RESTRICTED

WT/DSB/M/343

13 June 2014

(14-3419) Page: 1/30

Dispute Settlement Body
26 March 2014

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 26 MARCH 2014

Chairmen: Mr. Jonathan Fried (Canada)/Mr. Fernando De Mateo (Mexico)

Table of Contents

1 ELECTION OF CHAIRMAN

1.1. The outgoing Chairman said that it was with mixed feelings that he would relinquish the Chairmanship of the DSB. He said that it had been both a privilege and a pleasure to serve and work with Members. The DSB delegates were a group of highly talented and knowledgeable people with a remarkable accumulation of experience and knowledge and all the stronger by virtue of the way they were able to work together. This had made his role easier and he was sure that the same would be true for his successor. He said that he would not review the activities over the past year given that he had shared some of his reflections on the past activities the previous week at a conference. Those reflections would be posted on the WTO website shortly. He thanked those that had made the work possible beginning with the Secretary of the DSB whose institutional knowledge was remarkable. Her dedication and commitment to the institution and to the DSB was equally remarkable and her contribution should not be underestimated. She was assisted ably by her colleagues who made things easier and ensured that the documentation moved smoothly. He also thanked the Director of the Legal Affairs Division and her team, which provided good support not just during but also in between meetings. He noted that many Members were also engaged in a number of disputes and thus also benefited from the Legal Affairs Division and the Rules Division. He further noted that two thirds of the disputes proceeded to the Appellate Body. In that regard, he thanked the Director of the Appellate Body Secretariat and his team for their work in supporting the members of the Appellate Body. Once again, he thanked the Secretariat for the hard work, dedication and commitment extended to him during the course of his tenure as Chairman of the DSB. He recalled that, at its meeting of 14 March 2014, the General Council had taken note of the consensus that had been reached on a slate of names for Chairpersons to a number of WTO bodies, including the DSB. It was on the basis of the views expressed and the understanding reached by the General Council that he wished to propose that, at the present meeting, the DSB elect by acclamation H.E. Mr. Fernando De Mateo of Mexico as its Chairman.

1.2. The DSB so agreed.

1.3. The incoming Chairman said that he thanked Ambassador Fried for his outstanding leadership over the past year. Members had been fortunate to have had a seasoned diplomat and gifted lawyer at the helm of which, he believed, was the most important Body of the WTO. He had had the pleasure of collaborating with Ambassador Fried many years ago when they were both negotiating the NAFTA. He had learned much from him then and had continued to benefit from his wise counsel and to marvel at his seemingly endless talents. He was very much aware that he had especially big shoes to fill. He did not expect to match Ambassador Fried's skill, wisdom, energy, and intelligence in leading the DSB. He thanked Ambassador Fried for his dedicated service to the DSB. Although Members would miss his leadership and guidance in the DSB, they were nevertheless grateful that he had assumed the Chairmanship of the General Council, where his exceptional talents, deep wisdom and seemingly boundless energy would serve the Membership well. He noted that this was his first day as Chairman of the DSB and that there were many things he still had to grasp and learn. As Members would have noticed, the Appellate Body selection process would be considered under item 11 of the Agenda of the present meeting. As the new DSB Chair, he recognized that he would have to deal with this as a matter of priority and urgency. He had been briefed by his predecessor on this matter. He thanked him and the members of the Selection Committee for their considerable efforts in this regard. He would have more to say about how he would wish to proceed with this issue under Agenda item 11. He thanked Members for their trust and confidence in electing him as the DSB Chair for 2014 and promised to work with all Members to ensure that matters before the DSB were resolved appropriately and promptly. He said that he would count on the support of the Secretariat.

1.4. The representative of the United States said that his country would like to congratulate Ambassador De Mateo on his election, and to extend its welcome to him as he assumed the Chairmanship of the DSB. The United States very much looked forward to working with him over the coming year. The United States representative also said his country would like to thank Ambassador Fried for his many significant contributions to the work of the DSB during this past year. It had been a pleasure, and the United States wished him even greater success chairing the General Council during this important year.

1.5. The representative of the European Union said that the EU wished to congratulate and warmly welcome Ambassador De Mateo as the new DSB Chair. The EU looked forward to the year ahead under his leadership. All indications suggested that this would be yet another busy year for the DSB. The EU wished to thank Ambassador Fried for a very active and entertaining year under his leadership. The EU noted that Ambassador Fried had kept Members on their toes and had ensured that they made best efforts to provide meaningful information to the DSB. The EU wished Ambassador Fried the best in his ever more challenging task as the General Council Chair.

1.6. The representative of Japan said that his country wished to express its appreciation to Ambassador Fried for his courageous initiatives on difficult tasks related to the DSB. Japan wished him success in his new role as General Council Chair. Japan looked forward to working with the new Chair, Ambassador De Mateo, in the coming year.

1.7. The representative of India said that his country wished to compliment Ambassador Fried for a very successful tenure as the DSB Chair. His involvement and leadership was much appreciated. He had conducted the DSB in a very fair, impartial and inclusive manner. His efforts in improving DSB procedures and processes were praiseworthy. He had made an invaluable contribution in making the Annual Report of the DSB reader-friendly. He had also brought to the attention of the Membership the issues of the workload of the Appellate Body and had taken proactive steps. India wished him all the best in his new assignment as the Chair of the General Council. India was confident that under his leadership, multilateralism would be further strengthened. India welcomed the new Chair of the DSB, Ambassador De Mateo. India was confident that his long and diverse experience would enrich the DSB. India assured the Chairman of its continued support in all his endeavours and looked forward to closely working with him in the future.

1.8. The representative of Argentina said that his country congratulated the incoming Chair and welcomed him to the DSB, an important WTO Body. It was a great satisfaction for all Members to be able to rely on him as the DSB Chair and Argentina was sure that both the WTO and the Members would benefit from his experience and professionalism. Argentina thanked Ambassador Fried for his leadership and energy over the past year. He had contributed greatly to the DSB's work and Argentina wished him success in his new role as the General Council Chair.

1.9. The representative of Honduras, speaking on behalf of GRULAC, said that he wished to thank Ambassador Fried for his excellent leadership at the helm of the DSB. GRULAC wished him success in his new function and assured him of its support in his work. GRULAC was proud to have Ambassador De Mateo as the new DSB Chair and offered him its full support.

1.10. The representative of China said that her country welcomed and congratulated Ambassador De Mateo on his election as the DSB Chair. She said that she had worked with him in the CTS Special Session and was familiar with his way of working. China was sure that the DSB would be in good hands and looked forward to working with him. China also thanked the outgoing Chair, Ambassador Jonathan Fried. Under his Chairmanship the DSB's work during the past year was dynamic and he had led Members through some of the most challenging times. China wished him the best and looked forward to working with him as the Chairman of the General Council.

1.11. The representative of the Kingdom of Saudi Arabia said that his country congratulated Ambassador De Mateo as the new Chair of the DSB for 2014. Saudi Arabia also thanked Ambassador Fried for his wise leadership in the past year and looked forward to his leadership in the General Council.

1.12. The representative of Canada said that his country congratulated Ambassador De Mateo on his election and welcomed him to the DSB. He said that it was not an entirely new experience for him personally to work with Ambassador De Mateo as he had been the Chair of the OECD Trade Committee. Canada was confident that his wisdom and leadership that he had demonstrated in

that venue would be demonstrated again in the DSB and that he would serve Members well during what promised to be a busy and eventful year in dispute settlement. Canada also thanked Ambassador Fried for his service. While it had obviously not been an entirely new experience for Canada to work with Ambassador Fried, it had been a pleasure to work with him in this new and different context. As with others, Canada had learned much from his leadership and energy. He had brought a renewed dynamism to the DSB that was appreciated by all. Canada wished him the same success in the General Council as the one he had achieved in the DSB.

1.13. The representative of Cuba said that her country wished to congratulate Ambassador De Mateo for taking over the Chairmanship of the DSB. Cuba believed that his experience, professionalism and his negotiating skills would help move forward the issues on the DSB's Agenda. Cuba also thanked and congratulated Ambassador Fried for the work he had done over the past year with enthusiasm, passion and a significant amount of energy thus giving greater momentum to the work of the DSB. This was essential to achieving results on different issues. Ambassador Fried's leadership and energy had enhanced the DSB's work over the past year. Cuba wished him all the best in his new role as the Chairman of the General Council.

1.14. The representative of Chile said that his country welcomed Ambassador De Mateo and wished him success during the coming year. Chile recalled that the DSB was the most important WTO Body. The past year's agenda was not easy and Chile did not think that the agenda this year would be any easier. Chile noted that there was a lot of work to be done. Chile thanked Ambassador Fried for his work, enthusiasm, creativity and intelligence.

1.15. The representative of Mexico said that his country thanked Ambassador Fried for his work as the DSB Chair and wished him every success in his new role as Chairman of the General Council. Mexico welcomed Ambassador De Mateo as the new Chairman of the DSB, expressed its support and wished him success.

1.16. The representative of New Zealand said that, in keeping with Ambassador Fried's unfaltering efforts to promote efficiency and succinctness in interactions in the DSB, New Zealand thanked him for what had been a year of energetic service. In addition, New Zealand congratulated Ambassador De Mateo who, from the experience of working with him in the CTS Special Session, brought a wealth of wisdom and experience to the DSB.

1.17. The representative of Thailand said that his country thanked Ambassador Fried for injecting energy and dynamism into the DSB over the past one year. Thailand had learned a lot from Ambassador Fried's Chairmanship. Thailand also welcomed Ambassador De Mateo as the new Chairman of the DSB and was sure that his rich experience would help advance the DSB's work in the coming year.

1.18. The representative of Hong Kong, China said that his country warmly welcomed Ambassador De Mateo and looked forward to working closely with him in the coming year. Hong Kong, China also thanked Ambassador Fried for his excellent leadership over the past year. Hong Kong, China had benefited a lot from his dynamism and insights and wished him all the best in his new position as the General Council Chair.

1.19. The representative of Egypt said that his country welcomed Ambassador De Mateo and trusted that he would successfully manage the DSB over the coming year, especially with regard to certain issues as mentioned in the opening remarks. Egypt also thanked Ambassador Fried for the work he had done over the past year and wished him success during his tenure as Chairman of the General Council.

1.20. The representative of Colombia said that his country joined previous speakers in thanking Ambassador Fried and congratulated him for the work he had done over the past year. Colombia wished him success in his new role as Chairman of the General Council. Colombia welcomed Ambassador De Mateo as the new DSB Chairman. Colombia, like other countries from the region, was proud of his election and assured him of its full support during the coming year.

1.21. The representative of Brazil said that his country welcomed Ambassador De Mateo and wished him every success. Brazil was ready to work with him so as to overcome different challenges to be faced by Members this year. The challenges would at times be complex but with

patience, transparency and common sense, Brazil believed that Members would be able to overcome them. Brazil also thanked Ambassador Fried for his excellent work in the DSB.

1.22. The representative of Qatar said that his country thanked Ambassador Fried for his efforts in guiding the DSB during the past year. Qatar wished to congratulate Ambassador De Mateo on his Chairmanship and believed that the DSB would be in good hands in the year to come.

1.23. The representative of Ukraine said that his country thanked Ambassador Fried for his excellent leadership and welcomed Ambassador De Mateo in his new position.

1.24. The DSB took note of the statements.

2 SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.135)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.135)

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

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.73)

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.22)

F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.21)

G. Canada – Certain measures affecting the renewable energy generation sector/Canada – Measures relating to the feed-in tariff program: Status report by Canada (WT/DS412/17/Add.1 – WT/DS426/17/Add.1)

2.1. The Chairman noted that there were seven sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. He recalled that Article 21.6 of the DSU required that: "Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and shall remain on the DSB's Agenda until the issue is resolved". The DSB's obligation with respect to surveillance was a unique feature of the WTO dispute settlement system and Members must take full advantage of the opportunity that each DSB meeting provided to carry out the important responsibility of keeping under surveillance the implementation of adopted recommendations or rulings. As Ambassador Fried had done over the past year, he also encouraged 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. With these introductory remarks, he turned to the first status report under this Agenda item.

