Specifically, the Appellate Body had agreed with the Russian Federation that the importing Member – and not the Panel – had to ultimately assess the evidence provided by the exporting Member and make a determination as to whether there existed pest- or disease-free areas. The Appellate Body had clarified that this determination had to be made pursuant to the second sentence of Article 6.2 of the SPS Agreement – and not Article 6.3 of the SPS Agreement. It had also agreed with the Russian Federation that this assessment required a "reasonable period of time" which was, contrary to the EU's arguments, not contingent on meeting the conditions under Article 5.7 of the SPS Agreement. In addition, the Appellate Body had agreed with the Russian Federation's argument that whether an exporting Member had provided sufficient evidence must be determined in light of the importing Member's appropriate level of protection (ALOP).

8.5. Moreover, the Appellate Body had agreed with the Russian Federation that findings that an exporting Member, under Article 6.3 of the SPS Agreement, had failed to provide the necessary evidence must have an impact on a Member's obligation under Article 6.1 of the SPS Agreement. The Russian Federation noted that the Appellate Body had also helpfully clarified the relationship between a risk assessment under Article 5.1 of the SPS Agreement and the risk assessment under Article 6 of the SPS Agreement. Contrary to the EU's arguments, the Appellate Body had found that while the assessment of the existence of, or likelihood of, disease-free areas in zones, regions, countries or compartments could be conducted as part of an Article 5.1 risk assessment, it had clarified that it did not have to be part of an Article 5.1 risk assessment. Despite important clarifications to the jurisprudence under Article 6 of the SPS Agreement, the Russian Federation was concerned that the Appellate Body's interpretation of Article 6.3 appeared to have reduced its scope to a means of collecting information from exporting Members without any additional substantive implications. The Russian Federation said that it continued to believe that such an interpretation was contrary to the ordinary meaning of Article 6.3 of the SPS Agreement. Finally, the Russian Federation said that it regretted that the Appellate Body had not given the appropriate meaning and deference to its Accession Protocol vis-à-vis its obligations under the covered agreements. Paragraph 893 of the Russian Federation's Accession Protocol established the validity of the EU-Russia bilateral veterinary certificates. In Russia's view, the Appellate Body had not struck a balance between the rights and obligations set out in a Member's Accession Protocol and the rights and obligations set out in the covered agreements. This lack of balance resulting from the respective conclusions of the Appellate Body and of the Panel gave priority to Members' obligations under the covered agreements over commitments in Members' Accession Protocols. Russia said that it was carefully evaluating the Reports of the Panel and of the Appellate Body. While adhering to its policy goals on prevention of the spread of this highly contagious disease, Russia was committed to acting consistently with the findings of the Panel and of the Appellate Body.

8.6. The DSB took note of the statements and adopted the Appellate Body Report contained in document WT/DS475/AB/R and Add.1 and the Panel Report contained in document WT/DS475/R and Add.1, as modified by the Appellate Body Report.

9 APPELLATE BODY APPOINTMENTS

A. Statement by the Chairman

9.1. The Chairman recalled that the second four-year term of Mr. Ricardo Ramírez Hernández would expire on 30 June 2017, and the second four-year term of Mr. Peter Van den Bossche would expire on 11 December 2017. Pursuant to Article 17.2 of the DSU they were not eligible for reappointment and the DSB would have to decide on the appointments of two new Appellate Body members to replace the incumbents. At the 25 January 2017 DSB meeting, the Chairman had outlined two possible approaches to fill the upcoming vacancies in the Appellate Body. Following the 25 January 2017 meeting, he had consulted with Members on possible approaches and on the elements outlined with respect to the two vacant positons. In the course of his consultations several delegations had supported one single selection process. However, two delegations had expressed a preference for two independent processes. One delegation had suggested that the

DSB could start one selection process to fill the vacancy that would expire in June 2017 and that more time could be given to address the second vacancy. It was the Chairman's understanding, however, that those supporting one single selection process would only agree to two independent processes if the work on both could be completed before the summer break or if there was prior clarity on the process and timing of both. He recalled that at the 20 February 2017 DSB meeting, he had indicated his intention to consult with delegations with a view to submitting a proposal to the DSB in March, on the procedural steps and the possible time-table for launching the process or processes. At the present meeting he wished to report that he had consulted with several delegations on these matters but, unfortunately, it had not been possible to come to an agreement on the way forward. Therefore, the Chairman's consultations would have to continue. In this regard, he had already briefed his successor who would be taking over the Chairmanship of the DSB and who would continue the process of consultations in order to find a way forward.

