WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/350

21 November 2014

(14-6784)

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Dispute Settlement Body
26 September 2014

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 26 SEPTEMBER 2014

Chairman: Mr. Fernando De Mateo (Mexico)

Prior to the adoption of the Agenda, the item concerning the adoption of the Panel Reports in the disputes on: "Argentina – Measures Affecting the Importation of Goods" (DS438; DS444; DS445) were removed from the proposed Agenda, following Argentina's decision to appeal the Reports.

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1 STATEMENT BY THE DIRECTOR-GENERAL REGARDING DISPUTE SETTLEMENT ACTIVITIES

1.1. The Chairman said that, as previously announced, at the present meeting he wished to invite the Director-General to make a statement regarding dispute settlement activities.

1.2. The Director-General made the following statement:

"I would like to talk to you about the current situation in the DSB: the challenges we face, what we are doing to overcome them and what more we may need to do. There is no question that the WTO's dispute settlement system has been a success. The numbers tell their own story about how valued it has become. In just under 20 years since the system came into being, 482 requests for consultation have been received. In 47 years under the GATT, 300 disputes were received. In 68 years, the International Court of Justice has received 162 cases. So we have seen a remarkable level of activity. Looking at the economic importance of the system, researchers found that, in the first 16 years of the DSB, we handled disputes covering at least US$1 trillion of trade flows. Members clearly hold the system in high esteem. Two thirds of our Membership has participated in the system in one way or another. It has been suggested that the ever-increasing number of RTAs might pose a challenge, but this has not proved to be the case. Most dispute settlement mechanisms provided for in RTAs are rarely used. Indeed, some have never been used at all. Yet one in every five WTO disputes involves parties who are also parties to RTAs. This means that the system is in very high demand. In fact, as you are aware, we are experiencing an unprecedented volume of work in dispute settlement. And while this is welcome, it does create some very real challenges.

CURRENT SITUATION: So let us take a look at the current situation in the dispute settlement system. I will not spend too much time on this today as I want to focus more on prescription, rather than diagnosis. The total number of active proceedings being serviced by the Legal Affairs Division, Rules Division, and the Appellate Body Secretariat has roughly doubled since 2012. Today there are 19 active panels requiring full-time assistance, three ongoing appeals, and four panels in composition. Our estimates suggest that this is not just a temporary surge and I do not believe that dispute settlement volume will soon diminish. In fact, 2014 is moving faster than 2013 in terms of the number of panels established by this time of year. As for appeals, you are well aware that the rate of appeal has always been very high - and much higher than expected, when the negotiators created a body of seven part-time AB members. The average rate of appeal is approximately two-thirds. This means we should prepare for around 10-12 appeals being filed per year during the next 24 months including possible appeals in the two complex aircraft cases. If we shut the doors today, panels and the Appellate Body will have enough work to keep them and their Secretariat staff busy for the next two years. But of course the doors will not be shut - new requests will keep coming in. But it is not just the number of disputes and appeals that places demands on the dispute settlement system. Disputes are generally much more complex now than they were in the first decade. It is now common for disputes to involve multiple parties advancing a variety of claims with more voluminous submissions, increased third-party participation, more demand for translation, and greater procedural complexity. I am now going to show a few slides illustrating the upward trend in the complexity of disputes. The first graph shows the total number of active disputes per year since the beginning of the system in 1995, including all stages of disputes. The next two graphs show the number of pages of interim review and findings in the panel reports per four-year period from 1995 to 2014. The first includes the two LCA reports. The second excludes those two reports as they are outliers in terms of their length. Nevertheless you can see that the trend is unchanged. For the most recent four-year period the average is nearly 200 pages - which is almost four times greater than the first four-year period, when there was an average of 50 pages. The final graph shows the average number of exhibits for the first five years of the system at about 94, and for the most recent five years of the system, at just over 300. As with the upward trend in the number of cases, I do not expect this increased level of complexity to change. We are in a situation where the demand is severely testing our capacity. There are some clear constraints on our ability to extend that capacity - such as the budgetary situation and

some aspects of how the system was designed. For example, we have had some difficulties in retaining staff, which have contributed to some extent to the challenges we are facing. Speaking frankly, the private sector, and others, can offer WTO dispute settlement lawyers more stable and lucrative long-term working conditions and better career advancement opportunities. That is just reality. We therefore lost a number of trained and experienced lawyers - and their institutional and case law memory. Under the present circumstances, we need senior and experienced lawyers to lead panel teams, especially bearing in mind that panelists are part-time and some of them are not experienced with the system. We must also be mindful of the fact that the capacity of the Appellate Body is limited, first and foremost by the fact that the DSU stipulates that the Appellate Body shall be composed of seven members. The intensity of the work required to complete an appeal within the 90-day timeframe means that it is not possible for an Appellate Body member to serve on two divisions with identical or largely overlapping schedules. The likelihood that appeals will remain too numerous for the Appellate Body, composed of seven members, to handle cases in parallel, is to be continued. Even with somewhat staggered appeal filings the Appellate Body cannot hear more than three of the nowadays more complex appeals in parallel. Therefore, even if we could service more panels than we currently do, we still have an insurmountable bottleneck at the Appellate Body stage. All these factors explain why some Members are experiencing delays with panels getting up and running after composition. It also explains why the Appellate Body will need more than 90 days to complete some appeals over the coming months and why parties may have to wait for an appeal slot to become available. I can assure you that we are cognisant of the delays that some of you have experienced recently, particularly after panel composition. I understand that this can pose difficulties for you, including financial difficulties. I want to be clear that in working through cases, we are proceeding in a strictly chronological order without discrimination or favoritism. There is no arbitrary or subjective approach to determining the sequence.