A. United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.135)

2.2. The Chairman drew attention to document WT/DS176/11/Add.135, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

2.3. The representative of the United States said that his country had provided a status report in this dispute on 13 March 2014, in accordance with Article 21.6 of the DSU. At least six bills had been introduced in the current Congress in relation to the DSB's recommendations and rulings. This included H.R. 214, H.R. 778, H.R. 872, H.R. 873, H.R. 1917 and S. 647. The

US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

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

2.5. The representative of Cuba said that the United States had submitted a total of 135 status reports, none of which had provided any solution to settle this dispute. Cuba also noted that the United States had started even reducing its already brief report and, as of the 133rd report (submitted on 10 January 2014), it had stopped alluding to legislative texts H.R. 214, H.R. 778, H.R. 872, H.R. 873 and S. 647. These were the only actions, still without results, that the United States had announced it was taking to comply with its obligations. This confirmed, once again, that the United States had no intention to find a way of complying in this dispute. Cuba reiterated that the US hostile economic, commercial and financial embargo policy against Cuba, underpinning this non-compliance, did not give the United States the right to ignore its WTO obligations. The US illegal conduct in this dispute over the years not only threatened intellectual property rights inherent in Cuban institutions, but also showed disregard for the dispute settlement system. In particular, Cuba wished to point out that the objective of Article 21 of the DSU, which was to monitor implementation of recommendations and rulings of the DSB was being undermined. Cuba recalled that Article 21.1 of the DSU established the principle of "prompt compliance". Article 21.2 of the DSU indicated that the principle of special and differential treatment applied to the settlement of disputes, by stating that "particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement". Article 21.3 of the DSU was of significant importance. It stated that "the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB". Article 21.6 of the DSU stipulated the form and content of status reports and how often they should be submitted before the DSB. Article 21.6 stated that "at least 10 days prior to each such DSB meeting, the Member concerned shall provide the DSB with a status report in writing of its progress in the implementation of the recommendations or rulings". In Cuba's view, the United States had violated all these provisions for more than 12 years. Every month, this item was on the DSB's Agenda without any new developments to report on compliance and settlement of the dispute. Cuba was obliged, month after month, to raise its complaint concerning the irresponsible US conduct and failure to meet its obligations. Furthermore, Cuba reiterated that simply mentioning draft legislations that had never been adopted could not be seen as a step forward and, much less, as a relevant piece of information. Cuba would not cease to challenge these violations, to claim its rights and to demand the prompt settlement of this dispute by repealing Section 211.

2.6. The representative of the Plurinational State of Bolivia said that his country congratulated the Chairman on his appointment. With regard to this Agenda item, Bolivia recalled that this dispute had been on the DSB's Agenda for more than 12 years and was probably the oldest unresolved dispute. At the present meeting, the United States had presented the same status report. No substantive change had been made and no solution had been presented either. Bolivia, once again, reiterated its concerns about the systemic implications that this situation had for the dispute settlement system. Bolivia was also concerned about the lack of will to resolve this matter. In Bolivia's view, non-compliance undermined the credibility of the multilateral trading system and had a negative impact on a developing-country Member. Bolivia requested the United States to comply with the DSB's recommendations and rulings and to make efforts so as to remove the restrictions imposed under Section 211. Bolivia, once again, shared the concerns expressed by Cuba.

2.7. The representative of Ecuador said that his country joined Honduras, which had spoken on behalf of GRULAC, in congratulating the Chairman on his election. Ecuador also thanked Ambassador Fried for his work in the past year. With regard to this particular Agenda item, Ecuador supported the statement made by Cuba. Ecuador recalled that Article 21 of the DSU called for the prompt compliance with the DSB's recommendations or rulings, in particular since the interests of a developing country member were affected. Ecuador noted that Article 21.3 of the DSU stated that prompt compliance with the DSB's recommendations was essential in order to ensure effective resolution of disputes. Ecuador hoped that the United States would promptly and fully comply with its WTO obligations.

2.8. The representative of China said that her country thanked the United States for its status report and the statement made at the present meeting. China noted that the prolonged situation of non-compliance in this dispute was highly incompatible with the prompt compliance requirement under the DSU provisions, in particular since the interests of a developing-country Member were affected. China urged the United States to implement the DSB's rulings and recommendations without any further delay.

2.9. The representative of Argentina said that, once again, his country joined the previous speakers' request for a solution to this dispute. Failure to implement the DSB's rulings seriously affected the credibility and effectiveness of the dispute settlement system. Argentina noted that the last sentence of Article 21.6 of the DSU stated that: "At least 10 days prior to each such DSB meeting, the Member concerned shall provide the DSB with a status report in writing of its progress in the implementation of the recommendations or rulings". Argentina noted that the monthly US status report in this dispute did not contain any new information. The only apparent change was the addenda number in the document symbol. This was contrary to Article 21.6 of the DSU which required the Member concerned to report on its progress in the implementation of the recommendations or rulings. It was not enough to merely repeat that no progress had been made in finding a solution. Argentina, once again, urged both parties to the dispute, in particular the United States, to make an effort to find a solution to this issue and thus finally remove it from the DSB's Agenda.

2.10. The representative of India said that his country thanked the United States for its status report and the statement made at the present meeting. India noted that the United States did not report any progress. India was therefore compelled, yet again, to stress that the principle of prompt compliance was missing in this dispute. India renewed its systemic concerns about the continuation of non-compliance as this undermined the credibility and confidence that Members reposed in the system. India urged the United States to report compliance in this dispute without any further delay.

2.11. The representative of Brazil said that his country thanked the United States for its status report. Brazil noted that, once again, the United States reported lack of progress. Brazil remained concerned about this situation of non-compliance with the DSB's recommendations and urged the United States to bring its measures into conformity with WTO rules.

2.12. The representative of Jamaica said that her country thanked the United States for its status report and Cuba for its statement. As it had repeatedly done in the past, Jamaica joined other delegations in voicing its concern regarding the continued failure by the United States to implement the DSB's recommendations adopted in 2002 with respect to Section 211. This protracted failure by the United States to take the steps necessary to comply with its DSB obligations was incompatible with the DSU requirement for prompt and effective implementation of the DSB's recommendations. This was of particular concern in cases such as this where the failure to respect an obligation had a negative impact on the economic interests of a developing-country Member. Jamaica noted that all Members, when ratifying the Marrakesh Agreement, had recognized the need for positive efforts designed to ensure that developing countries, like Cuba, secured a share in the growth in international trade commensurate with the needs of their economic development. Furthermore, Jamaica was compelled to express its deep concern about the systemic implications of any disregard for the DSB's rulings. Such disregard could serve to undermine the overall integrity of the dispute settlement system which remained a key pillar of the WTO. Jamaica had repeatedly heard that this disregard for the DSB rulings did not pose systemic implications for the dispute settlement system. However, Jamaica disagreed because any derogation from the DSB's rulings had implications for the wider system. The aim was towards a 100% compliance with the DSB's rulings and the repeated inclusion of this item on the DSB's Agenda was of great concern to Jamaica. In that regard, Jamaica once again urged the United States to take the required steps and promptly implement the relevant DSB recommendations and rulings. Jamaica looked forward to the removal of this item from the DSB's Agenda.

2.13. The representative of El Salvador said that her country thanked the United States for its status report. Like previous speakers, El Salvador noted with concern the lack of compliance in this dispute which affected a developing-country Member and the multilateral trading system. In order to resolve this prolonged dispute, El Salvador urged the parties to the dispute to promptly find a solution and comply with the DSB's recommendations and rulings. Finally, El Salvador supported

the statement made by Honduras on behalf of GRULAC welcoming the new Chairman and thanking Ambassador Fried for his work over the past year.

2.14. The representative of Mexico said that his country, once again, urged the parties to this dispute to take the necessary steps to comply with the DSB's recommendations and rulings to the benefit of all Members, in accordance with Article 21.1 of the DSU. Mexico noted that the status report submitted by the United States stated that legislation had been introduced in the current session of the US Congress. The fact that the United States had submitted legislation showed a willingness to comply. However, merely submitting the legislation may not be enough. Mexico recommended that further information be provided on this matter so that this dispute could move towards resolution.

2.15. The representative of Nicaragua said that his country congratulated the new Chairman on his appointment and wished him every success in his professional endeavours. With regard to this item, Nicaragua thanked the United States for its status report but regretted that this report did not show any progress towards implementation of the DSB's recommendations. Nicaragua supported the statement made by Cuba on Section 211 regarding the rights of Cuban right holders of the Havana Club trademark. In Nicaragua's view, the repeated US failure to comply with the DSB's recommendations and rulings undermined the credibility and efficiency of the dispute settlement system and the multilateral trading system. It could also set a precedent with consequences for other Members, in particular developing-country Members. Nicaragua, once again, urged the United States to take the necessary reforms and introduce legislation so as to comply with the DSB's recommendations and rulings.

2.16. The representative of Uruguay said that his country congratulated the new Chairman on his appointment and wished him every success. Uruguay was certain that he would be able to meet the expectations. With regard to this dispute, Uruguay thanked the United States for its status report, but regretted that the United States did not provide any new information. In that regard, Uruguay urged the United State to resolve this matter so as to remove it from the DSB's Agenda. In Uruguay's view, the US failure to resolve this dispute undermined the credibility of the dispute settlement system.

2.17. The representative of South Africa said that her country congratulated the Chairman on his appointment and trusted that his wise leadership and exemplary skills would guide the DSB going forward. South Africa also thanked Ambassador Fried for his dedicated, dynamic and efficient leadership over the last year. With regard to the dispute at hand, South Africa thanked the United States for its status report which did not contain any new developments. South Africa referred to its previous statements stressing its systemic concern that non-compliance undermined the credibility and integrity of the dispute settlement system, an important enforcement pillar of the WTO. South Africa was also concerned that non-compliance perpetuated a negative impact on the economic interests of a developing-country Member. South Africa, therefore, urged the United States to bring its legislation into compliance with the DSB's rulings and recommendations.

2.18. The representative of Zimbabwe said that his country congratulated the Chairman for his election as DSB Chair. Zimbabwe thanked the United States for its status report and its statement made at the present meeting. However, like previous speakers, Zimbabwe was disappointed and regretted that the United States had continued to disregard the DSB's rulings and recommendations in this dispute concerning Section 211. The continued US failure to comply with its obligations seriously undermined the integrity of the DSB, as well as the efficacy and effectiveness of its rulings. For a number of years Zimbabwe, along with other Members, had been calling on the United States to desist from this violation of WTO rules and to honour its obligations. Zimbabwe, therefore, strongly supported Cuba's statement and urged the United States to comply with the relevant DSB's rulings and recommendations.

2.19. The representative of the Bolivarian Republic of Venezuela said that his country, once again, supported Cuba, a developing country that had challenged the inconsistency of Section 211. The DSB had adopted the recommendations regarding Section 211, but the United States had yet to comply. At every regular DSB meeting, despite the many statements made in support of Cuba, the United States stated that it had complied with most DSB rulings. In Venezuela's view that claim was unfounded. Full compliance with all DSB's rulings and recommendations was mandatory and non-compliance demonstrated blatant disregard for the DSB. The current situation of non-compliance not only affected Cuba, but also set a negative precedent in terms of the credibility of

the WTO and its ability to resolve disputes. Venezuela, therefore, urged the United States to end this non-compliance and to report, at the next DSB meeting, on measures it intended to take to resolve this dispute.

2.20. The representative of Chile said that his country's position on this matter was well known. Chile wished to reflect on an important issue referred to by Uruguay. The fact that this matter remained on the DSB's Agenda was a permanent constant reminder that failure to comply undermined the dispute settlement system in the short-, medium- and long-term. Chile found it difficult to understand that, after a decade, Members were still discussing the same dispute, the same circumstances and the same parties. Chile hoped that this matter would soon be removed from the DSB's Agenda.