9.2. The representative of Australia said that her country was disappointed that the DSB was not in a position to launch the process for the appointment of new Appellate Body members at the present meeting. Australia appreciated the importance of maintaining a full complement of Appellate Body members. All Members were aware of the workload pressures under which the Appellate Body continued to operate and had a vital interest in the effective functioning of the Appellate Body. Members should all seek to ensure that the Appellate Body was not required to continue for a prolonged period at less than its full capacity. Australia noted that whatever process would ultimately be adopted by the DSB, Members' overriding interest must be to support and reinforce the effective functioning of the Appellate Body. This should be achieved by an effective, transparent, and merits-based process to determine the appointment of new Appellate Body members, consistent with past practice. The timely appointment of new Appellate Body members played an essential part in allowing the Appellate Body to continue to fulfil its proper role. Australia encouraged all Members to take a flexible and pragmatic approach and to work together to reach agreement on a process to ensure the timely appointment of members to the Appellate Body.

9.3. The representative of the European Union said that his delegation wished to refer to its statement made at the 20 February 2017 DSB meeting. The EU said that it regretted that the selection process for the two vacancies in the Appellate Body arising in 2017 had not yet been launched. The EU encouraged the Chairman to continue to consult with delegations in order for the selection process to be launched without delay.

9.4. The representative of Chile said that his country wished to thank Ambassador Carim for his work in chairing the DSB over the past year, which he had done in a very skilful manner. Chile wished Ambassador Carim every success in his new role as Chairman of the General Council. With regard to the Appellate Body appointments, Chile said that Members had to assume their responsibilities and appoint new Appellate Body members as soon as possible. He noted that the second term of office of Mr. Ricardo Ramírez Hernández would end on 30 June 2017. However, Chile was concerned that although his term was due to end in three months, it had not yet been possible to decide on the timelines and other elements of the process to select his successor. This situation was unacceptable. In addition to this systemic concern, Chile had a direct interest in the matter as it intended to put forward a candidate. The Latin American and Caribbean region was equally concerned about this situation. Thus far, no explanation had been provided for the delay. Chile understood that other countries in the region were also interested in nominating highly-qualified candidates. Thus, the region had demonstrated that it had responded seriously to this challenge and that it was ready to participate in the new selection process. Chile hoped that the process to replace Mr. Ramírez, who had performed his Appellate Body responsibilities in a commendable manner, would start soon, and that a new Appellate Body member would come from the Latin American and Caribbean region. Chile hoped that Members would meet their responsibilities and begin a new selection process without any delay so as to preserve the efficient functioning of the dispute settlement mechanism.

9.5. The representative of Guatemala said his country shared the concerns expressed by other delegations with regard to the delay in starting the selection process to replace Mr. R. Ramírez Hernández, whose second term of office was due to expire on 30 June 2017. Guatemala remained flexible as to whether the selection processes should be carried out simultaneously or sequentially. Guatemala shared the view that it would be more efficient to carry out the selection processes simultaneously to fill the two vacancies in the Appellate Body in 2017, as long as the two processes remained separate. One process should be carried out to fill the Latin American vacancy and the other to fill the European vacancy. Guatemala believed that without a consensus to

conduct both processes simultaneously, the DSB should begin the selection process to fill the vacancy of the Appellate Body member whose term of office was to expire first. Guatemala recognized that the rules did not specify any deadlines within which selection processes should take place. However, it was Guatemala's understanding that it was both good practice and common sense to allow a reasonable period of time in order to interview candidates. This would enable interested Members to provide informed views before the Selection Committee with regard to their preferences on candidates. In view of the above, Guatemala urged the DSB to take a pragmatic approach. It was important not only to reconcile the need for prompt selection of the replacement for Mr. Ricardo Ramírez Hernández, whose term of office was about to expire, but also to ensure that delegations had the necessary amount of time to meet and interview candidates. Finally, Guatemala thanked Ambassador Carim for his tireless efforts during the consultation process and for his work as Chairman of the DSB.