ADDRESSING THE SITUATION: So, in very plain terms, that is where we stand today. When I started the job this time last year, I found that things were even worse than I had expected. It was an emergency situation. Despite the number of disputes rising to its highest in a decade starting in 2012, this slide shows that in 2013 the Secretariat did not have enough lawyers who could be assigned in new disputes. This is partly because we had lost a number of trained and experienced lawyers in the preceding few years. So I took immediate steps to deal with the problems. I reallocated resources so that the three dispute settlement divisions could recruit junior lawyers through temporary contracts for one to two years, using funds that were available from vacant posts. A total of 17 temporary contracts have been awarded in the three divisions since February 2013. Part of this reallocation has addressed the need for additional native speakers of Spanish. We have achieved some results through staff mobility. I am envisaging temporarily assigning two-three staff members from non-dispute settlement divisions to pending and upcoming disputes as lead lawyers. These staff members had previously worked on disputes, but they are currently in different divisions. Of course, there is a very limited number of staff with this experience. The same is true for support staff, which require specific expertise more akin to that of registrars, paralegals and professional editors. Therefore mobility (in short, moving people from one division to another) is not the silver bullet that some may think it is. We need to be prepared to take some bigger steps. Simply put, the need for specialised skills means that we will need to hire new staff at both the senior and junior levels. Although we have been able to attract qualified people through temporary contracts in the recent past, we are unable to retain them without offering more stability and long-term career opportunities. When they leave, the considerable effort and time that we have invested in training them is completely lost. So we must find ways to retain the best and the brightest once we have recruited and trained them. Moreover we must bring new people in at the senior level - and this is where the most acute problem is at the moment. The supply is just not there. Let us be realistic. Even if we bring in new people at the senior level, it also takes at least a year to 18 months for them to develop specialized skills and experience necessary to lead a panel or an appeal team. So this is something that we will address. This slide shows the changes that I am going to make in order to deal with these issues. I have recently allocated 15 additional posts to the three dispute settlement divisions - six at the senior level and nine at the junior level. Vacancies for these posts will be announced next week. In fact, my intention is to create overcapacity in the dispute settlement area. Should dispute settlement activity wane in a year or two, which is again very unlikely, then we will put these talents to work elsewhere in the Secretariat and bring them back if the work in dispute settlement so requires. Of course hiring staff at present is problematic. Members have put very clear limitations on what I can do and I am not whining. First, there is the overall cap on the budget. Second, there is the cap on the proportion of the budget which can be used for personnel. Of course I must observe both of

these caps, and therefore my options are limited. I am reallocating resources within the organization. When senior posts are vacated elsewhere in the Secretariat, a significant proportion saved there will be reallocated to disputes. Of course this approach will inevitably have some consequences. It means, for example, that we will have to stop doing some things, or that we will have to do certain things with less, and that perhaps we will also have to outsource even more of our work, including translation.

Clearly there are limits to the sustainability of this approach that Members will want to consider. There are some other steps that we can take to alleviate some of the pressure on the system, in addition to taking on staff. To start, we must address the complexity of disputes. There are precedents for this. For example: simplifying the descriptive part of a panel report by annexing parties' executive summaries to the report. That simplifies things a little. Sometimes setting time limits for oral presentations before panels; seeking ways to streamline selection of panel experts; and, in the Appellate Body, standardizing the content and format of routine communications and rulings. Members could think about taking additional steps in a similar vein going forward. I am trying to ask you to be helpful! Members could also consider some more fundamental steps and this is for you to consider. Some years ago there was a proposal to increase the number of AB members. Under the current situation the seven members of the AB can handle around 10-12 appeals at most per year. That's stretching the envelope and this is with AB members working almost full-time. This operational cap is thus simply not enough given the level of demand. If, for example, Members decided to increase the number of members to nine, the maximum per year could be increased by approximately a third. This could potentially address the bottleneck at the AB stage to some degree. But of course this is entirely in your hands.

CONCLUSION: We will continue to work hard to address these issues. But, I think that Members need to reflect on the situation that I have outlined today. I think it is important to consider how the system was designed - and how it has evolved since then. We thought we had built a sailboat, but now we have discovered that what we have on our hands is an ocean liner. Of course an ocean liner requires more resources, more fuel and a bigger crew. So we will need to consider what resources we are prepared to provide if we want to stay afloat. I am taking concerted action to resolve the challenges before us but I am working within constraints. No amount of mobility or invention will adequately resolve our situation definitely. We need to confront the situation as we find it today and we need to be honest about what it means if it goes unaddressed. The WTO dispute settlement system has served the Membership extremely well. It is recognized the world over for providing fair, high-quality results that respond to both developing and developed country Members. It is faster than most if not all international adjudicative systems operating today, to say nothing of domestic courts the world over. We need to ensure that this remains the case. For this, I invite you to start thinking seriously about the hard options and decisions we will have to face to fix the system. Finally, I would like to take this opportunity to thank staff members for their very hard work in assisting panels and the Appellate Body Members. The WTO dispute settlement system would not have achieved its current success without their professionalism and dedication."

1.3. The Chairman thanked the Director-General for his presentation and invited delegations to make statements, if they so wished.

1.4. The representative of Korea said that his country wished to express its appreciation to the Director-General for sharing his candid assessment of the challenges facing the dispute settlement process, and welcomed his constructive views to address those challenges. As the Director-General had rightly pointed out, the WTO dispute settlement system had rightfully earned its reputation as the most successful and best functioning international tribunal, not to mention the keystone of the WTO multilateral structure. One could say that the dispute settlement system was the *raison d'être* of the WTO. However, as the Director-General had pointed out, Members' increasing reliance on the dispute settlement mechanism to resolve disputes, as well as the increased complexity and technicality of the issues brought before the panels and the Appellate Body, were putting pressure on the WTO's resources. As an active user of the WTO dispute settlement mechanism, and a party or third-party to many disputes, Korea shared the growing concern within the Membership about the effects that a surge in workload may have on the prompt resolution of disputes, not to mention the quality of rulings. Providing the necessary support and resources to ensure the timely resolution of ongoing disputes was especially important. Korea noted that Members would benefit even further from a dispute settlement system that was more efficient and more streamlined. Korea welcomed discussions to analyse the organizational challenges facing the WTO, and remained open to any constructive

and practical steps for moving forward. Such steps may include the reallocation of human resources within the WTO and enhancing the efficiency of proceedings and timely issuance of panels and Appellate Body reports. In this regard, Korea fully supported the Director-General's tireless efforts to meet the challenge and to make changes to the dispute settlement system. Indeed, to make changes was a difficult task. Finally, he said that Members were free to decide how to proceed on this matter, but should be mindful of any future consequences resulting from their choices.