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

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.135)

2.22. The Chairman drew attention to document WT/DS184/15/Add.135, 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.

2.23. The representative of the United States said that his country had provided a status report in this dispute on 13 March 2014, 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 the matter.

2.24. The representative of Japan said that his country thanked the United States for its statement and status report submitted on 13 March 2014. Japan referred to its previous statements regarding its desire that this issue would be resolved as soon as possible.

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

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

2.26. The Chairman drew attention to document WT/DS160/24/Add.110, 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.

2.27. The representative of the United States said that his country had provided a status report in this dispute on 13 March 2014, 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 the matter.

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

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

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.73)

2.30. The Chairman drew attention to document WT/DS291/37/Add.73, 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.

2.31. The representative of the European Union said that, in recent DSB meetings, the EU had already reported on authorization decisions taken up to January 2014. The Appeal Committee of 27 February 2014 had voted on a draft authorization decision for an oilseed rape[1] product, for food and feed uses and had rendered no opinion. The file was back to the European Commission for final adoption. In addition, the standing committee of 20 February 2014 had voted on a draft authorization decision for a cotton[2] product for food and feed uses and had rendered no opinion. The draft decision would be presented to the Appeal Committee for a vote on 27 March 2014. As had been stated many times before, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings. The GMO regulatory regime was working normally as evidenced by the approval decisions and other actions towards approval decisions just mentioned. The details on the relevant products were set out in the EU's written statement.

2.32. 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. At the January and February 2014 DSB meetings, the United States had recalled that the EU had not addressed the product-specific DSB recommendation and ruling with respect to a variety of biotech corn known as BT-1507.[3] The application for approval of this product had been pending since 2001. The United States took note that the EU representative had stated at the February DSB meeting that measures approving the use of BT-1507 "are now to be adopted by the Commission in accordance with the applicable rules". The United States regretted, however, that based on the information publicly available before the present meeting, it did not appear that the Commission had taken this action. Accordingly, the EU measures on the approval of BT-1507 continued to be delayed. In addition, although the approval of this particular biotech product after 13 years would be a positive development, the handling of this product approval application exemplified the problems with EU measures affecting the approval of biotech products. An approval by the Commission in the face of EU Council opposition was an extraordinary procedural step, and inevitably resulted in substantial delays. In closing, the United States urged the EU to take steps to address the problems with EU measures affecting approval of biotech products, including delays in approvals and bans imposed by EU member States on products approved at the EU level.

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

E. Thailand – Customs and fiscal measures on cigarettes from the Philippines: Status report by Thailand (WT/DS371/15/Add.22)

2.34. The Chairman drew attention to document WT/DS371/15/Add.22, which contained the status report by Thailand on progress in the implementation of the DSB's recommendations in the case concerning Thailand's customs and fiscal measures on cigarettes from the Philippines.

2.35. The representative of Thailand said that, as indicated in its most recent status report, Thailand had been collecting information in preparation for responses to the Philippines' request for additional information regarding certain aspects of Thailand's implementation as well as other matters of concern to the Philippines. Thailand had provided some of these responses to the Philippines and had just received further information related to the decision by the Customs Board of Appeal from Bangkok that morning. Thailand would proceed with the formality of sharing that information with the Philippines immediately. Thailand was ready to discuss any other matters of concern bilaterally with the Philippines and looked forward to continuing discussions with the Philippines on these matters and to resolving this dispute in an amicable manner.

[1] GT73 oilseed rape.
[2] T304-40 cotton.
[3] "European Communities – Measures Affecting the Approval and Marketing of Biotech Products" (WT/DS291/R), adopted on 21 November 2006, at para. 8.18(a)(xi).

2.36. The representative of the Philippines said that her country congratulated the Chairman on his appointment as the DSB Chair. The Philippines also thanked Ambassador Fried for his excellent work and wished him all the best in his new endeavour as the General Council Chair. With regard to this particular item, the Philippines thanked Thailand for its status report and for its statement made at the present meeting. The Philippines had hoped to be able to report on developments at the present meeting. The Philippines recalled from its statements made at previous DSB meetings that it was still waiting to obtain further information from Thailand on two issues. The first was the recent decision by the Thai Attorney General to prosecute an importer of Philippine goods, and several of the importer's current and former employees, for alleged under-declaration of customs values in the 2003-2007 time-period, which included the period covered by the DSB's recommendations and rulings in this dispute. The second issue concerned a decision by the Thai Customs Board of Appeals to reject the declared transaction values for 210 entries of Philippine goods from 2002. With respect to the second issue, the Philippines thanked Thailand for indicating that it would soon provide the Philippines with a set of replies to the questions it had submitted to Thailand in September 2013. The Philippines thanked Thailand in advance for those replies, which it would study in detail as soon as it received them. The Philippines hoped that the responses would address its concerns in a meaningful way, with suggestions of how best to achieve full WTO compliance. The Philippines hoped that it could continue the dialogue with its ASEAN partner, in order to find a solution to the outstanding issues in this dispute.

2.37. The representative of Thailand said that her country took note of the Philippines statement and concern regarding the prosecution under Thai law. The Ministry of Commerce had communicated with the relevant authorities on the Philippines questions and concerns. As had been stated in previous meetings, Thailand reiterated that it would ensure that it acted in a WTO-consistent manner to the extent that this particular concern of the Philippines involved Thailand's obligations under WTO law.

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

F. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.21)

2.39. The Chairman drew attention to document WT/DS404/11/Add.21, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain shrimp from Viet Nam.

2.40. The representative of the United States said that his country had provided a status report in this dispute on 13 March 2014, in accordance with Article 21.6 of the DSU. As it had noted at past DSB meetings, the US Department of Commerce had published a modification to its procedures in February 2012 in order to implement the DSB's recommendations and rulings regarding the use of "zeroing" in anti-dumping reviews. That modification addressed certain findings in this dispute. The United States would continue to consult with interested parties as it worked to address the recommendations and rulings of the DSB.

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

G. Canada – Certain measures affecting the renewable energy generation sector/Canada – Measures relating to the feed-in tariff program: Status report by Canada (WT/DS412/17/Add.1 – WT/DS426/17/Add.1)

2.42. The Chairman drew attention to document WT/DS412/17/Add.1 – WT/DS426/17/Add.1, which contained the status report by Canada on progress in the implementation of the DSB's recommendations in the cases concerning Canada's measures affecting the renewable energy generation sector and the measures relating to the feed-in tariff program.

2.43. The representative of Canada said that the DSB had adopted the recommendations and rulings in these disputes on 24 May 2013. Canada, Japan and the European Union had initially agreed that the reasonable period of time for Canada to implement these recommendations and rulings would end on 24 March 2014. On Monday 24 March 2014, on the expiry of the reasonable

period of time, Canada, Japan and the EU had reached a mutual agreement to modify the reasonable period of time to expire on 5 June 2014. Furthermore, on 24 March 2014, the parties had reached a mutual agreement on procedures under Articles 21 and 22 of the DSU to reduce the scope for procedural disputes. The parties had notified that modification of the reasonable period of time and the sequencing agreement to the DSB Chair. The documents would be circulated to the Membership in due course. As set out in the documentation circulated with regard to this item (WT/DS412/17/Add.1 and WT/DS426/17/Add.1), Canada and the Government of Ontario had taken the following measures with a view to ensuring compliance with the DSB's recommendations and rulings. On 12 June 2013, the Minister of Energy of the Province of Ontario had directed the Ontario Power Authority (OPA) not to procure any additional energy under the Feed-In Tariff (FIT) Program for large projects, and to instead develop a new competitive process for procurement of large renewable energy capacity through requests for proposals. The OPA was currently developing this process. As a result, large wind and solar electricity procurement were no longer subject to the domestic content requirements of the FIT program. On 16 August 2013, the Minister had directed the OPA to lower significantly the domestic content requirements for small FIT and micro FIT wind and solar electricity projects that were procured under the FIT program, starting with the Fall 2013 procurement window. In addition to these compliance steps, the Government of Ontario had tabled legislation to provide the Minister with the authority to direct the OPA to procure electricity under the FIT program without any domestic content requirements. This legislation was currently in Second Reading in the Ontario Legislative Assembly.

2.44. The representative of Japan said that his country thanked Canada for its statement and status report submitted on 13 March 2014. Japan wished to express its regret that Canada could not complete its compliance by 24 March 2014 when the original reasonable period of time for this dispute had expired. However, given the fact that the Legislative Assembly of Ontario had been discussing a bill to remove domestic content requirements from the FIT program, upon a request by Canada, on 24 March 2014 Japan and Canada had agreed to modify the reasonable period of time to expire on 5 June 2014, when the current session of the Legislative Assembly of Ontario would end, in order to give further time for the bill to be passed. Japan had also taken into consideration the fact that Canada had taken intermediate measures to implement the DSB's recommendations and rulings. At the same time, Japan and Canada had agreed on a sequencing agreement. Japan strongly hoped that the bill would be passed and be in force prior to 5 June 2014 when the modified reasonable period of time for this dispute expired.

2.45. The representative of the European Union said that the EU thanked Canada for its second status report and the statement made at the present meeting. The reasonable period of time originally agreed between Canada and the EU was set to expire on 24 March 2014. Ontario's domestic rules would have allowed fast action to tackle the WTO-inconsistent aspects of Ontario's measures before that date, and the EU regretted that this had not been the case. However, in a spirit of cooperation and in order to facilitate compliance with the DSB's rulings, the EU had been willing to agree exceptionally on a modification of the reasonable period of time, in consideration of the specific and tangible steps that had thus far been taken by Canada. At present, the Ontario Parliament was considering an "Act to amend the Electricity Act, 1998 with respect to a World Trade Organization decision", aimed at the repeal of the provision in the 1998 Electricity Act concerning domestic content. The EU trusted that the draft bill would be adopted into law within the modified reasonable period of time, which was to expire on 5 June 2014. Together with the modification of the reasonable period of time, Canada and the EU had also agreed on procedures under Articles 21 and 22 of the DSU in order to manage any disagreement as regards Canada's compliance actions, or a situation of non-compliance. That said, the EU hoped that Canada would make all necessary efforts to ensure full compliance by the end of the modified reasonable period of time, in a manner that would make further recourse to action under the DSU provisions unnecessary. In that regard, the EU wished to underscore again the importance of removing domestic content requirements from the FIT program. Similarly, it was essential to make sure that any new system introduced to replace the FIT program with regard to some project categories accorded no less favourable treatment to imported generation equipment compared to domestic goods. The EU looked forward to further reports from Canada in upcoming DSB meetings as regards the status of implementation of the DSB's recommendations and rulings in this dispute.

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

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

A. Statements by the European Union and Japan

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

3.2. The representative of the European Union said that, once again, the EU requested that the United States stop transferring anti-dumping and countervailing duties to the US industry. Such disbursements were clearly incompatible with the DSB's recommendations and rulings. The EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit status reports in this dispute.

3.3. The representative of Japan said that, since the distributions under the CDSOA had been continuing, Japan, once again, urged the United States to stop the illegal distributions in order to resolve this long-standing dispute. 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 thanked the EU and Japan for regularly bringing this issue before the DSB. India shared their concerns and supported their views. As had been mentioned, the CDSOA remained operational and the WTO-inconsistent disbursements continued unabated to the US domestic industry. India agreed with previous speakers that this issue should continue to remain under the surveillance of the DSB until such time that full compliance was achieved.

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

3.6. The representative of Thailand said that his country thanked the EU and Japan for continuing to bring this item before the DSB. Thailand supported the previous speakers' statements and continued to urge the United States to cease the disbursements and fully implement the DSB's rulings and recommendations.