9.6. The representative of New Zealand said that her country thanked the Chairman for his progress report and efforts to find consensus. Like other Members, New Zealand was disappointed with the current situation. It urged Members to be pragmatic and to agree on a process for 2017 appointments as soon as possible. If Members could not find agreement on a process for the appointment of new members to the Appellate Body, time would run out and Members would soon find themselves, once again, in the regrettable position of carrying a vacancy in the Appellate Body. This was particularly concerning at a time where there was increased workload pressure on the dispute settlement system, a number of appeals already in the queue, and more likely to be brought soon. Repeated and lengthy vacancies had the potential to undermine the credibility of the WTO dispute settlement system if they led to significant and unexpected delay. If the WTO dispute settlement system could not produce prompt resolution of disputes, its stakeholders could begin to question the benefit of the WTO. This could undermine efforts for ongoing engagement and the organization's standing as the preeminent forum for resolving trade and economic disputes. New Zealand said that it was prepared to consider any constructive solution that expedited appointments and to engage in discussions on how to address other causes of delay in Appellate Body hearings. New Zealand said that it looked forward to working with other Members and the incoming Chairman in this regard.

9.7. The representative of Peru recalled that, as stated at the 20 February 2017 DSB meeting, Peru considered that the best option would be to carry out one selection process to fill the two upcoming vacancies in the Appellate Body. It would also be preferable for the two new Appellate Body members to be appointed at the latest by the end of July 2017, prior to the substantive preparations for MC11. However, if Members wished to pursue another approach, Peru would remain flexible. Peru was concerned that the procedures and deadlines for the selection process to replace Mr. Ricardo Ramírez Hernández had not yet been put forward. Peru recalled that the selection process to replace Ms Yuejiao Zhang, whose second term of office had ended on 31 May 2016, required two months starting from the deadline for nominations of candidates until the Selection Committee's recommendation to the DSB. Peru noted that the second term of office of Mr. Ramírez Hernández as an Appellate Body member would end on 30 June 2017. Therefore, if Members were to follow past practice, the deadline for nominations of candidates in this new process should be set for 15 April 2017, at the latest. This would give the Selection Committee time to carry out its work and to make its recommendations by no later than mid-June 2017. In light of these arguments and past practice, Peru believed that the selection process for a replacement of Mr. Ramírez Hernández should start as soon as possible since the Appellate Body would need to have a new member as of 1 July 2017.

9.8. The representative of Brazil said that her delegation wished to join the previous speakers who had expressed their concerns about the delay in the launch of the selection process to replace Mr. Ramírez, whose term of office would expire on 30 June 2017. Based on past practice of starting a selection process several months in advance of an appointment of a new Appellate Body member by the DSB, delegations had expected the selection process to begin in February 2017. However, at the end of March, it was uncertain whether and when the process would be initiated. Some GRULAC Members, including Brazil, had already announced their intention to present a candidate for the Appellate Body. However, the DSB had not yet agreed on a time-table and guidelines for the selection process. This situation created uncertainties. Brazil pointed out that some Members had already announced that they would nominate candidates, while others had not yet done so. Some of them had already started campaigning, while others were waiting for the formal procedures to be initiated by the DSB. Without any formal decision by the DSB regarding the selection process, it was not clear how to proceed. Brazil hoped that the selection process

would be initiated soon and urged Members that a new selection process be initiated at the next DSB meeting.