1.5. The representative of Canada said that his country thanked the Director-General for providing the update on the steps he had taken and continued to take to increase capacity. Indeed, this had been a subject of debate and discussion, and Members' efforts to address this matter went back to before the Director-General's arrival. Canada had been active in asking and promoting the Membership to think through solutions, whether at the DSB or at the Budget Committee, and shared the Director-General's assessment that the current capacity did not match the demands being placed on the system. As the Director-General had noted, virtually everyone was now facing some sort of delay at one stage or another – sometimes at every stage. Canada itself was engaged in several disputes subject to WTO adjudication, whether as complaining party, responding party or third party. Canada faced delays in almost every one of them, and its expectation was that it would continue to face delays. Canada was working with the other parties and with the Secretariat to find practical ways to try to come closer to meeting DSU deadlines in these disputes. Canada wished to underscore something that was implicit in the Director-General's presentation, namely that while it may be easy to attribute some of these current difficulties to cyclical changes in demand, if in fact Members were unable to effectively legislate to address outstanding issues, the temptation to litigate would inevitably increase. Thus, in Canada's view, and indeed as the Director-General implied, Members were facing a structural challenge. Canada wished to underscore something else that the Director-General had said. The responsibility rested both on the Membership itself and on the Secretariat to strengthen dispute settlement. Canada agreed that an investment in longer-term personnel solutions was essential and that temporary assignments did not necessarily work. Members needed to address not only the lawyers and their paralegal support staff, but also the translation and interpretation burden. In that respect, Canada was reassured by the presentation made at the present meeting that the Director-General and the Secretariat were on the right track to do what could be done in their areas of responsibility. Canada accepted that a good deal of the responsibility rested on Members to alleviate the pressure on the system. The inevitable attraction of being competitive as litigants exacerbated the problem. That meant that Members had a responsibility to be more mature as litigants to find practical ways - whether by limiting briefs, oral argument, or exhibits - to reduce the burden. The collective failure of Members to agree, either in the DSB or in the DSU negotiations on even the most modest practical changes was inexcusable. A number of proposals for very sensible improvements had been pending in the DSU negotiations for many years, and yet some Members chose to hold those practical reforms hostage to bigger issues allegedly of principle. There was no reason why Members could not allow practical improvements to proceed while still discussing in full the nature of some of those more fundamental issues. As it had indicated at various times and various settings, Canada was ready to engage with other delegations in a collective effort to find sustainable and permanent solutions to the whole range of issues that contributed to the challenges identified by the Director-General. Canada appreciated the Secretariat's contribution to the solution.

1.6. The representative of Norway said that his country thanked the Director-General for informing the DSB of the measures that had been taken, and would be taken, to address the resource challenges in the dispute settlement system. Norway welcomed the Director-General's presentation made at the present meeting. The Director-General and the Secretariat were undertaking an extremely important task, which was called for. As stated by the Director-General, the WTO had experienced a significantly increased level of activity in the dispute settlement area. Moreover, the disputes were increasingly complex and technical. The Secretariat's organization and human resources structure had not been designed to meet this development. This had given rise to great concerns. A well-functioning and efficient dispute settlement system, which delivered high-quality reports within the prescribed deadlines, was crucial for the credibility of the multilateral trading system. Norway greatly appreciated that the real concerns expressed by Members were being taken seriously, as indicated by the Director-General. The concrete measures undertaken were important and encouraging. However, the challenges relating to resource allocation to the dispute settlement system were merely part of a larger picture. The number of disputes and their scope and complexity would fluctuate. So would

the workload in the other WTO areas. It was, therefore, crucial that the Secretariat be equipped to adapt to changing demands in order to meet changing needs and priorities. In Norway's view, this must be a core objective of the ongoing strategic review of the Secretariat. Norway noted the Director-General's statement regarding mobility of the staff. This was an encouraging first step. Norway also acknowledged that looking at the system was a responsibility that Members had to take seriously, and encouraged delegations to start discussions on this matter. Norway assured the Chairman and the Director-General, of its engagement and support on the road ahead. Norway would follow the process closely, both in the DSB and in the Budget Committee.

1.7. The representative of the United States said that his country thanked the Director-General for his presentation. The United States appreciated the Director-General's personal interest in this issue and the manner in which he had described this issue to Members. It demonstrated in a graphical and numerical way what Members had known intuitively. The United States was also fully aware of, and appreciated the extensive work of, the Secretariat, panel members, and the members of the Appellate Body. The presentation very appropriately put the need to provide a solution back on Members. The United States had taken very careful note of the suggestions the Director-General had made. Some made intuitive sense, especially in regard to the reallocation of staff. Other suggestions would require Members to think more deeply. Like others had mentioned, the United States looked forward to working closely with other Members and the Secretariat to find a way forward to address the issues the Director-General had raised. The United States would participate actively in thinking through a solution.

1.8. The representative of Mexico said that his country thanked the Director-General for his presentation regarding the difficulties faced by the WTO Secretariat in the dispute settlement area. Mexico's authorities would examine it closely and, if necessary, express their views on this matter. Mexico firmly believed that it was necessary to resolve the problems related to delays in settling disputes. As Members were aware, Mexico was one of the ten most frequent users of the dispute settlement system and, as such, it had become aware of the increasing complexity of claims. In particular, it had become aware of the growing volume of written submissions and evidence, which undoubtedly affected the amount of time required to resolve disputes. However, this complexity was not related to the greater number of disputes. The actual number of disputes initiated since 1995 had in fact steadily decreased over each five-year period until now. That was why Members had to reflect on matters such as human resource capacity and the experience of those who worked in the divisions that provided assistance to panels (Legal Affairs Division and Rules Division) and to the Appellate Body members. At the same time, parties to disputes recognized that not all delays were the sole responsibility of the Secretariat or panel members. As Mexico had previously stated, the complexity and volume of claims required the parties to request extensions to the prescribed deadlines in order to respond to lengthy submissions or to questions posed by panels.

1.9. Therefore, it was important to identify the areas where the WTO, and the relevant administrative structure involved in dispute settlement, could improve its procedures and timelines. These included adherence to time-tables, timely translations, and enhanced human and technical capacities to facilitate the work of the WTO Secretariat and the Appellate Body. As part of that exercise, Mexico wished to share its analysis, without taking into account the individual nature of each dispute, of the past 14 panel reports and the deadlines for their circulation. Under the DSU, the panel should issue its decision in a maximum of nine months from the date of establishment of a panel by the DSB. However, the average time taken by the WTO to issue the most recent panel reports between 2012 and the present had been 537 days, approximately one year and four months. Of these past 14 panel reports, the average amount of time between the submission of the final report to the parties to the dispute and its circulation to all Members was 112 days, which meant almost four months spent for translation. This was without taking into account the fact that many of these reports were appealed. Nor did these past 14 reports constitute exceptional cases in terms of volume, as had those concerning the disputes between the EC and the United States the Large Civil Aircraft disputes, which had been issued in 2010 and 2011. The conclusion drawn from these figures was that on average the WTO takes up to six months more than the maximum time provided by the DSU (nine months) simply to circulate a panel report to Members, without mentioning the additional time from then until the adoption of a report by the DSB, in cases where the parties were requested to delay appeals to give the Appellate Body more time to resolve pending disputes in order to avoid an increased workload.