3.7. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. As it had expressed at previous meetings, Brazil was of the view that the United States was under obligation to submit status reports in this dispute until such time that no more disbursements were made pursuant to the Byrd Amendment. Only then would the issue be resolved within the meaning of the DSU and the United States would be released from its obligation to provide status reports in this dispute.

3.8. The representative of the United States said that, as his country had noted at previous DSB meetings, the President had signed the Deficit Reduction Act into law on 8 February 2006, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Furthermore, the United States recalled that Members, including the EU and Japan, had acknowledged during previous DSB meetings that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, which was more than six years ago. Therefore, the United States 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.

3.9. The DSB took note of the statements.

4 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. Statement by the United States

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

4.2. The representative of the United States said that his country continued to have serious concerns that China had not implemented the DSB's recommendations and rulings in this dispute. The situation had not changed since the United States had first begun raising this matter in the DSB. In particular, China maintained a ban on foreign EPS suppliers by imposing a licensing requirement, while providing no procedures for foreign suppliers to obtain a license. As a result, China's own domestic champion remained the only EPS company that had ever been able to operate in China's domestic market. China's measures could not be reconciled with the DSB's findings that China's WTO obligations included both market access and national treatment commitments concerning Mode 3 for electronic payment services.[4] The United States did take note of China's statement at the February 2014 DSB meeting that China was working on the necessary regulations that would allow for the licensing of foreign EPS suppliers. Unfortunately, the United States understood that no such regulations had yet been issued. Accordingly, the United States urged China to adopt measures that would allow the licensing of foreign EPS suppliers and that would bring its measures into compliance with China's WTO obligations.

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 referred to its statements made at previous DSB meetings regarding this matter. China had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute. China had also further explained that the actions being sought by the United States were beyond the scope of China's compliance obligations. China hoped that the United States would reconsider the systemic implications of its position.

4.4. The DSB took note of the statements.

5 UKRAINE – DEFINITIVE SAFEGUARD MEASURES ON CERTAIN PASSENGER CARS

A. Request for the establishment of a panel by Japan (WT/DS468/5)

5.1. The Chairman recalled that the DSB had considered this matter at its meeting on 26 February 2014 and had agreed to revert to it. He drew attention to the communication from Japan contained in document WT/DS468/5, and invited the representative of Japan to make a statement.

5.2. The representative of Japan said that his country would not repeat in detail its position and claims in this dispute at the present meeting, which had already been explained in its panel request and the statement made at the 26 February DSB meeting. He recalled that the panel request had first appeared as an item on the Agenda of the DSB meeting on 26 February 2014. Following that meeting, Japan once again requested at the present meeting that the DSB establish a panel to examine the matter set forth in the panel request, with standard terms of reference in accordance with Article 7.1 of the DSU. Japan reiterated its position that the door for reaching a mutually agreed solution remained open and that it looked forward to receiving a timetable for the abolishment of the measures. Japan wished to take this opportunity to express its strong hope that Ukraine's political and economic situation would be stabilized as soon as possible. Japan, as a member of the international society, had supported Ukraine in its efforts to promote market economy and democracy. In that regard, Japan had announced a package of financial assistance to Ukraine and would continue to support Ukraine's effort.

5.3. The representative of Ukraine said that his country regretted that Japan had considered it necessary to reiterate its request for the establishment of a panel in respect of Ukraine's safeguard measures on passenger cars. The relevant authorities in Ukraine had conducted an objective investigation which had concluded that the domestic car industry in Ukraine was under threat of

[4] "China – Certain Measures Affecting Electronic Payment Services", WT/DS413/R (adopted on 31 August 2012), paras. 7.575, 7.678.

suffering serious injury as a result of the significant increase in imports of cars. In such circumstances, the rules of the WTO Agreement on Safeguards expressly allowed Members to impose temporary safeguard measures, in a transparent and non-discriminatory manner, as Ukraine had done. Ukraine had engaged in constructive and meaningful consultations with Japan in an effort to find an amicable solution that was respectful of Ukraine's rights under the relevant WTO Agreements. Ukraine regretted that Japan considered it necessary to seek for the second time the establishment of a panel rather than to pursue the search for an amicable solution through consultations. Ukraine expressed its concern about the fact that Japan's request for the establishment of a panel differed from its request for consultations. He noted that certain aspects that Japan wanted to raise before the panel had not been subject of consultations. Ukraine had also noted with regret that Japan's request for the establishment of a panel failed to provide the required summary of the legal basis of certain aspects of its complaint with sufficient clarity in violation of the relevant DSU provisions. At the present meeting, a panel would have to be automatically established, as provided for in the DSU. Ukraine considered that its measure was in full compliance with its obligations under the relevant WTO Agreements. In that regard, Ukraine would provide its full defence of the safeguards measure before the panel that would be established at the present meeting.

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 the European Union, India, Korea, the Russian Federation and Turkey reserved their third-party rights to participate in the Panel's proceedings.

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

A. Request for the establishment of a panel by China (WT/DS471/5 and Corr.1)

6.1. The Chairman recalled that the DSB had considered this matter at its meeting on 26 February 2014 and had agreed to revert to it. He drew attention to the communication from China contained in documents WT/DS471/5 and Corr.1, and invited the representative of China to make a statement.

6.2. The representative of China said that, at the 26 February 2014 DSB meeting, China had discussed its request for the establishment of a panel, as set forth in document WT/DS471/5 and WT/DS471/5/Corr.1. This matter concerned a number of US anti-dumping measures which China considered to be inconsistent with the provisions of the Anti-Dumping Agreement and the GATT 1994. The United States had opposed the establishment of a panel at that meeting. Since the matter remained unresolved, China requested, for the second time, that the DSB establish a panel to examine this matter.

6.3. The representative of the United States said that, as his country had explained both to China and to the DSB, the measures identified in China's request – to the extent they had been properly identified – were fully consistent with US obligations under the WTO Agreement. Accordingly, the United States regretted that China had chosen for a second time to request the establishment of a panel with regard to this matter. The United States was prepared to engage in these proceedings and to explain to the Panel that China had no legal basis for its claims.

6.4. The representative of Ukraine said that his country had made a written request to participate in this dispute as a third party but had not received any positive response. Ukraine had a systemic interest in this dispute and wished to reiterate its request to participate as a third party.

6.5. 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.

6.6. The representatives of Brazil, Canada, the European Union, India, Japan, Korea, Norway, the Russian Federation, Saudi Arabia and Ukraine reserved their third-party rights to participate in the Panel's proceedings.

7 AUSTRALIA – CERTAIN MEASURES CONCERNING TRADEMARKS, GEOGRAPHICAL INDICATIONS AND OTHER PLAIN PACKAGING REQUIREMENTS APPLICABLE TO TOBACCO PRODUCTS AND PACKAGING

A. Request for the establishment of a panel by Indonesia (WT/DS467/15)

7.1. The Chairman drew attention to the communication from Indonesia contained in document WT/DS467/15, and invited the representative of Indonesia to speak.

7.2. The representative of Indonesia said that his country welcomed Ambassador De Mateo as the new Chair of the DSB. Indonesia believed that his experience would bring good leadership for the year ahead and assured him of its full support. He recalled that, on 20 September 2013, Indonesia had requested consultations with Australia pursuant to Article 4 of the DSU, Article XXII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Article 64.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"), and Article 14.1 of the Agreement on Technical Barriers to Trade ("TBT Agreement") with respect to certain Australian laws and regulations that imposed restrictions on trademarks, geographical indications, and other plain packaging requirements on tobacco products and packaging. Indonesia had held those consultations with Australia on 29 October 2013 with a view to reaching a mutually satisfactory solution. The consultations had clarified certain issues pertaining to this matter, but had failed to resolve the dispute. This dispute concerned the following Australian measures: (i) the Tobacco Plain Packaging Act 2011, Act No. 148 of 2011, "An Act to discourage the use of tobacco products, and for related purposes"; (ii) the Tobacco Plain Packaging Regulations 2011 (Select Legislative Instrument 2011, No. 263), as amended by the Tobacco Plain Packaging Amendment Regulation 2012 (No. 1) (Select Legislative Instrument 2012, No. 29); (iii) The Trade Marks Amendment (Tobacco Plain Packaging) Act 2011, Act No. 149 of 2011, "An Act to amend the Trade Marks Act 1995, and for related purposes"; and (iv) any related measures adopted by Australia, including measures that implemented, complemented or added to these laws and regulations, as well as any measures that amended or replaced these laws and regulations. These measures applied to the retail sale of cigarettes, cigars, and other tobacco products and established comprehensive and restrictive requirements regarding the appearance and form of the retail packaging of tobacco products, as well as the tobacco products themselves. The measures also established penalties, including criminal sanctions, for the violation of these requirements. In Indonesia's view, Australia's measures appeared to be inconsistent with Australia's obligations under: (i) Articles 2.1, 3.1, 15.4, 16.1, 16.3, 20, 22.2(b) and 24.3 of the TRIPS Agreement; (ii) Articles 2.1 and 2.2 of the TBT Agreement; and (iii) Article III:4 of the GATT 1994. Therefore, Indonesia respectfully requested that, pursuant to Article 4.7 and 6 of the DSU, Article XXIII of the GATT 1994, Article 64.1 of the TRIPS Agreement, and Article 14.1 of the TBT Agreement, the DSB establish a panel to examine the matter, with standard terms of reference, as set out in Article 7.1 of the DSU.

7.3. The representative of Australia said that his country welcomed the appointment of Ambassador De Mateo as the DSB Chair. Having worked under his guidance in other forums and other cities, Australia had every confidence in the benefits that his leadership would provide as Members faced the challenges confronting them over the next year. Australia also wished to record its appreciation for the contribution made by the previous Chair, Ambassador Fried, for his dynamic and refreshing approach to his responsibilities.

7.4. With regard to the item at hand, the representative of Australia said that Australia's world first tobacco plain packaging measure had now been in force for over a year. This measure was the next logical step in Australia's long history of tobacco control. As part of Australia's comprehensive range of tobacco control measures, Australia believed it was already having a positive impact. As Members would be aware from Australia's previous statements to the DSB, tobacco plain packaging was a sound, well-considered measure designed and based on a broad range of scientific studies and reports to achieve a legitimate objective, the protection of public health. Australia's measure was consistent with the fundamental right of all Members under the WTO covered agreements to implement measures necessary to achieve this objective. The World Health Organization (WHO) had recognized the global nature of the tobacco epidemic and Australia was proud of its efforts to address this challenge. When Australia had implemented its ground breaking tobacco plain packaging measures, it was the first country to have done so and it did not believe that it would be the last. Australia commended those Members who were in the process of legislating or had signalled their intention to adopt similar measures in the future. Tobacco use

was the leading global cause of preventable death and was the only legal product that killed up to half of those who used it as intended. According to the WHO, tobacco killed nearly six million people a year worldwide, meaning someone died roughly every six seconds from tobacco. It was estimated that tobacco-related deaths would increase to over eight million per year by 2030 worldwide, an increase which would affect developing countries like Indonesia. Most of tobacco's damage to health did not become evident until years or even decades after the onset of use.