9.9. The representative of Korea said that his country shared the concerns of other Members that the DSB was not in a position at the present meeting to start the selection process due to a procedural matter. Based on past practice, the DSB should have started the selection process in February 2017 in order to ensure the timely appointment of a new Appellate Body member to replace the current member whose term of office would expire on 30 June 2017. Pending vacancies in the Appellate Body should be avoided as this would unnecessarily burden the dispute settlement system. Korea looked forward to working with other Members in a pragmatic way so that the DSB could start the selection process as soon as possible.

9.10. The representative of Mexico said that the DSU recognized that "the dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system".[5] Mexico considered that the proper functioning of the Appellate Body was highly important for the operation and credibility of the WTO. Like Chile, Guatemala, Peru and Brazil, Mexico was concerned that the selection process had not been launched on time and pointed out that, in the absence of consensus, there had always been a procedure to move forward. Currently there were several ongoing appeals and there would be more appeals later in the year. The workload of the Appellate Body, and the dispute settlement mechanism in general, was expected to increase significantly in the future. Mexico, therefore, encouraged Members to identify the minimum conditions necessary to initiate an expeditious process to address the needs, and meet the requirements of Members. Finally, Mexico expressed its appreciation to Ambassador Carim for his excellent work as Chairman of the DSB. Mexico wished him the best of success in his new role as Chairman of the General Council, during which he would face significant challenges, particularly in guiding the WTO membership towards a successful Ministerial Conference in Buenos Aires, a task for which he could count on Mexico's determination and support.

9.11. The representative of Argentina thanked the Chairman for his efforts during the consultation process and wished him every success in his work as Chairman of the General Council. Argentina recalled that initially his country had expressed its preference to carry out one selection process for the two Appellate Body positions at the same time. However, given the present circumstances and the limited time, Argentina would not oppose if separate selection processes were to be conducted. Argentina recalled that: (i) this was the third regular DSB meeting in 2017 where this matter was on the Agenda; (ii) on 30 June 2017 the mandate of one Appellate Body member would expire; and (iii) the dispute settlement system was currently facing a heavy workload. The delay in the selection of a new Appellate Body member would have a negative impact on the functioning of the system. Argentina believed that Members should reflect on this matter and hoped that they would show flexibility so that the selection process could begin without delay. The process should start as soon as possible because the Selection Committee would have to respect certain deadlines in order to allow Members an adequate opportunity to assess nominated candidates.

9.12. The representative of China said that his country agreed with the previous speakers and wished to register its concerns with respect to the delay in this selection process. China attached great importance to the functioning of the Appellate Body. Given the heavy workload currently faced by the Appellate Body, China encouraged Members to show flexibility so that the DSB could launch the selection process as soon as possible in order to ensure the proper functioning of the Appellate Body.

9.13. The representative of India said that his country echoed the views of other Members who had expressed concern over the delay in the initiation of an appointment process for a new Appellate Body member. India said that it was not entirely clear on the underlying reasons for the impasse since it was not part of either group that was seeking a single process or independent processes. As a matter of clarification, India said that it would be of great value to the membership to have information regarding past practice in similar situations. This would provide some guidance in resolving the impasse. India believed that although some Members considered the upcoming preparations for MC11 to be a factor in favour of a single process, it would be pragmatic to go ahead with filling the first vacancy, as stated by Peru. There were many potential candidates already being considered and, as Brazil had stated, they were already canvassing. It was very

[5] Article 3.2 of the DSU.

difficult to engage without a clear time-frame for the appointment process. The DSB had had an impasse a few months before on the selection of Appellate Body members, but now the impasse was on the process of the appointment itself. India said that it hoped Members would be flexible and would find a way of expediting the process of appointment.

9.14. The representative of the United States said that his country appreciated the information provided by the Chairman and looked forward to consulting with the Chairman, and other Members, on the process to fill these important positions.