1.10. Despite the foregoing, it should be noted that Mexico attached more importance to the high quality of the analyses carried out by panels and the Appellate Body than to the amount of time taken to issue their rulings. This was because of unmeasured impact of systemic implications of panel reports on the design and application of trade measures, as such reports provided greater clarity on the correct interpretation of the provisions and obligations of the various WTO Agreements, on the basis of the DSB's decisions regarding the trade measures of trading partners. However, these delays were inconsistent with one of the characteristics recognized by the DSU as essential for its effective functioning: "… the prompt settlement" of disputes (Article 3.3 of the DSU). The delays were also inconsistent with the principle of predictability (Article 3.2 of the DSU). When a Member was party to a dispute or wished to initiate a dispute, the estimated amount of time to receive a definitive ruling in a proceeding has been ever increasing and not in conformity with the expectations of not only the DSU negotiators, but also the industries affected by the WTO-inconsistent trade measures. Predictability, in Mexico's view, was not limited to the consistency of DSB decisions and the way in which disputes were resolved, but also to the expected amount of time to obtain a definitive ruling. It was not uncommon for those wishing to adopt protectionist measures to estimate the average amount of time it would take the WTO to rule definitively on the measures and the consequences of their non-compliance with the DSB's recommendations. In Mexico's view, the longer it took to resolve a dispute, the more disincentives Members had to file complaints and the more incentives to adopt protectionist measures. This was due to the fact that the WTO did not provide for obligatory compensation measures and Members continued to be restricted by extreme recourse to a possible suspension of benefits that in many cases was not enough to eliminate the non-compliant measures, thus leading to longer proceedings and in some cases to the initiation of disputes concerning measures which were clearly WTO-inconsistent but enjoyed an ever-longer grace period as a result of delays in procedures.

1.11. One of the fundamental functions of the WTO had always been its ability to resolve the disputes submitted under the DSU. The use of the WTO dispute settlement system and the correct functioning of this system undoubtedly constituted one of the most active areas of the WTO. The WTO as an institution, and its Membership, must therefore undertake discussion on the effective use of resources to support and improve this important area, something that not only entailed monetary resources to increase the capacity of the Organization, but undoubtedly required a much deeper analysis. In that regard, addressing the issue of temporary contracts and the lack of long-term career prospects in areas related to dispute settlement was a good place to start this analysis. The loss of skills acquired from the experience of temporary staff and the training of new staff must have some effect on the prompt settlement of disputes. The lack of incentives to conclude disputes promptly should be discussed in the ongoing DSU negotiations. Therefore, Mexico suggested that the WTO dispute settlement area seriously consider both the need to increase the human capital of lawyers in the WTO divisions in general, with special emphasis on Spanish speaking lawyers given the growing increase in disputes in this WTO-official language, and the need to capitalize on the experience acquired by lawyers hired on a temporary basis. It would be a shame to let one of the WTO areas that worked best, the "jewel in the crown", become part of the criticism directed at WTO because of its increasingly unimpressive functioning. This criticism echoed that expressed by the private sector, which was represented by Members, and which was the main party affected by uncertain and increasingly long proceedings. Mexico reiterated its commitment towards working to find solutions to the problems faced by the dispute settlement system.

1.12. The representative of China said that his country thanked the Director-General for his presentation and welcomed new ideas proposed by the Director-General regarding the management of the dispute settlement system. China believed that the dispute settlement mechanism was an essential element in providing security and predictability to the multilateral trading system. The effective and efficient operation of this system was vital in preserving the international trade environment. The increased use of the dispute settlement mechanism underscored Members' confidence in the dispute settlement mechanism. China recognized the workload and the resource restrictions faced by the Secretariat. China had cooperated with the Secretariat and Members to ensure proper arrangements in some disputes in order to accommodate the availability of the Secretariat's resources. However, in most recent disputes in which China was a party, the situation had become complex. The Secretariat could not estimate when its resources would be available for the substantial meeting of the Panel. Thus, the Panel proceedings in that dispute had to be delayed without a clear indication about the date. China quoted the proverb, "Justice delayed is justice denied". In light of the current situation, China

urged the Secretariat and Members to take all necessary and effective measures to resolve the resource and workload issues in the dispute settlement mechanism as early as possible.

1.13. The representative of Brazil said that his country thanked the Director-General for his very informative and encouraging presentation. Brazil had been following with concern the discussion regarding the difficulties currently faced by the WTO Divisions responsible for managing disputes. All Members were aware of the constant inflow of those disputes and the visible increase in their substantive complexity as well as in the number of parties and third-parties participating in disputes. This reflected, as the Director-General had stated, the success of the dispute settlement system, but at the same time it posed challenges to this system in terms of its capacity to contribute towards a timely and high-quality resolution of trade disputes. It was also very clear that the budgetary constraints faced by the WTO over the past several years added further difficulty in retaining qualified staff in the Organization. Furthermore, Members themselves often contributed to the workload, bringing sometimes many complex claims and producing thousands of pages of submissions and exhibits. It was obvious that when the DSU was drafted, negotiators from the GATT period had not imagined fully the importance and complexity that the system would acquire. The situation that had been described by the Director-General, and the consequent backlog of disputes pending both before panels and the Appellate Body may unfortunately affect, in Brazil's view, the smooth operation of the system. If not reversed promptly, the situation might, in the long run, affect the efficiency and credibility of the dispute settlement mechanism, in particular in light of Article 3.3 of the DSU regarding "prompt settlement" of disputes. The WTO dispute settlement mechanism was an invaluable tool offered to all Members, developed and developing. It was a strong and indispensable pillar of the multilateral trading system. The centrality of this function should induce Members to adopt a constructive attitude in order to solve the current and future challenges faced by the system. Brazil, as one of the most frequent users of the system, was willing to work with the Secretariat and other delegations to seek efficient creative solutions. Brazil supported the Director-General's efforts and initiatives and was ready to engage with interested Members, in formal or informal meetings regarding this matter, with a view towards finding a durable solution to the current problems. In the short term, Brazil hoped that the current backlog generated by the lack of resources and the lack of staff, be administered so as to maintain the high quality and efficiency of the dispute settlement system.

1.14. The representative of Hong Kong, China said that his country thanked the Director-General for his presentation, which provided a holistic picture of the situation. In his delegation's view, the dispute settlement system was an important WTO area. The quality of its jurisprudence and the timeliness of its proceedings enjoyed a high reputation among Members and in the international community. It was very important that a reasonable level of resources in line with the current workload was allocated to the dispute settlement system. In this challenging time, the allocation of resources in the Organisation had to be flexible. Resources should go to where they were justifiably and urgently needed. Hong Kong, China supported the recent work carried out in the Secretariat as mentioned by the Director-General in his presentation. Hong Kong, China viewed it as an integral part of the larger picture of the improvements of the WTO and resource utilisation. Hong Kong, China would appreciate further updates on the related issues in relation to dispute settlement and the WTO as a whole. Hong Kong, China welcomed further opportunities for discussions on this matter. Hong Kong, China would engage constructively and follow closely discussions in the DSB and the Budget Committee.