7.5. Australia noted that the harmful effects of tobacco were also of concern to the Indonesian Government. Australia understood that Indonesia was one of the largest tobacco markets in the world. The WHO estimated that 67% of male adults in Indonesia were current smokers and that 57% were daily smokers, the second highest male smoking rate in the world. The WHO had noted that 41% of Indonesian males aged between 13 and 15 years smoked. Female smoking rates, while much lower than male smoking rates, were also increasing. Global evidence showed that 88% of adults who became daily smokers first used cigarettes by 18 years of age. In 2012, Indonesia's president Susilo Bambang Yudhoyono had signed into law tobacco control regulations aimed at protecting the health of individuals, families, communities and the environment from the hazards of materials that contained carcinogens and addictive substances in tobacco products. Australia recognized Indonesia's efforts to strengthen its tobacco control laws and welcomed recent statements by Indonesia's Minister of Health, Nafsiah Mboi, signalling that Indonesia would seek to accede to the World Health Organization's Framework Convention on Tobacco Control. Against that background, Australia was disappointed that Indonesia had requested the DSB to establish a panel in relation to tobacco plain packaging. However, in the interests of ensuring a harmonized panel process and to avoid contributing to any further delay in the multiple disputes relating to Australia's tobacco plain packaging measure, and consistent with Australia's desire to ensure the overall efficiency and effectiveness of the WTO dispute settlement system, Australia accepted, at the present meeting, Indonesia's request for the establishment of a panel in this dispute. In the same vein, Australia hoped that the three complaints regarding its tobacco plain packaging measure could be managed in the most efficient way possible. Australia noted that panels had already been established in September 2012 and September 2013, with Ukraine and Honduras respectively. Regrettably, there had been no agreement to establish a single panel to consider both disputes, as should have been the case under Article 9.1 of the DSU. This made it all the more important that, to the greatest extent possible, the same persons were appointed to serve as panelists in all of the disputes involving Australia's tobacco plain packaging measure, and that the timetable for the panel process in these disputes be harmonized, pursuant to Article 9.3 of the DSU.

7.6. The representative of Ukraine said that, as Members were aware, Ukraine had also initiated a dispute settlement proceeding over the same plain packaging measure imposed by Australia on tobacco products that was at issue in Indonesia's panel request. Ukraine thus shared the concerns expressed by Indonesia regarding the lack of consistency of this measure with Australia's WTO obligations and welcomed Australia's decision to accept Indonesia's panel request at the present meeting.

7.7. The representative of Honduras said that his country had followed with interest the dispute initiated by Indonesia against Australia's plain packaging measures on certain tobacco products. As Members were aware, Honduras was also challenging these measures. He recalled that at the September 2013 meeting, the DSB had established a panel to examine Honduras' complaint regarding this matter. As it had previously indicated, Honduras supported the adoption of tobacco control measures to protect public health, as long as the measures were compatible with WTO rules. Australia's measures undermined the main function of a trademark, it seriously affected geographical indications of tobacco products and was contrary to the TRIPS Agreement. These measures were also inconsistent with the provisions of the TBT Agreement since they were more trade restrictive than necessary to attain a legitimate objective. Honduras would continue to support the efforts of other Members who also considered that Australia's plain packaging measures were not consistent with WTO rules.

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

7.9. The representatives of Brazil, Canada, China, Cuba, the European Union, Guatemala, Honduras, India, Japan, Korea, Malaysia, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Oman, the Philippines, the Russian Federation, Chinese Taipei, Thailand, Turkey, Ukraine,

the United States and Uruguay reserved their third-party rights to participate in the Panel's proceedings.

8 EUROPEAN UNION – ANTI-DUMPING MEASURES ON BIODIESEL FROM ARGENTINA

A. Request for the establishment of a panel by Argentina (WT/DS473/5)

8.1. The Chairman drew attention to the communication from Argentina contained in document WT/DS473/5, and invited the representative of Argentina to speak.

8.2. The representative of Argentina said that biodiesel was an energy commodity made from fats or oils of various products of plant or animal origin, in Argentina's case, soya bean. The efficient production of biodiesel was dependent on the fulfilment of particular requirements, the most relevant of which included access to raw materials (in terms of both quantity and quality) and an appropriate scale of production. Biodiesel production in Argentina had both of these characteristics in abundance. As the world's leading exporter of soya bean oil, the supply of this input (the raw material used for biodiesel produced in Argentina) was abundant and of good quality. However, the high level of vertical integration and the scale of production of the companies producing it also made it possible to supply the markets with a high quality product, at a very good price and under efficient conditions. None of this, however, was sufficient if market access was hindered by measures which appeared to seek solely to reserve the market for local production, which was what Argentina believed was happening in this case. Between 2009 and 2011 Argentina had become the leading supplier of biodiesel to the EU market, with exports amounting to some US$1,800 million in 2011. Towards the end of 2012, Argentinian biodiesel had been subject to two investigations, one involving alleged subsidies and another concerning alleged dumping. Argentina had participated actively and constructively, through both the Government and the private sector, in both proceedings, providing the information requested by the investigating authority, helping with verification in each of the investigations and, most notably, providing the European Commission with the reasons why both investigations should be concluded without imposing measures. Argentina was pleased to note that, in December 2013, in view of the total lack of evidence of the existence of alleged subsidies, the subsidies investigation had been closed without imposing measures, and rightfully so.

8.3. Regrettably, the investigating authority had not done the same in the anti-dumping investigation and had found a way, on the basis of the reconstruction of the normal value based on information different from that provided by the exporters, of imposing a definitive anti-dumping measure with duties ranging from 20% to 24%, depending on the company concerned. On 19 December 2013, Argentina had requested consultations with the EU under Article 4 of the DSU.[5] The consultations, which had taken place on 31 January 2014, had been useful, but had not led to any solution to this situation. While Argentina was prepared to do its utmost to find an appropriate solution to the problem posed by this measure, there did not appear to be any such solution on the horizon for the time being. Argentina considered the anti-dumping measures imposed by the EU to be in breach of various provisions of Articles 2, 3 and 9 of the Anti-Dumping Agreement, as well as Article VI of the GATT 1994. Argentina also believed that certain provisions of Regulation (EC) 1225/2009 (the "Basic Regulation") which enabled the investigating authority to make determinations in relation to the reconstruction of the normal value, were themselves inconsistent with the Anti-Dumping Agreement and the obligations assumed by the EU under the Marrakesh Agreement. For that reason, pursuant to Articles 4.7 and 6.1 of the DSU, Article XXIII of the GATT 1994 and Article 17 of the Anti-Dumping Agreement, Argentina requested the establishment of a panel with standard terms of reference set forth in Article 7.1 of the DSU.

8.4. The representative of the European Union said that the EU's impression after the consultations was that Argentina was willing to find a mutually acceptable solution to the dispute. Therefore, the EU considered Argentina's request for the establishment of a panel premature. In any event, the EU was convinced that the measures identified in its panel request fully respected its WTO obligations. The EU did not agree to the establishment of a panel at the present meeting.

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

[5] Document WT/DS473/1.

9 AUSTRALIA – TOBACCO PLAIN PACKAGING: STATEMENT BY AUSTRALIA

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

9.2. The representative of Australia said that more than two years had elapsed since WTO dispute settlement proceedings had been initiated by Ukraine with respect to Australia's tobacco plain packaging measure. Since that time, another four WTO Members had started proceedings against Australia concerning the same measure. A record number of Members had joined the disputes as third parties. Tobacco plain packaging had also been the subject of extensive debate in the TBT Committee and TRIPS Council. With that level of interest, Australia intended at the present meeting to update Members about progress in these disputes and to inform Members about certain procedural issues that had arisen. Australia believed that these procedural issues had broader implications for the proper functioning of the WTO dispute settlement system, which should be a shared interest of the WTO Membership as a whole. Between April 2012 and October 2013, Australia had participated in separate WTO dispute consultations with each of the five complainants – Ukraine, Honduras, Dominican Republic, Cuba and Indonesia – on the tobacco plain packaging measure.[6] As of the present day, three separate Panels had been established by the DSB in relation to Australia's measure: with Ukraine in September 2012, Honduras in September 2013 and at the present meeting, Indonesia. Australia, Ukraine and Honduras had held several rounds of discussions, but it had not been possible to reach agreement. Thus, nearly two years on, panel proceedings were yet to commence in any of the complaints brought against tobacco plain packaging. In December 2012, Australia and Ukraine had agreed to suspend panel composition discussions to allow Honduras and Dominican Republic, which had each made a first request for establishment of a panel, time to catch up by having panels established in those disputes. However, following its first request for the establishment of a panel in November 2012, ten months had elapsed before Honduras again requested the establishment of a panel in September 2013. Following panel establishment, Honduras had immediately sought to suspend the panel composition process. In the meantime, Ukraine had advised Australia it had wanted to resume composition discussions in relation to its complaint. Australia had, therefore, refused Honduras' request to suspend panel composition, so as to ensure the two processes would proceed together, given that Honduras had declined to have the complaints considered by a single panel under Article 9.1 of the DSU. To maximize efficiency, Australia had suggested joint panel composition discussions with Ukraine and Honduras, a proposal that Honduras eventually had agreed to after several rounds of separate meetings.

9.3. In the most recent developments, in a letter dated 24 March 2014, Ukraine had requested that the Director-General compose the panel in its complaint against Australia. Australia would, on the present day, request the Director-General to compose the panel in relation to Honduras' complaint against Australia to ensure harmonization of the two disputes, consistent with Article 9.3 of the DSU. Dominican Republic had made its first request for establishment of a panel in December 2012. Australia had rejected that request, in line with normal practice. In the nearly 16 months since that date, Dominican Republic had not made a further panel request. However, on 3 March 2014, Dominican Republic had requested "full participation" in the joint panel composition discussions between Australia, Ukraine and Honduras, but had given no indication about when it would seek to have a panel established in its own dispute. Australia had rejected that request. Consultations had also been held with Cuba, in June 2013. Cuba was yet to request the establishment of a panel.

9.4. The progress of these disputes to date raised three issues for Members to consider. The first concerned the role of the WTO dispute settlement system in providing security and predictability to the multilateral trading system. The second related to the resource implications of the way the complaints had proceeded to date. The third comprised some of the procedural questions that had arisen. The general provisions in Article 3 of the DSU set out a number of overarching principles underpinning the operation of the dispute settlement system. Article 3.2 of the DSU provided that the WTO dispute settlement system "is a central element in providing security and predictability to the multilateral trading system". Further, Article 3.3 of the DSU recognized that the prompt settlement of disputes was "essential to the effective functioning of the WTO and the maintenance

[6] WTO dispute consultations were held with Ukraine on 12 April 2012, with Honduras on 1 May 2012, with the Dominican Republic on 27 September 2012, with Cuba on 13 June 2013 and with Indonesia on 29 October 2013.

of a proper balance between the rights and obligations of Members". Until the complaints about Australia's measure were resolved, there would be uncertainty about tobacco plain packaging, and the application of relevant provisions of the GATT 1994, the TBT and the TRIPS Agreements to it. That uncertainty had a cost for all Members which extended beyond the circumstances of this case.

9.5. Since the introduction of tobacco plain packaging in Australia, a number of Members had indicated that they were also considering introducing tobacco plain packaging. In response, Honduras, Dominican Republic and Cuba had stated in the TRIPS Council and TBT Committee that those other Members should wait until the outcome of the disputes against Australia's measure was known. The cost of the continued uncertainty engendered by these proceedings and the failure to proceed to a prompt settlement of the disputes was a regulatory chilling effect on other WTO Members that may wish to take into account the outcome of the disputes against Australia before implementing their own tobacco control measures. Australia noted that, when the measure at issue was genuinely designed to protect public health (as was the case with tobacco plain packaging measures), then the human cost of delays in implementation could be especially serious. Against that background, prompt resolution of these complaints was essential. There were also resource implications of prolonging dispute settlement procedures. Participating as a principal party in a dispute was a resource-intensive exercise for any Member, which was exacerbated when the progress of a dispute was unpredictable. Members may consider that Australia, as a developed country, should be well placed to manage the defence of a complaint lodged by multiple complainants. However, Members may wish to reflect upon the implications should a developing country itself face the sort of situation Australia found itself in at the moment – a scenario that the DSU would not prevent. Delays in dispute settlement processes also affected the resources of the third parties and the WTO Secretariat. Members were aware of the difficulties the Secretariat was already facing in managing its workload. Though the Secretariat had not raised the issue with Australia, its planning for the support of the tobacco plain packaging panels must have been made very difficult by the continuing uncertainty as to the timing and indeed number of those panels. In turn, this situation must impact on the Secretariat's capacity to support disputes more generally.