9.15. The DSB took note of the statements.

10 DISPUTE SETTLEMENT WORKLOAD

A. Statement by the Chairman

10.1. The Chairman, speaking under "Other Business", said that he wished to provide the DSB with information about the Appellate Body's workload, the number of disputes before panels, and at the panel composition stage, and the ability of the Secretariat to meet expected demand over the coming period. This report reflected the status of disputes up until the present DSB meeting on 21 March. Other developments in the course of this meeting would be reflected in the information posted on the Members' website. With regard to panels, there were currently 18 active panels (including five panels under Article 21.5 of the DSU) that had not yet issued a final report to the parties. Multiple disputes that were being considered simultaneously by the same panel were being counted as one. As of the present meeting, all composed panels had been assigned staff to assist them and were either active or in the process of commencing proceedings. There were six panels at the composition stage, not counting panels for which there had been no composition activity in the last 12 months. In addition, four final panel reports that had been issued to the parties were currently being translated. The Appellate Body was currently dealing with six appeals, including the extremely complex compliance proceedings in "EC and Certain Member States – Large Civil Aircraft (Airbus)". Two of these appeals could not be staffed at this point. Up to three additional appeals could be filed within the next three months, including an appeal in the compliance proceedings in "US – Large Civil Aircraft (Boeing)". Finally, three matters had been referred to arbitration under Article 22.6 of the DSU and one under Article 21.3(c) of the DSU.

10.2. The DSB took note of the statement.

11 ELECTION OF CHAIRPERSON

11.1. The outgoing Chairman noted that this was the last meeting of the DSB that he would have the privilege of chairing and said that he would make a few personal remarks. His experience in chairing the DSB over the past year had been an extremely rewarding one, both personally and professionally. In the course of the year, the Chairman had gained a deeper insight into the intricacies of the working procedures of the dispute settlement mechanism and at least some new insight into the complexities of the legal issues related to the enforcement and implementation of WTO rules. He said that he had a better appreciation of the significant strengths of the DSU, but also some idea of the areas in which Members believed it could be further strengthened. During DSB meetings over the course of the year, he said that he had repeatedly been struck by the quality of delegations' interventions and exchanges. They had demonstrated delegates' capabilities in effectively representing matters of great national interest, but always in a manner that revealed a high regard for the rules that governed the work of the DSB, and always in an atmosphere of mutual respect. The Chairman had detected many instances of a genuine intention to cooperate and to search for constructive solutions to many of the difficulties that had been encountered. This was testimony to the professionalism, competence and dedication of the distinguished delegates who had participated in these meetings.

11.2. The DSB continued to be very busy, as the trend of an increasing workload from the past couple of years carried over into 2016. The Chairman said that it was his understanding that 2016 was the busiest year on record, with a total of 41 disputes active before panels, the Appellate Body or in arbitration. Panels and the Appellate Body had continued to deliver a significant number of reports in 2016: there had been 11 panel reports, six Appellate Body reports and one arbitration decision had been issued. While these figures signalled the continued confidence Members placed

in the mechanism, it was difficult to ignore the fact that the growing number of disputes placed strain on the capacity of the mechanism to deliver on all the terms of its mandate. While the DSB work generally proceeded smoothly and efficiently, the DSB had encountered several challenges in the course of the year. Members registered an important achievement in so far as the DSB was finally able to agree to the appointment of two new Appellate Body members. The Dedicated Sessions the DSB held in the second half of 2016 had provided important insights into the views of Members in respect of the overall reappointment process. In concluding, the Chairman acknowledged the contribution made by the Directors of the Legal Affairs Division, the Rules Division and the Appellate Body Secretariat to the work of the DSB over the course of the year. The Chairman paid special tribute to Mr. Victor do Prado, Ms Bozena Mueller-Holyst and the other staff members of the CTNC Division for the unstinting support they had given him over the past year. The Chairman said that he was particularly grateful to Ms Bozena Mueller-Holyst for openly sharing her considerable knowledge and experience with him. Her patience in explaining and guiding the work gave him great comfort in chairing the DSB meetings where so many complex issues, interests and perspectives were in play. He also took this opportunity to thank the interpreters for their contribution. He then recalled that, on the basis of the understanding reached by the General Council on 27 February 2017 with regard to the appointment of officers to WTO bodies with respect to the Chairman of the DSB, he proposed that the DSB elect by acclamation Ambassador Junichi Ihara of Japan as Chairman of the DSB.