1.15. The representative of India said that his country joined other delegations in thanking the Director-General for the detailed statement regarding the overview and state of affairs of dispute settlement activities. The serious challenges of a critical and well-functioning part of the WTO system were before Members. India agreed with the assessment that the dispute settlement system was overburdened and there was an urgent need to address this problem. India as a frequent user of the system over the years attached utmost importance to the effective functioning of a transparent, predictable, multilateral rules-based trading system and an effective dispute settlement mechanism where both developing and developed, small and large WTO Members, regardless of size and status, could seek redress of their legitimate rights. The Director-General had raised important issues of workload both before panels and the Appellate Body, delays in completion, complexity of cases, translation issues, allocation of resources as well as budgetary constraints. It was evident that these were complex issues that required that Members give serious thought and time. Specifically in the short term, apart from staff mobility, the Director-General had indicated that vacancies to hire legal experts to assist the Secretariat in

dispute settlement activities would be filed. India believed that it was extremely important to keep in mind the diverse Membership of the WTO to ensure that representation in this selection was not skewed in any manner. A number of important long-term measures had also been suggested. Some of these issues were being addressed in the DSU negotiations. India did not wish to raise those issues at the present meeting. All these required close consideration and commitment by the Membership as a whole. Delegations would need to reflect on the issues in the context of the burdening of the system. Any changes must be made after due deliberations. India looked forward to engaging with other Members and the Secretariat in the process of arriving at long-term solutions to this very important area of the multilateral trading system.

1.16. The representative of the European Union said that the EU joined others in thanking the Director-General for his presentation and strongly welcomed the initiative to have this very useful discussion at the present meeting. Like others, the EU strongly recognized the centrality of the dispute settlement system for the WTO and shared fundamentally the Director-General's assessment of the situation. The EU supported the Director-General's efforts to address the challenges. The measures that he had taken the previous year were much appreciated as well as the short-term measures referred to at the present meeting. In particular, the EU appreciated his effort to present the real options to Members. The EU took note of the Director-General's invitation to examine what he had described as "hard options", because that was exactly what Members needed to do. The Director-General's suggestions were very valuable. The EU was ready to engage in the discussion on this matter, which was necessary for the future of this important area. The EU appreciated the efforts made by the WTO Secretariat under the difficult circumstances. The EU assured the Director-General of its support in taking forward this important discussion.

1.17. The representative of Lesotho, speaking on behalf of the African Group, said that the African Group welcomed and noted the Director-General's presentation. The African Group agreed, as other Members had said, on the importance of the dispute settlement system, a jewel of the WTO system by virtue of being the sole adjudicating body on international trade disputes. To that end, the African Group commended the Director-General's efforts in addressing the issue of capacity. On the questions raised regarding the issue of increasing the number of Appellate Body members, the African Group took note of the fact that a proposal to this end had been made previously and the African Group welcomed this constructive initiative. The African Group underscored that their concern was access to the system. To that end, Members were aware of the African Group's proposals to address a number of issues such as compliance with the DSB's rulings and recommendations, and the creation of the dispute settlement fund. In the view of the African Group, these issues were important.

1.18. The representative of South Africa said that her country supported the statement made by Lesotho, on behalf of the African Group. South Africa thanked the Director-General for his address outlining the problems facing the dispute settlement system as well as possible solutions. South Africa saw important value in the dispute settlement mechanism as a critical pillar of the multilateral trading system. The dispute settlement system's exemplary record in enforcing WTO law and building a credible predictable body of jurisprudence for the multilateral trading system was fundamental for the continued credibility of the WTO in the area of global economic governance, as well as for the faith that Members, both existing and new, placed in the system. Ensuring the enforcement pillar of the WTO, like other pillars, was adequately resourced and empowered in a manner that made it equally accessible to all Members, regardless of their size, remained crucial. South Africa, like others, was committed to reflecting on all options available as well as to engaging on constructive solutions and reforms. South Africa supported all efforts by the Director-General and his team to further streamline and optimize organizational processes going forward, so as to ensure the continued efficient and smooth functioning of the dispute settlement system. South Africa had the utmost faith that this process would be completed expeditiously, so as to enable all Members' needs to continue to be well-served by the dispute settlement mechanism.

1.19. The representative of Ecuador said that his country thanked the Director-General for his presentation, in which he emphasized in a very clear manner, the objectives and current situation of the dispute settlement system, the challenges faced and what should be done. Ecuador supported what had been stated by other delegations regarding the discussions in the context of the DSU negotiations. He recalled that between June and December 2012, a large group of developing-country Members had presented in the DSU negotiations the proposals with

legal texts on, *inter alia*, effective compliance and access to the dispute settlement system. Ecuador believed that these proposals were essential to the efficient functioning and the credibility of the dispute settlement system. In Ecuador's view, the process of clarifying and improving the DSU should focus on specific and concrete solutions through which Members could address the substantive matters.

1.20. The representative of the Dominican Republic said that his country thanked the Director General for his comprehensive presentation. The Dominican Republic had been very concerned about delays in the proceedings of panels and the Appellate Body. The initiative to find a solution to this problem in order to preserve the efficiency and credibility of the system was an important step forward, and for that reason, the Dominican Republic welcomed the Director-General's efforts.

1.21. The representative of Cuba said that her country thanked the Director-General for his presentation. Cuba had been closely following the discussion and appreciated the information provided by the Director-General. Cuba believed that it was important to find solutions to address the resource constraints in the dispute settlement system so that the work in this important area could be carried out in a smooth manner. Cuba supported the statement made by Lesotho, on behalf of the African Group. Cuba reaffirmed the importance of the ongoing DSU negotiations. In that regard, Cuba reiterated the importance of the proposal to create a fund to enable developing-country Members to participate effectively in the dispute settlement system. The participation of developing-country Members and effective compliance with the DSB's recommendations and rulings would strengthen the dispute settlement system. Cuba appreciated the opportunity to discuss this matter in the DSB in the presence of the Director-General.

1.22. The representative of Japan said that his country thanked the Director-General for his comprehensive presentation. Japan noted that, about a year ago, there had been a paper prepared by the Appellate Body warning and alerting of the situation. He also recalled that, in 2013, the former Chairman of the DSB, Ambassador Jonathan Fried, had carried out informal consultations with delegations in an effort to find a solution to the problem in question. Since then, some measures had been taken, but as the Director-General had rightly stated, there was a need both to introduce additional short-term measures and make some drastic changes. To achieve that objective, and with the budgetary constraints, Members had to look not only at the activities and the working method of the dispute-related activities but also at the whole range of the WTOs activities. Japan was prepared to engage in discussions on this matter.