9.6. The third area Members may wish to consider concerned certain procedural questions that had arisen in the dispute. Members would recall the debate in the September 2013 DSB meeting about the application of Article 6.1 of the DSU to Honduras' panel request. Australia was not seeking to reopen that debate at the present meeting, but clearly substantial delay between panel requests undermined the secure and predictable operation of the system. The fact that Australia will, at the present day, request the Director-General to compose the panel in relation to Honduras' dispute, and had agreed to Indonesia's first request for the establishment of a panel, demonstrated that Australia's views were not motivated by any interest in delaying the tobacco plain packaging proceedings. Indeed, prolonged delay was contrary to Australia's interests in these proceedings, and to the effective functioning of the WTO dispute settlement system as a whole. The second procedural issue related to the request by Dominican Republic to participate in discussions among the parties on panel composition. While Australia was seeking to promote coherence in the progress of the disputes, including in panel composition, it would have been extraordinary for it to have accepted that request in the absence of a further request by Dominican Republic for the establishment of a panel in relation to its own complaint. Had Dominican Republic followed normal practice for panel requests, a panel would have been established by now and Dominican Republic would have already joined the panel composition discussions in its own right. Australia did recognize that there may be circumstances where prolonging formal dispute processes might be justified. The first was where the parties were seeking to settle the issue bilaterally, including through a mutually agreed solution. Australia noted that this was a course that was appropriately encouraged in the DSU. But it was not the case here. Not one of the parties had approached Australia to resolve the dispute through a mutually agreed solution.

9.7. Alternatively, where the measure or measures at issue were evolving, a complainant may need to delay dispute processes to ensure it was targeting the measure in a way that would be effective. Complainants should have that leeway. Again, however, that was not the case here. Australia's measure had been foreshadowed by the Australian Government in April 2010, nearly four years ago, and it had been notified to the TBT Committee in April 2011. Moreover, the measure had been in full force since December 2012. There were compelling reasons why the DSU was drafted to ensure that complainants could pursue dispute settlement in a way that respondents could not block. Australia did not question that general approach. Yet under that general approach, complainants also had responsibilities. Thus, Article 3.3 of the DSU provided

that prompt settlement of disputes was "essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members". Article 3.7 of the DSU provided that "before bringing a case, a Member shall exercise its judgment as to whether action under these procedures would be fruitful". In Australia's view, this meant that a Member should not request consultations or a panel and only afterwards start considering whether it had a case that was capable of succeeding. In conclusion, Australia thanked the Chairman and Members for the opportunity to set out the unique circumstances of these disputes. Australia's aim had been to give Members the opportunity to consider some of the systemic questions it had touched on. Australia would welcome the opportunity to hear the views of other Members, either at the DSB or in some other forum. Australia would also make available, at the end of the present meeting, a chronology table for these disputes, as a further reference for Members.

9.8. The representative of Ukraine said that, given that Australia had expressed a clear preference to have a single panel for all disputes, Ukraine and Australia had agreed to suspend the panel composition process to allow the other Members that had initiated a dispute against Australia to establish their panels and join the process, in accordance with Article 9 of the DSU. In the absence of any progress, Ukraine had decided to re-start the panel composition process in August 2013 and had since met with Australia to discuss criteria and names of panelists in several rounds of constructive and open discussions. Any delays in the context of this process were therefore due only to Ukraine's desire to respond to the systemic issues expressed in Article 9 of the DSU to ensure that disputes relating to the same matter proceeded, to the greatest extent possible, before the same panelists and on the basis of a harmonized timetable. Ukraine understood that this was also Australia's wish. Ukraine had always acted in a manner that sought to achieve its own objective for a prompt resolution of the dispute, while respecting the systemic objectives. Ukraine remained actively committed to proceed with its dispute with Australia. In fact, as of Monday 24 March 2014, and due to the lack of progress between Australia and Ukraine over the proposed panelists, Ukraine had requested that the Director-General compose a panel and allow the dispute to move into the panel litigation stage.

9.9. The representative of New Zealand said that her country thanked Australia for the detailed update it had provided and the important questions it had raised at the present meeting. New Zealand wished to provide the DSB with its views on some of these issues, including with reference to the current status of New Zealand's proposed tobacco plain packaging measures. New Zealand recalled that it had welcomed the Australian Government's decision to legislate for the plain packaging of tobacco products. New Zealand shared Australia's public health objective and also had a strong trade and systemic interest in seeing WTO disciplines correctly applied. In New Zealand's view, Australia had paid close attention to and had respected its WTO obligations in developing and implementing its tobacco plain packaging measures. New Zealand shared Australia's concerns about the time it was taking for this matter to progress through the dispute settlement process. In particular, New Zealand was struck by the fact that, for three of those disputes, initial panel requests had been made in 2012 but to date, 18 months later, no panel had yet been composed. New Zealand, therefore, welcomed the developments reported by Australia at the present meeting. New Zealand agreed that the procedural issues that had been raised by Australia had broader implications for the proper and effective functioning of the WTO dispute settlement system that were relevant for the WTO Membership as a whole. New Zealand noted that Article 3.2 of the DSU clarified the role of the WTO dispute settlement system in considering it to be "a central element in providing security and predictability to the multilateral trading system". Furthermore, Article 3.3 of the DSU emphasized that the prompt settlement of disputes "is essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members". By highlighting the "effective functioning of the WTO", Article 3.3 of the DSU indicated that the prompt settlement of disputes was an element of providing security and predictability to the multilateral trading system. When interpreting the DSU provisions relating to procedures and time-frames, those provisions should be interpreted in accordance with their ordinary meaning in their context and in light of the DSU's object and purpose. In New Zealand's view, Articles 3.2 and 3.3 of the DSU provided context when interpreting the DSU's procedures and time-frames and expressed one of the key objects or purposes of the DSU.

9.10. New Zealand was of the view that delays in establishing a panel may be consistent with the DSU's object and purpose in certain circumstances, including: (i) where such delays enabled efforts to reach a mutually agreed solution; (ii) where the measure or measures in question were evolving and the complainant needed time to update or amend its complaint; or (iii) where the

delay reflected an intention of a complainant not to prosecute the dispute. New Zealand was not aware of any of those situations applying in these cases. These disputes were of direct trade interest to New Zealand because of its Government's decision to introduce a plain packaging regime for tobacco products in New Zealand. Legislation to give effect to that decision had been introduced to the New Zealand Parliament. On 11 February 2014, the Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill had passed its first reading in Parliament and, as a consequence, had been referred to a parliamentary select committee for further consideration. It was important to note that New Zealand's tobacco plain packaging Bill was draft legislation. In accordance with its domestic legislative process, and its obligations under the TBT Agreement, the New Zealand Government had invited submissions in respect of the legislation, and the deadline for Members to provide any comments or submissions was 18 April 2014. In conclusion, New Zealand referred to the requests from a number of Members made elsewhere in the WTO that it should suspend its legislative process and wait for the outcome of the WTO disputes regarding Australia's tobacco plain packaging measures. New Zealand noted in that regard that its legislative and regulatory process allowed ample opportunity for New Zealand to take into account developments in the dispute settlement processes in relation to Australia's tobacco plain packaging measures before finalizing and implementing its own tobacco plain packaging measures. Nevertheless, and in light of Article 3.3 of the DSU, New Zealand felt that it was reasonable to expect the complainants in these disputes to progress their complaints as promptly as possible, particularly if those complainants were also requesting that New Zealand and other Members delay their consideration or development of tobacco plain packaging legislation pending resolution of the disputes.

9.11. The representative of Honduras said that his country noted the statement by Australia concerning its understanding of the facts with regard to Australia's tobacco plain packaging legislation. Honduras considered this to be a complex case, given that it involved five complainants. Honduras also noted that Australia had raised three issues. Honduras did not agree with Australia's assessment of the facts. In Honduras' understanding, and contrary to what Australia had put forward, every WTO Member was entitled both legally and politically to present its claim under the DSU provisions when it thought it was most timely. The DSU did not specify when a Member could or should initiate a dispute, regardless of whether there was one complainant or several. WTO Members were free to decide when to initiate procedural steps. The DSU did not provide a time-frame in this regard. This right included the choice of the most appropriate time to submit a request for the establishment of a panel for consideration by the DSB. Members could choose not to submit their requests in two consecutive DSB meetings. As Members were aware, at the DSB meeting on 25 September 2013, Members had discussed this matter. At that meeting, the DSB had established a panel despite the fact that Honduras had not presented its request for the establishment of a panel in two consecutive DSB meetings. Regarding the issue of panel composition, Honduras had taken part, in good faith, in the discussions and had sought to ensure that the panels' timetables would be harmonized for the benefit of the multilateral trading system. Honduras was surprized by Australia's decision to request the Director-General to compose a panel in DS435 because normally the complainant would do so and not a respondent. Honduras regretted Australia's decision and believed that the two parties had been engaged in a constructive process to seek consensus on the choice of panelists, without the Director-General's intervention, with a view to having the same panelists serve in the separate panels in accordance with Article 9.3 of the DSU. Honduras thought that it was unfortunate that Australia's request had interrupted this fruitful process, which was mutually agreed.

9.12. The representative of the European Union said that the EU thanked Australia for updating Members on the procedural aspects of the plain packaging cases and the systemic implications that arose from the current situation. The EU shared Australia's concerns and called upon the relevant Members to proceed in a manner that ensured that the disputes were settled promptly, with a view to providing security and predictability to the multilateral system. The situation necessarily affected all concerned and not least the WTO Secretariat which would not only need to find the panelists to adjudicate these disputes, but also to support the panels once they were established and composed while ensuring that other disputes also received the necessary support. In the EU's view, applying Article 9 of the DSU in these disputes was necessary in order to ensure optimal resource allocation not only for these disputes but ongoing and future disputes more generally.

9.13. The representative of Uruguay said that his country wished to reiterate the importance of maintaining and strengthening the efficient functioning of the DSB, which was an important pillar

in the structure of the multilateral trading system. In that respect, the parties' procedural conduct must be in line with the DSU to ensure the prompt and efficient settlement of the disputes. Uruguay was a developing country who believed in and defended the multilateral system. It also believed that the DSB should provide security and predictability for Members. This applied not only to the timing of filing complaints, but also to compliance with the DSB recommendations. For that reason, Uruguay fully shared the systemic concerns raised at the present meeting regarding the disputes in question and urged Members to meet the DSU objectives. With regard to the substance of the disputes in question, Uruguay reiterated its position regarding the legitimacy of the measures on plain packaging for tobacco-based products under WTO rules. Uruguay supported Australia's view that delaying other Members from implementing policies to control tobacco consumption until these disputes were resolved may result in high cost for the protection of the public health of their populations. Uruguay noted that the protection of health was within the sovereign authority of States and that Members' actions aimed at preventing thousands of deaths each day due to tobacco consumption could not be left subject to the uncertainty.

9.14. The representative of Norway said that his country welcomed Ambassador De Mateo as the new DSB Chair. Norway thanked Australia for putting this item on the Agenda and for providing a useful overview of the status of the cases and the procedural issues that arose. As repeatedly stressed in various fora, public health and tobacco control were topics of particular interest to Norway. Like Australia, Uruguay and New Zealand, Norway noted that certain Members had stated in the TRIPS Council and the TBT Committee that other Members should wait to introduce plain packaging until the outcome of the disputes against Australia's measure. Norway fully shared Australia's concern with regard to the delays in these disputes and referred to the overarching principles in Article 3 of the DSU of providing security and predictability to the multilateral trading system.