11.3. The DSB so agreed.

11.4. The incoming Chairman thanked Members for their confidence in appointing him as the new Chair of the DSB. He said that he was honoured to have the opportunity to serve as Chairman of the DSB and recognized the importance of the dispute settlement system for the entire multilateral trading system. He said that with the full support of delegations, as well as that of the Secretariat, he would do his best to carry out his mission. As Ambassador Carim had stated, and many delegations had just indicated, one of the most urgent tasks for the DSB, and in particular for the Chairman, was the appointment of the two new Appellate Body members. He would continue the process of consultations so as to be able to submit the proposal to the DSB as soon as possible. Finally, the Chairman thanked Ambassador Carim for everything that he had done as Chairman over the past year and wished him all the best in his new role as the Chairman of the General Council.

11.5. The representative of the Kingdom of Saudi Arabia thanked Ambassador Carim for his significant contribution to the DSB and his leading role over the past year. Saudi Arabia congratulated Ambassador Ihara on his appointment as the new Chair of the DSB. The appointment of Ambassador Ihara demonstrated that Members placed in him their confidence and trust in chairing this important WTO body. Saudi Arabia said that Ambassador Ihara could count on its full support.

11.6. The representative of Japan said that his country wished to thank Ambassador Carim for his service as Chairman of the DSB. As Ambassador Carim had described, it had been a challenging year for the DSB and the WTO dispute settlement system, but, under his leadership, the DSB had been able to live up to the challenge and manage the proper administration of the dispute settlement procedures as expected. Japan wished Ambassador Carim all the best in his next endeavor as Chairman of the General Council. Japan also welcomed Ambassador Ihara as the new Chairman of the DSB and looked forward to working with him.

11.7. The representative of Korea said that his country appreciated the dedicated service and able leadership of Ambassador Carim during a very challenging period for the dispute settlement system, including the issues related to the Appellate Body, and wished him every success as Chairman of the General Council. Korea welcomed Ambassador Ihara as the new Chairman of the DSB and wished him all the best in his new responsibilities.

11.8. The representative of Mexico said that his country wished to welcome and congratulate Ambassador Junichi Ihara for taking on the role of Chairman of the DSB for 2017. The challenges awaiting the DSB were significant, as had been evidenced by Agenda item 9 regarding the Appellate Body appointments. Mexico said it was fully prepared to support and collaborate with Ambassador Ihara, and with the rest of the membership, to duly address this situation and other issues that could arise during Ambassador Ihara's time as the new Chairman of the DSB in order to ensure that his term was successful.

11.9. The representative of the United States said that his country would like to take this opportunity to congratulate Ambassador Ihara on his election, and to extend its welcome to him as he assumed the Chairmanship of the DSB. The United States said that it looked forward to working with him over the coming year. The United States also thanked Ambassador Carim for his many contributions to the work of the DSB during the past year.

11.10. The representative of Brazil said that her country joined other Members in thanking Ambassador Carim for his kindness, continued efforts, and endless patience in the conduction of the work of the DSB. Brazil wished him all the best in his new functions. Brazil also welcomed Ambassador Ihara as the new Chairman of the DSB and reiterated its commitment to working constructively with Ambassador Ihara and other Members to ensure the well-functioning of the dispute settlement mechanism.

11.11. The representative of Uganda said that his country wished to take this opportunity to thank Ambassador Carim for the great work he had rendered to the DSB during the time he had been the Chairman. Uganda noted that Ambassador Carim had grappled with a number of challenges but had managed to keep the DSB afloat. Uganda thanked Ambassador Carim for the contribution he had made to the DSB. Uganda welcomed Ambassador Ihara and said that it hoped that he would be able put more stones to strengthen the work of the DSB.