1.23. The representative of Argentina said that his country thanked the Director-General for his presentation. Argentina shared the concern expressed by other users of the dispute settlement system regarding delays in dispute settlement proceedings. Such delays occurred at the composition of panels and circulation of Reports. They affected the prompt settlement of disputes as stipulated in the DSU provisions. Argentina thanked the Director-General for his efforts to find a solution to this problem. Argentina noted that some short term solutions had been mentioned. However, long-term solutions that had been proposed had to be analysed carefully. Argentina supported the statement made by Lesotho on behalf of the African Group as well as the statements made by Cuba and Ecuador. Argentina expressed its readiness to discuss the proposals submitted in the context of the DSU negotiations.

1.24. The representative of Guatemala said that his country thanked the Director-General for his comprehensive presentation. In Guatemala's view, it was not necessary to reiterate the importance of the dispute settlement system and the urgent need to come up with new resources to improve the system. Guatemala supported the statements made by previous speakers and wished to add that there was an important gap regarding the legal capacities of small countries to take advantage of the dispute settlement system. Nevertheless, these small countries had tried to use the dispute settlement system, which was one of the most important areas of the WTO. In light of this, Guatemala was ready to discuss possible solutions to address the problems referred to by the Director-General.

1.25. The representative of Uganda said that his country thanked the Director-General for his presentation regarding the activities of the dispute settlement system. There was no doubt that the dispute settlement system was a very unique and important pillar of the multilateral trading system. Uganda supported the proposed reforms highlighted by the Director-General in his

presentation. Uganda supported all efforts intended to make the dispute settlement system more efficient in a manner that delivered for all.

1.26. The Director-General said that he thanked delegations for their statements and support explicit or implicit regarding the efforts undertaken by the Secretariat. He noted that many delegations had pointed out that there was a need to deepen this discussion. On his side he was engaged in discussions with the Secretariat and the Deputy Director-General, who was assisting him with the restructuring and the reallocation of the resources, which not only affected the dispute settlement system but the Organization as a whole. This was also part of the structural reform that the Secretariat was undertaking and Members were being briefed on this in the Budget Committee. The discussion would continue within the Secretariat and once the situation was better diagnosed and better ideas were presented on how to move forward, he would revert to Members in a formal or informal meeting, at the level of Ambassadors and with the involvement of dispute settlement experts. He would keep all Members updated and noted the points raised at the present meeting. He encouraged Members to come forward with proposals and suggestions and to make their views known either to him or the DSB Chair. In his view, the work carried out in the context of the DSU negotiations was very important and could assist Members in finding solutions. He noted that some delegations had mentioned the proposals submitted in the DSU negotiations. Members had to be mindful of the proposals on improving the functioning of the system so as to ensure access to all Members. First and foremost, it must be ensured that the boat was afloat and that it was going in the right direction. Efforts should be made to make the system ample enough and easily accessible for all Members. He hoped that the discussion on this matter would continue and thanked delegations for their comments.

1.27. The Chairman thanked the Director-General and all delegations for the exchange of ideas. He said that the problem currently faced by the dispute settlement system was not an easy one and that there were no easy solutions. It had multiple layers and Members had to continue this discussion. He was aware that Members had been discussing this issue for a long time and they would continue this discussion with the Director-General and in the DSB. He invited Members to convey their views and suggestions to either the Director-General or to him as the Chairman of the DSB.

1.28. The DSB took note of the statements.

2 APPOINTMENT OF APPELLATE BODY MEMBER

2.1. The Chairman said that, as announced in the fax sent out to all delegations on 10 September 2014, he intended to propose under this Agenda item that the DSB take a decision to appoint a new Appellate Body member. However, he wished first to briefly review the process that had led to this point. He recalled that at its meeting on 23 May 2014, the DSB had agreed to launch a selection process for the vacant position in the Appellate Body, and to invite nominations of candidates for that position by the deadline of 30 June 2014. At the same time, the DSB had also agreed that the candidates nominated for the 2013 process initiated by the DSB would remain under consideration, and that it would not be necessary for Members to re-nominate them. The DSB had also established a Selection Committee to carry out the selection process and to make a recommendation by no later than 15 September 2014 on a replacement for Mr. David Unterhalter, whose second term had expired on 11 December 2013. Consistent with the selection procedures set out in WT/DSB/1, the Selection Committee was composed of the Director-General, the Chairs of the General Council, Goods Council, Services Council and TRIPS Council, and the Chair of the DSB. By the agreed deadline, seven candidates had been proposed and considered in the selection process. The nominations included candidates from the following countries: Cameroon, Egypt, Ghana, Kenya, Mauritius, Uganda and Zimbabwe. The Selection Committee had conducted interviews with each of the seven candidates on 22 and 23 July 2014. As part of the selection process, on 9 and 10 September 2014, the Committee met individually with 51 delegations to hear their views on the candidates. The Committee had also received in writing the views of seven delegations. The Committee had based its work on the guidelines, rules and procedures contained in the DSU, WT/DSB/1 and WT/DSB/63 governing the selection and appointment of Appellate Body members. As had been indicated in its recommendation to the DSB, dated 10 September 2014, the Committee was pleased to note that the consultations with Members confirmed its view as to which candidate had the qualifications required under Article 17.3 of the DSU for the position in the Appellate Body and would enjoy the support of the Membership. The Committee's task had been challenging given the outstanding

calibre and impressive qualifications of the candidates. On behalf of the Committee and the entire WTO Membership, he wished to extend gratitude to the candidates who had participated in the process and to their respective Governments for nominating them.

2.2. Turning to the matter at hand, the Chairman said that as had been communicated by fax to all delegations on 10 September 2014, the Selection Committee had recommended that Mr. Shree Baboo Chekitan Servansing be appointed as a member of the Appellate Body for a four-year term, starting as soon as the contractual arrangements had been concluded. The Chairman wished to inform Members that he had consulted with Mr. Servansing and it was his understanding that the contractual arrangements could be concluded by 1 October 2014. Therefore, he wished to propose that, at the present meeting, the DSB take a decision to appoint Mr. Servansing as a member of the Appellate Body for a four-year term starting on 1 October 2014.

2.3. The DSB so agreed.

2.4. The Chairman said that, before giving the floor to delegations who would wish to make statements, on behalf of the Selection Committee and the entire WTO Membership, he wished to congratulate Mr. Servansing on his appointment. He also wished to thank the members of the Selection Committee for their hard work.