9.15. The representative of Cuba said that her country fully supported the statement made by Honduras. Cuba noted Australia's statement. However, it believed that the procedural concern in these disputes resulted from the difficulties faced by developing countries under the dispute settlement system. In the case of Cuba, as Australia had stated, consultations had taken place on 14 June 2013, in accordance with the rules established in the DSU, the GATT 1994 and the TRIPS Agreement as well as the TBT Agreement. Since then, Cuba had carefully analysed the effects of the plain packaging measures in Australia with regard to the level of the consumption of tobacco on the Australian market. Cuba had also analysed the trade impacts of such measures. On that basis, and after 15 months of its analysis, Cuba had much more concrete information on the effects of the measures adopted by Australia. As Honduras had rightly stated, there was no time-frame established in the DSU as to when a panel request must be submitted before the DSB. Cuba considered that a requirement of this nature would not be consistent with the objective of the dispute settlement mechanism, which was to seek a positive solution to disputes. Currently, different actions initiated by Members were still pending. Australia had also mentioned systemic concerns relating to the burden imposed on the Secretariat and other Members. Cuba noted that, as mentioned by Honduras, a request for the composition of a panel had been made to the Director-General. Cuba further noted that Australia had accepted the establishment of a panel at the present meeting, pursuant to Indonesia's first request. Cuba closely monitored the situation on the Australian market and believed that Australia should also assess the effect of its measures.

9.16. The representative of Indonesia said that his country thanked Australia for its statement. Indonesia noted that initiating a dispute was not a step to be taken lightly. Members recognized this and Article 3.7 of the DSU provided that before bringing a case, a Member shall exercise its judgment as to whether action under the DSU would be fruitful. This was part and parcel of a set of rules that were designed to avoid disputes and to allow Members to find ways to secure a positive solution to a dispute without compelling a complainant to proceed to a panel. Members would not be forced to proceed to a panel until they believed it was fruitful to do so. Any other position would deny Members the opportunity to avoid dispute settlement proceedings, if possible. To that end, the DSU did not impose or prescribe any other limits for the time-period between a request for consultation and a first panel request, or between a first and second panel request. When Honduras had made its second request for the establishment of a panel to examine its dispute with Australia over plain packaging in September 2013, the DSB had considered Australia's argument regarding the timing for establishing panels. Many Members that had spoken at that meeting had emphasized that a complainant was indeed not required to present its first and second panel request at consecutive DSB meetings. Moreover, a respondent was by no means prejudiced by allowing a complainant time to bring a dispute. Indeed, if a complainant took time to

seek the establishment of a panel, the respondent was given more time to seek a mutually agreed solution and avoid the dispute. Moreover, the respondent also enjoyed the benefit of extra time to prepare its case. The fact that the complainants took time before seeking the establishment of a panel did not create prejudice for the respondent in the panel proceedings should they be brought. The respondent would have more time to seek a mutually agreed solution to avoid the dispute and would have additional time to prepare its rebuttal submissions should a case be brought. Any due process related concern that the respondent may have could and should be raised with the panel and not by introducing arbitrary deadlines to the DSU that the drafters themselves had not established.

9.17. The representative of Canada said that his country thanked Australia for putting this item on the Agenda of the present meeting and for bringing these issues to the attention of the DSB. Canada had been at the forefront of the development of labelling requirements for tobacco products. Canada, therefore, followed with interest the ongoing international developments regarding the plain packaging of tobacco products, and how such measures interacted with both international trade and public health. As mentioned by Australia and others at the present meeting, and as was highlighted in Article 3.2 of the DSU, the WTO dispute settlement played a pivotal role in providing security and predictability to the multilateral trading system. Article 3.3 of the DSU further recognized the importance of the prompt settlement of disputes. The protracted and differential pursuit of disputes concerning the same issue or similar ones, as seemed to be the case in these disputes, was not conducive to security and predictability and it was not an effective use of the resources of either the institution or the Membership. Among other detrimental effects, to have WTO resources allocated to a given dispute (or disputes), and then suspended in uncertainty indefinitely, had an impact on the ability to proceed quickly on other unrelated disputes and, therefore, on the interests of non-disputing Members. It was incumbent on all actors, including the disputing parties, panels and the Appellate Body, to act in a manner that promoted the settlement of disputes in a timely and effective manner. As Canada had said on other occasions, it was Members' responsibility, when acting as disputing parties, to act in a manner that took into account the systemic and institutional consequences of their actions. This would seem to suggest a degree of coordination when it came to disputes related to similar measures.

9.18. The representative of Japan said that his country thanked Australia for the update on these important disputes. Although Japan would not be taking any position regarding any factual matters of these disputes at the present meeting, it wished to reiterate the importance of Article 9 of the DSU to have consistent panel decisions and effective panel proceedings from a systemic point of view.

9.19. The representative of Zimbabwe said that this item of the Agenda had similar elements to Agenda item 7 which the DSB had already considered. Zimbabwe had keen interest in both Agenda items: 7 and 9. In that regard, Zimbabwe welcomed Australia's acceptance to establish a panel to examine its tobacco packaging measures. Zimbabwe also welcomed Australia's statement introducing this Agenda item. Zimbabwe wished to express its concern that the tobacco plain packaging measures by Australia would restrict trade and that they appeared to be inconsistent with the TRIPS and TBT Agreements. According to Article 2.2 of the TBT Agreement, the technical regulations at issue created unnecessary obstacles to trade because they were more trade restrictive than necessary to fulfil a legitimate objective. The measures appeared to be inconsistent with Australia's obligations under Article 16.1 of the TRIPS Agreement because the measures prevented owners of registered trademarks from enjoying the rights conferred by a trademark. Zimbabwe was of the view that there was no demonstrable scientific evidence that the measures proposed would be effective in influencing the behaviour of consumers or reducing smoking among the youth or the rest of the population in general. In fact, Zimbabwe believed that the Australian measures would result in illicit trade and would reduce the value of the products and exports.

9.20. The representative of Brazil said that his country thanked Australia and other Members that had spoken with regard to the update on the procedural challenges in the "Australia - Plain Packaging" disputes. Brazil appreciated the sharing of concrete experiences and of the difficulties in the framework of the DSU. As these disputes concerned important issues of trade, the protection of human health and intellectual property, it was in the interest of the entire Membership to follow closely the procedural aspects and to encourage the parties to cooperate and coordinate so as to ensure that the DSU procedures were properly observed, that due process was preserved, and that the efficiency of the dispute settlement was maintained.

9.21. The representative of Hong Kong, China said that his delegation joined the previous speakers in thanking Australia for bringing this important issue before the DSB. Without commenting on the substance of the disputes concerned, Hong Kong, China shared Australia's systemic concern regarding the need for the prompt settlement of disputes. This was of utmost importance for the predictability and security of the multilateral trading system. Hong Kong, China also shared the views of Japan and the EU with respect to Article 9 of the DSU.

9.22. The DSB took note of the statements.

10 REPORT ON THE PROGRESS OF THE DIGITAL DS REGISTRY INITIATIVE

10.1. The Chairman said that, under this Agenda item, as requested by Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Honduras, Hong Kong, India, Japan, Korea, Lesotho (on behalf of the African Group), New Zealand, Norway, Chinese Taipei, Thailand and the United States, he wished to invite the representative of the Secretariat, Ms Valerie Hughes, Director of the Legal Affairs Division, to report to Members on the progress of the Digital DS Registry initiative.

10.2. The Director of the Legal Affairs Division, Ms Valerie Hughes, made the following statement:

"The Secretariat is pleased to provide a further report to the DSB on the Digital Dispute Settlement Registry initiative (which I will refer to as the DDSR), as requested by the delegations referred to by the Chair.

This report will cover progress made since our last report to the DSB in December 2012, including discussions that took place at meetings of the open-ended Working Group on the DDSR and the technical work that has been underway for some months now. It will also provide information on activity anticipated for the coming months.

We have left copies of a room document – a power point presentation – that outlines some of the main aspects of this presentation, so that Members will be able to follow along and visualize some of the processes I will be referring to. The Secretariat's full report will, of course, appear in the minutes of this meeting. Should any Member wish to have an electronic copy of the room document, please do not hesitate to contact me and I will be pleased to provide it.

Members will recall that the DDSR project has three elements: (1) the development of a central *electronic storage facility* for all WTO dispute settlement records; (2) the design of a *research facility* to be used by Members and the Secretariat to search for dispute settlement information; and (3) the creation of a *secure electronic registry* for filing and serving dispute settlement documents on line.

1. Central Electronic Storage Facility

The DDSR will serve as a secure electronic facility for the storage of all panel and Appellate Body records. In order to have a complete database, we have to upload existing dispute settlement material into the new system. When the DDSR becomes operative, new dispute settlement material will be loaded directly into the system.

As I reported previously, WTO dispute settlement records dating back to 1995 had been stored in cardboard boxes in the basement of this building and then later moved offsite in rented space during the renovation project. Unfortunately, the boxes were not well-organized and retrieving old records was often time consuming and difficult. As I explained in our last report, past records – some of it hard copy materials and some of it in electronic formats that are no longer readable on today's computers – are being inventoried, catalogued and scanned for eventual uploading into the DDSR. You will see an illustration of one of the excel sheet inventories on the first page of the room document. This will give you an idea of the detailed work involved in cataloguing this material. Each phase of a dispute (for example, panel, appeal, compliance, arbitration) requires a separate inventory to ensure efficient searching and retrieving of material, as well as to ensure protecting dispute settlement material from improper disclosure. Many thousands of pages have been processed so far.

We will soon begin uploading scanned records into the system and will then run tests to check whether they have uploaded properly. Unfortunately, the cataloguing and scanning of old records are not yet complete and, given the enormous volume of documents, it may be some time before we have the entire archive uploaded into the system.

Let me emphasize that scanned material will be retrievable only by those authorized to have access to such material. For example, if a Member wished to retrieve a copy of a submission it made in an arbitration proceeding several years ago, it will be able to do so. However, a Member that did not participate in that arbitration will not be able to access that submission.

2. Research Facility

We have made great progress on the Research Facility in the last several months. Lawyers from the Legal Affairs Division, the Appellate Body Secretariat, and the Rules Division were all assigned a number of cases to process. These assignments involved developing what is known as the "metadata" for every phase of every dispute, so that those using the facility will be able to conduct sophisticated searches. For example, cases have been assigned thematic keywords (such as burden of proof, national treatment, treatment no less favourable, and appropriate level of protection). In addition, the findings of each panel and Appellate Body report have been linked with each relevant WTO provision. The subject-matter of the disputes (be it products, services, or IP) has also been gathered. An example of this "metadata-related" work is illustrated in the room document. While it is true that some of this information is available on the WTO dispute settlement website, it is much less detailed and is not complete for each stage of the proceedings. For example, it is currently not possible to conduct a search for all Appellate Body reports dealing with the term "burden of proof", or with a claim under Article 11 of the DSU. Nor is it possible to conduct a search on today's website to find out which panelists have dealt with specific provisions under specific WTO Agreements. The new research facility has been designed to allow this kind of searching. You can see a screen shot of what such a search would look lie in the room document that we circulated today.

Uploading of that data began this month and should be completed in April. We have recently begun testing the search facility in the three legal divisions to ensure that the data were loaded properly.

3. Electronic Registry

As we reported previously, the main hallmarks of the new electronic registry will be: (i) increased security in filing confidential dispute settlement submissions, because it will no longer be done through e-mail, which is highly insecure; (ii) paperless service on other parties and third parties; (iii) paperless distribution of submissions and exhibits to panel and Appellate Body Members located across the globe; and (iv) a comprehensive calendar of dispute settlement deadlines to assist Members and the Secretariat with workflow management. In other words, each Member will be able to see on a calendar when their next submissions are due and when their next hearings will take place, which will facilitate organizational meetings when deadlines for new disputes are being agreed.

As Members are aware, the Secretariat has been consulting with a "Working Group" open to all Members to obtain input on the design of the registry so that it will align with Members' needs. The Working Group has met several times since our last report to the DSB (specifically, in June, July, and October of 2013). We plan to hold the next meeting of the Working Group on Thursday, 3 April 2014, at 14h00 in Room D. All Members are of course invited to attend.

In the most recent meetings of the Working Group, the discussion focused on the implementation of additional layers of security for accessing the DDSR, most notably what is referred to as "the second factor of authentication". Members provided valuable input on this as well as on aspects of how Members will administer their own DDSR accounts and the accounts of their individual employees authorized to access the system. You will see illustrations of these two aspects in the room document.