11.12. The representative of Peru said that his country had already made a statement to thank Ambassador Carim for his tremendous work over the past year. Peru wished Ambassador Carim every success in his role as Chairman of the DSB and said that Ambassador Ihara could count on Peru's support to ensure his success.

11.13. The representative of Guatemala said that, like other delegations, his country wished to thank Ambassador Carim for his Chairmanship over the past year and congratulated Ambassador Ihara on his appointment as the new Chairman of DSB. Guatemala wished Ambassador Ihara every success and assured him of its support. As had been mentioned by other delegations, Guatemala also wished Ambassador Carim every success as Chairman of the General Council and thanked him for his leadership over the course of the year which had been an important one in many respects.

11.14. The representative of Chile said that his delegation had already thanked Ambassador Carim for his Chairmanship. Chile congratulated Ambassador Ihara on his appointment and wished him every success as the new Chairman of the DSB. Chile expected that during Ambassador Ihara's stewardship there would be difficult issues to deal with, and Chile assured Ambassador Ihara of its support in this regard. Chile hoped that the DSB would be able to resolve the issue of the appointment of Appellate Body members as quickly as possible.

11.15. The representative of China said that his country wished to join other Members in thanking Ambassador Carim for his hard work and excellent leadership during the past year as the Chairman of the DSB. China noted that the dispute settlement mechanism was the backbone of the multilateral trading system and that under Ambassador Carim's leadership the DSB had functioned well over the past year. China wished Ambassador Carim all the best in the coming year. China congratulated Ambassador Ihara on his appointment as the new Chairman of the DSB and assured him of its support in the coming year.

11.16. The representative of Colombia said that his country wished to join other Members in thanking Ambassador Carim for the excellent way in which he had chaired the DSB over the past year. Colombia wished Ambassador Carim every success in his new role as the Chairman of the General Council. Colombia welcomed Ambassador Ihara, wished him a successful period as Chairman of the DSB and assured him of its full support in chairing the work of the DSB.

11.17. The representative of the Russian Federation said that her country wished to join other Members in thanking Ambassador Carim for his leadership, wisdom and patience during very challenging times for the DSB. Russia wished him all the best in his new position. Russia also congratulated Ambassador Ihara on his appointment and wished him success in his role as the DSB Chairman.

11.18. The representative of Morocco said that, as his country had already stated at the meeting of the General Council on behalf of the African Group, Morocco would like to join other speakers who had thanked Ambassador Carim for his contribution to the work of the DSB over the past year. Morocco congratulated Ambassador Ihara on his appointment as Chairman of the DSB and assured him of its support.

11.19. The representative of Moldova said that her country wished to express its gratitude and appreciation for the work done by Ambassador Carim and his sincere desire to find a compromise amongst Members during a very challenging period of the DSB's work. Moldova wished Ambassador Carim every success in his new role as Chairman of the General Council. Moldova welcomed Ambassador Ihara, congratulated him for assuming this important position and wished him every success in his new role. Moldova looked forward to working with Ambassador Ihara and would support him in his efforts to move forward with the issue of appointments of new Appellate Body members.

11.20. The representative of the European Union said that his delegation wished to join other delegations in expressing its thanks to the outgoing Chairman of the DSB and in congratulating him for all the achievements and successes that the DSB had managed to achieve under his leadership. The EU welcomed Ambassador Ihara in his new role and assured him that the EU would support him in any way it could in the successful performance of his tasks.

11.21. The representative of Honk Kong, China said that her delegation would like to join others in thanking Ambassador Carim for his dedicated efforts over the past year and wished him all the best in his new role as the Chairman of the General Council. Hong Kong, China expressed its warm welcome to Ambassador Ihara as the newly elected DSB Chairman and wished him every success for his new appointment.

11.22. The incoming Chairman thanked all delegations for their kind words and warm wishes to him as well as to Ambassador Carim. He said that he would need Members' support and cooperation to discharge his responsibilities as Chairman of the DSB. He looked forward to working closely with all Members in the year ahead.

11.23. The DSB took note of the statements.