2.5. The representative of Egypt said that his country congratulated the Selection Committee on the completion of its work and reaching a recommendation on the appointment of Mr. Servansing as a new member of the Appellate Body. Egypt wished the newly appointed member of the Appellate Body every success. Egypt had always attached, and would continue to do so, the utmost importance to the membership and composition of the Appellate Body. In the past, Egypt had nominated two prominent citizens, who had served to ensure the stability of the system in its early years. In 2013, on the same basis, Egypt had decided to nominate Mr. Abdel-Hamid Mamdouh, with the belief that his qualifications met the requirements of Article 17.3 of the DSU, and that he would add value to the system. He noted that all the other African candidates nominated in the selection process had the knowledge, qualities and experience necessary to contribute to the functioning of the WTO system. Egypt fully understood both the role of the DSB and the role of the Appellate Body. However, the experience of the current process, which started more than a year ago, should guide Members and the Secretariat towards addressing the weaknesses that might have caused such a delay in completing the mandates of the Selection Committees. Egypt believed that the DSB Chairman, delegations and the Secretariat should start a process to review the guiding principles pertaining to the AB selection process with the aim of attaining a higher degree of neutrality, fairness and transparency, in line with the Director General's presentation under Agenda item 1 of the present meeting and Members suggestions and ideas. Egypt, once again, congratulated Mr. Servansing and the entire Membership for the conclusion of the process.

2.6. The representative of Saudi Arabia said that his country joined other Members in congratulating Mr. Servansing on his appointment to the Appellate Body. Saudi Arabia wished to express its deep and fundamental concerns about two rounds of the selection process for Appellate Body appointment, and about the consequences that this process had for the system. It was often said that the dispute settlement system was the "jewel in the crown" of the WTO. But Members must not allow themselves to lose sight of the underlying reason why the WTO adjudication system was valued and respected. The foundation of the dispute settlement system was Members' trust and confidence in the expertise and independence of WTO adjudicators. In Saudi Arabia's view, the trust and confidence of Members could only be maintained by ensuring the legal expertise and the independence of Appellate Body members. Article 17.3 of the DSU explicitly required that candidates must be "persons of recognized authority, with demonstrated expertise in law…" The rules governing the selection process, set out in WT/DSB/1, paragraph 5, which the Selection Committee certainly had to follow, made clear that this "expertise should be a type that allows Appellate Body members to resolve 'issues of law covered in the panel report and legal interpretations developed by the panel'…", as stipulated in Article 17.6 of the DSU. Article 17.13 of the DSU further confirmed that "the Appellate Body may uphold, modify or reverse the legal findings and conclusions of the panel." All these cited provisions led Saudi Arabia to emphasize that a solid legal background was a fundamental criterion for selecting Appellate Body members. The requirement of legal expertise was nothing but a pragmatic and common sense criterion. If the Appellate Body adjudicators lacked solid legal expertise, they

would not be able to carry out their work and ultimately professionals in the Appellate Body Secretariat would need to fill legal competence gaps. Although Saudi Arabia had nothing but respect and praise for the Appellate Body staff, they could not be expected to substitute in such a significant way for the chosen adjudicators. In order to satisfy the independence criterion, a candidate must not be affiliated with any government, and must be selected through the established process in order to reflect the support of WTO Members. The politicization of the selection process for Appellate Body members posed a grave threat to the most precious asset - which was the faith of Members in the multilateral trading system. If selection processes were politicized, inevitably rules would not be respected, and Members would be faced with candidates who had neither independence nor the required expertise, and would become affiliated with certain governments. If a very few number of countries influenced a selection process intended by its design and structure to reflect the broad support of the Membership, this would raise questions about the independence of candidates. Even if individual candidates may rise above such associations, the process and the system overall would be tainted, which would lead Members to lose faith and trust in the dispute settlement system. In fact, there had been outstanding candidates in both rounds of the selection process, but the politicization of the process had deprived the system of their service. Saudi Arabia was very disappointed with the conduct of the selection process. It did not consider that the process had been conducted in the agreed upon manner. Therefore, Saudi Arabia looked forward to working with all Members to amend the selection procedures to ensure that the basic requirements of the DSU and the collective will of the Membership were reflected in the results of future selection processes.

2.7. The representative of Mauritius said that his country commended the Selection Committee for having successfully completed the selection process for a new Appellate Body member. Mauritius understood the arduous task that the Selection Committee faced in light of the impressive calibre of all the candidates. Mauritius particularly wished to express its gratitude and appreciation to Members for all the valuable support to the candidature of Mr. Servansing. Mauritius was fully confident in his ability to discharge the responsibilities of his function with the hallmark of excellence that he had always shown.

2.8. The representative of Singapore said that his country thanked the Selection Committee, and the Secretariat assisting the Committee, for their hard work during the selection process for the appointment of an Appellate Body member. The WTO dispute settlement mechanism was an important and central pillar of the multilateral trading system. It had been used to resolve hundreds of disputes, which was more than any other international dispute settlement mechanism. It also stood apart from the rest as it had a standing Appellate Body, which played a fundamental role in shaping the WTO jurisprudence. In the process, the dispute settlement mechanism had enhanced the security and predictability of the rules of international trade embodied in the WTO Agreements. With the recent increase in both the number and complexity of disputes, it was imperative to have qualified persons to serve in the Appellate Body, in line with Article 17.3 of the DSU. Singapore congratulated Mr. Servansing on his appointment as an Appellate Body member. Singapore had participated actively in the selection process. Singapore was very impressed with the calibre of the candidates and hoped that this high quality of candidates would be maintained in future nominations to the Appellate Body.

2.9. The representative of Ghana said that his country remained a firm believer in the multilateral trading system. Ghana always supported the WTO in the achievements of its goals. More specifically Ghana, like many others, would continue to support the work of the dispute settlement system, anchored in the belief that the system had helped to stabilise the multilateral trading system. It was no wonder that it had been described as the "jewel in the crown". Ghana had nominated one of its distinguished citizens, Dr. Edward Kwakwa, for consideration to the Appellate Body. In nominating Dr Kwakwa, Ghana was firmly convinced that he had all the elements necessary to take up duties as an Appellate Body member. Among many other qualities, these elements included having distinguished himself in the field of law. Ghana was equally aware of the fact that the responsibility of the Appellate Body members was onerous. Although its candidate did not emerge as the preferred choice, Ghana assured the WTO, and in particular the DSB, that Ghana would continue to be fully committed to the system. Ghana congratulated all the candidates and governments who had been part of this process. Most importantly, Ghana extended its congratulations to Mr. Servansing on his appointment and wished him the very best in the next four years and beyond.

2.10. The representative of Chinese Taipei said that his country thanked the Selection Committee for its efforts over the past few months in finding a suitable replacement for Mr. David Unterhalter. Chinese Taipei also thanked Members for their valuable contributions to the appointment process, especially those that had nominated candidates. Chinese Taipei had always recognized the important role played by the Appellate Body in the WTO dispute settlement system. Chinese Taipei believed it was fundamental to the integrity of the rules-based trading system. Therefore, it was essential that the Appellate Body was composed of members selected entirely on the basis of their professional expertise and experience. This was a particularly important appointment that filled a position vacant since the expiry of Mr. Unterhalter's second term of office on 11 December 2013. Chinese Taipei was pleased that Members had successfully faced the challenge, and had finally taken the necessary steps to reach a consensus. The recommendation to appoint Mr. Servansing as a new member of the Appellate Body would ensure the proper functioning of the Appellate Body and understanding of the systematic interests of each and every WTO Member. Chinese Taipei commended the Chair of the DSB on his excellent leadership throughout the process and the satisfactory result for the WTO dispute settlement system. Chinese Taipei wished Mr. Servansing a successful term of office as a member of the Appellate Body.