At the Working Group meeting scheduled for 3 April, we will be reviewing and demonstrating where we stand with these two aspects. In addition, we hope to finalize at that meeting the number of security tokens to be provided to each Member, so that Members can access the system

(be it in Geneva or their capitals) when it goes "live". Some Members have already identified their needs regarding the number of tokens; we are still waiting for most Members to provide us with this information.

We will also discuss the pilot project, which will involve identifying Members who wish to participate in a trial of the actual system when it goes "live" for testing purposes. Finally, we hope to discuss plans for training in the application for all Members later this year.

In addition to participating in the Working Group sessions, Members have been encouraged to visit the Secretariat and receive a hands-on demonstration or to conduct a "test drive" of the registry function. The illustration in the room document is not quite how this will work! But Members will be able to file a fake submission in a fake case on a prototype of the system and will be walked through the steps of that process. So far, Australia, Argentina, Canada, China, the European Union, Japan, Korea, Panama, Chinese Taipei, and the United States have done a test drive with the Secretariat. We encourage all interested Members to arrange for such a demonstration.

4. Anticipated Milestones

Let me turn finally to a few anticipated milestones for the coming months.

Certain changes to the application that were necessary based on Member's comments, Secretariat testing, and identification of bugs, were delivered at the end of 2013 and in the course of January and February. Testing of these new features has been underway and will continue over the coming months as new aspects are added, data are uploaded, and bugs are rectified.

We expect the delivery of the application with the "second factor of authentication" sometime in May. Once we have that, Members should be able to log in to the DDSR from outside the WTO internal environment. A pilot project could begin with a few Members filing actual documents in ongoing disputes, although we would still maintain paper and e-mail filing as the official method.

Further aspects of the application that address functions performed by the Secretariat will be delivered in the course of May and June. These will be tested in the weeks following.

After a period of testing with real documents and after getting feedback from Members who participate in the pilot project, and after adjustments are made in the light of such experience, we can begin to plan for a gradual phase-in of the DDSR for all Members in all disputes. As we have explained previously, we would run two parallel systems initially – the one that we use now as well as the electronic registry. We have yet to determine for how long we will run both systems before switching to the electronic registry as the official version. We will determine that in consultation with Members. We may be in a position to start running the parallel systems as early as during the 4th quarter of 2014. However, this would not occur until after we have offered training sessions for all Members.

We have recently conducted a recruitment process for a new DS Registrar. The new DS Registrar is expected to take up duties soon, and will play an active role in providing training to Members and assisting them with any problems they encounter with e-filing.

5. Concluding Remarks

To sum up, then, I am happy to report that we have made good progress in 2013 and the beginning of 2014 towards the finalization of the application and in archiving of old records. Members' input has been invaluable in helping us develop an application that aligns with their needs.

As mentioned earlier, all Members are invited to attend the Working Group meeting on Thursday, 3 April 2014 at 14h00 in Room D. We also stand ready to respond to Members' questions at any time.

Finally, I would be remiss if I did not salute the members of the Secretariat who have worked especially hard on this project, including Marisa Goldstein, Xiaolu Zhu, Patricia Crawley, Elisabeth Upton, Ravi Soopramanien, Ric Romea, and Oliver Murillo."

10.3. The DSB took note of the report, and the Chairman invited delegations to make statements, if they so wished.

10.4. The representative of the United States said that his country thanked the Chair for requesting this report and the Secretariat for providing it, particularly as it had been over a year since the Secretariat's last report in the DSB on this important initiative. The Secretariat's report was informative, and the United States hoped that other Members found it useful as well. The United States had joined several other delegations in requesting that this information be brought to the DSB, similar to the reports provided by the Secretariat during the DSB meetings in June and December 2012. The United States considered that it was important that the Secretariat's report was presented to all Members for transparency and inclusiveness, and to allow all Members to participate, including those that may have not been able to attend the informal working group meetings, for example, due to other commitments. The United States looked forward to future opportunities to discuss this issue, and as future test pilots of the new system moved forward, the United States looked forward to examining and testing that system, in light of US interests and values in dispute settlement. The United States representative said his country would also like to briefly comment on something that had been mentioned by the Secretariat at the present meeting; namely, the implication that this system might become mandatory for all Members in all disputes after some period in which Members could choose between this system for filing and the current one. The United States saw this issue differently and thought that it was of systemic importance. The United States did not see how the system could be mandatory in all disputes without agreement of all WTO Members. Pragmatically, the United States did not see how it would be desirable to try to compel a WTO Member to use a filing system that it had considered did not preserve its interests in some way. The United States expected that the development of the system would fully take on board the interests and concerns of the Members and that they would be fully consulted with during its development. The United States looked forward to further discussion of this issue with Members in the informal working group and in the DSB.

10.5. The DSB took note of the statement.

11 AB SELECTION PROCESS UPDATE

11.1. The Chairman said that, as he had indicated in his initial remarks with respect to his election, one of the most urgent and pressing issues before the DSB was to fill the vacancy in the Appellate Body, which had been left by David Unterhalter at the conclusion of his second term in December 2013. He recalled that, at the February 2014 DSB meeting, Ambassador Fried had drawn attention to a fax from the Selection Committee informing delegations that the Committee had been unable to recommend a candidate for the vacant position in the Appellate Body and that it had recommended that the DSB commence as soon as practicable a new selection process, to be carried out by the Director-General and the 2014 Chairpersons. He also recalled that at that meeting, delegations had made statements regarding this matter. Various views had been expressed and he had been apprised of all of them. As he had mentioned previously, he had been briefed by Ambassador Fried regarding this issue. He was fully aware of where matters stood and he was mindful of the importance of this matter for the DSB and for the WTO as a whole. Despite the considerable efforts of the Selection Committee, this matter remained outstanding and Members must find a way forward together. He said that having been Chair of the DSB for just a couple of hours, Members may agree that it would be important for him to take the time needed to consult on this matter so that he could obtain Members views in finding the best way forward. He would be reaching out to Members regarding this matter and his door was open should any delegation wish to contact him directly. He was aware of the fact that this issue needed to be resolved as quickly as possible in order to enable the Appellate Body to function smoothly and in particular in light of the expected increase in the workload of the Appellate Body for 2014. It was his intention to propose the way forward as soon as at the next regular DSB meeting scheduled for 25 April 2014 or, if necessary, a special DSB meeting might be convened for that purpose.

11.2. The representative of Kenya said that his country congratulated the Chairman on his election. Kenya attached great importance to the DSB as a pillar and icon of confidence that gave credence and respect to the multilateral system. Having a seasoned diplomat and skilful negotiator as the DSB Chair, Kenya was convinced that Ambassador De Mateo's appointment as Chair was obviously not by accident but was due to his hard work and rich experience of many years of matters of international trade. Given his positive record and high qualities, Kenya had unreserved confidence in his leadership and ability to take the DSB to the next level of its operation. With

regard to the update on the Appellate Body selection process, Kenya thanked the Chair for his report and hoped that together Members would constructively continue building on the progress achieved until the issue was fairly concluded. Kenya would continue to engage constructively and fairly and would also give unreserved support to the process.

11.3. The representative of the Kingdom of Saudi Arabia said that Mr. Hamid Mamdouh, nominated by Egypt, was a candidate with demonstrated expertise in law, international trade and the WTO Agreements in general including the DSU. Saudi Arabia saw him as a solution to the deadlocked position in the unwritten geographical distribution rules and the composition of the standing Appellate Body. Saudi Arabia believed in his credibility as an independent Appellate Body member. With regard to voting, Saudi Arabia noted that Article IX of the WTO provided that "except otherwise provided … the matter at issue shall be decided by voting". With regard to this issue, Article 2.4 of the DSU clearly stated that "where the rules and procedures of this Understanding provide for the DSB to take a decision, it shall do so by consensus". In this regard, Saudi Arabia believed that this matter could only be resolved by consensus.

11.4. The DSB took note of the statements.

12 STATEMENT BY PANAMA REGARDING THE MEASURES TAKEN BY VENEZUELA VIS-À-VIS PANAMA

12.1. The representative of Panama, speaking under "Other Business", said that his country supported the statement made by Honduras on behalf of GRULAC to congratulate the new Chairman of the DSB on his appointment. Panama also thanked the outgoing Chairman of the DSB. Under "Other Business", Panama wished to express its concern regarding Venezuela's decision to break off economic and trade relations with Panama, and the fact that this decision was being implemented by means of restrictive and discriminatory measures against Panama's trade in goods and services. Panama had learnt from various sources, including Panamanian and Venezuelan traders and citizens, that Venezuela's authorities had suspended authorizations from the Foreign Currency Administration Commission (CADIVI) for purchasing foreign currency to use for trips to Panama, and authorizations for sending family remittances to Panama. As a result, Venezuelan citizens could not purchase dollars to use during visits to Panama and dollar payment operations with credit cards were blocked in Panama. Venezuelans residing or studying in Panama did not have access to money from Venezuela, all of which affected trade in Panamanian goods and services. Panama had also learnt, from Venezuelan importers who had received official communications, that Venezuela had suspended the purchasing of foreign currency for imports of merchandise from Panama. This constituted a restriction on trade in goods. None of these measures, or the grounds therefore under the Agreements, had been notified to Panama or to the WTO. Panama continued to examine the appropriate follow-up that should be given to this situation in all the relevant WTO forums, with a view to invoking its rights under the multilateral trade agreements. This could include the initiation of dispute settlement proceedings, should Panama not be able to obtain the necessary clarification or resolve the situation in a mutually agreed manner. Panama would keep Members informed of any developments in this regard.

12.2. The representative of the Bolivarian Republic of Venezuela said that his country noted the statement by Panama and wished to reiterate what it had stated at the General Council meeting on this matter. In Venezuela's view, such political matters should not be discussed under "Other Business". Furthermore, Venezuela did not think that the situation between Venezuela and Panama should be raised in the DSB. Venezuela believed that given the actions taken by Panama against Venezuela, his country had acted in line with the international rules and regulations.

12.3. The representative of the Plurinational State of Bolivia said that his country shared the view expressed by Venezuela that political issues should not be discussed in the DSB.

12.4. The representative of Cuba said that her country supported the statements made by Venezuela and Bolivia. Cuba did not think that it was appropriate to include this matter on the Agenda of the DSB. Article 4 of the DSU stipulated that a Member shall enter into consultations in good faith and that consultations provided Members with the possibility to exchange views on trade concerns in order to find an amicable solution. Cuba believed that consultations should be held first before the matter could be brought for consideration by the DSB. Cuba, therefore, urged the parties to consult on possible options in order to address this matter.

12.5. The representative of Nicaragua said that his country wished to reiterate what it had already stated at the General Council meeting. Nicaragua fully supported the statements made by Cuba and Venezuela. Nicaragua had some concerns as to whether the DSB was the appropriate forum to deal with such matters.

12.6. The representative of Ecuador said that his country shared the systemic concerns raised by previous speakers. Ecuador wished to highlight two elements. First, Article 2.1 of the DSU stated that the DSB was established to administer the DSU rules and procedures. Article 1.1 of the DSU stated that these rules and procedures would be applied to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 of the DSU. The DSB was a specialized WTO Body with specific mandate and the DSU's scope of application was clearly defined. Second, in accordance with Article 3.7 of the DSU, before submitting a claim, a Member shall exercise its judgment as to whether action under these procedures would be fruitful. The objective of the dispute settlement system was to secure a positive solution to a dispute and Article 3.7 of the DSU provided that a mutually agreed solution between the parties was the preferred option. As explained in the "Mexico - Corn Syrup" dispute, Article 3.7 of the DSU reflected the need for Members to resort, in good faith, to discussions to resolve the dispute before making recourse to the DSU provisions. As stated in the dispute: "US - FSC", the principle of good faith was a general principle of law and a general principle of international law.

12.7. The DSB took note of the statements.

_____