2.11. The representative of India said that his country congratulated Mr. Servansing on his appointment as a new Appellate Body member and wished him well in his term. India thanked the Selection Committee for providing delegations an opportunity to express their views on the candidates. The completion of the long-drawn-out selection process was definitely welcomed in the context of the increasing workload of the Appellate Body. However, India wished to raise a few important issues pertaining to the Appellate Body selection process that it thought Members should reflect on. It was of utmost importance to maintain the political neutrality and impartiality of the Appellate Body. A transparent, inclusive and fair selection process was a critical component of achieving that. In accordance with the DSU, the Appellate Body shall comprise persons of recognized authority, with a demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. These qualifications were critical and must guide Members in selecting an Appellate Body member. The selection should not only reflect the will of the Membership but also should not be clouded by political considerations that tended to vitiate the atmosphere. Candidates' qualifications should be the sole basis for the selection and factors other than this, including political factors, ought not to influence Members' decision. Transparency in the process was of utmost importance. Members may need to reflect more on how to achieve this in terms of the selection process. There perhaps needed to be clear-cut criteria on which the Selection Committee would recommend a candidate to the DSB. While confidentiality of a Members view was important, the process and rationale for selecting a candidate, including the criteria used, perhaps ought to be open to Members to access. This would be an important element of increasing transparency.

2.12. The representative of Jamaica said that her country congratulated the Selection Committee for the completion of the process to select a new Appellate Body member, and Mr. Servansing on his appointment. Jamaica noted the concerns expressed by some delegations regarding the challenges associated with this process. Jamaica wished to share its appreciation for the high calibre of all the candidates who had been nominated to serve on the Appellate Body. Jamaica noted with interest the wide variety of skills and expertise of the candidates and of the tremendous respect expressed by them for the work of the Appellate Body and of the WTO dispute settlement system. It was, therefore, an honour for Jamaica to have participated in the process.

2.13. The representative of Australia said that her country welcomed the nomination of Mr. Servansing to the WTO Appellate Body. This had been a long and, in some respects, a difficult process. In this respect, the statements made by India and Saudi Arabia had reflected some of those concerns. Nevertheless, Australia was pleased that the selection process had reached a successful conclusion. Australia had heard at the present meeting that the dispute settlement system was the cornerstone of the WTO and its credibility. Australia would simply add under this Agenda item that the Appellate Body stood at the apex of this system. Australia wished Mr. Servansing and his Appellate Body colleagues all the best in discharging their important function.

2.14. The representative of Hong Kong, China, said that Hong Kong, China thanked the Selection Committee which had faced a difficult task given the high calibre of all seven candidates. Hong-Kong, China also thanked the respective Members for nominating such high-calibre candidates. Mr. Servansing was no stranger to the work of the WTO. Hong Kong, China believed that with his experience and attributes, he would be in a position to make valuable contributions to the work of the Appellate Body. Hong Kong, China congratulated him on his appointment.

2.15. The representative of the European Union said that the EU thanked the Selection Committee for successfully concluding this very demanding and extremely important work. The EU was very impressed by the quality of the candidates that had participated in the process, and thanked the Members who had presented them and the candidates for going through the selection process. The EU congratulated Mr. Servansing on his appointment. The EU was confident that his long experience at the WTO would serve him well in this new important endeavour.

2.16. The representative of the Russian Federation said that her country joined other Members in welcoming the newly elected Appellate Body member, Mr. Servansing. Russia congratulated him on his appointment and wished him every success in his new position.

2.17. The representative of the United States said that his country thanked the members of the Selection Committee for their hard work and for the recommendation which had aided the DSB in taking its decision at the present meeting. The United States wished to take the opportunity to congratulate Mr. Servansing on his appointment to the Appellate Body. Given his extensive hands-on experience in the work of the WTO, as well as his range of experience in the area of international trade, the United States was certain that Mr. Servansing would make a major contribution to the work of the Appellate Body. The United States was a frequent participant in Appellate Body proceedings, and it very much looked forward to working with Mr. Servansing in his new capacity.

2.18. The representative of Japan said that his country welcomed this important DSB decision that would allow the Appellate Body to continue to carry out its work with seven members and ended the unusual situation, which persisted for nearly 10 months. Japan believed that Mr. Servansing would contribute to the dispute settlement system, which was one of the important pillars under the multilateral trading system.

2.19. The representative of Korea said that his country joined others in congratulating Mr. Servansing on his appointment as the newest member of the Appellate Body. Korea also thanked the Selection Committee for its careful consideration and efforts to select the most qualified professional, among highly qualified candidates, to serve in this important position. Mr. Servansing was a good friend of the Geneva community and the WTO, with an impressive record of service as a diplomat including in the area of international trade. Korea believed that his experience, insight and positive spirit would contribute greatly to the dispute settlement process.

2.20. The representative of Canada said that his country joined others in extending its congratulations to Mr. Servansing for his appointment. Indeed, as others had noted, Canada considered him to be an excellent choice for the institution, and someone who would bring both wisdom and experience to bear. Canada also thanked the Chairman of the DSB for his leadership in the selection process and for ensuring that the Selection Committee maintained the highest level of objectivity and integrity, uninfluenced by any political factors, applying strictly the standards set out in the DSU and the guidelines. This had included both assessing candidates against the qualifications, as set out by India, and the importance of taking stock of the will of the Membership. The Chairman of the DSB had ensured that that was done fully in accordance with the required standards. Canada appreciated fully how difficult the process had been, as each and every one of the candidates had brought eminent qualities to bear. Canada also respected and recognized the high quality of all seven candidates, and hoped that each of them would contribute to the betterment of trade and trade law in their further pursuits. Canada fully endorsed the view addressed by those who had stated that no political considerations should interfere with the process. Canada certainly did not think that any seat on the Appellate Body was reserved for any geographic region. Further, Canada did not think that there was any automatic rotation built in to the system. As India said, an appointment to the Appellate Body

should be solely on the basis of merit. In that respect, Canada thanked the Chairman of the DSB for ensuring that merit was indeed the guiding criteria taking full account of the will of the Membership in doing so.

2.21. The representative of Mexico said that his country congratulated all the parties involved in the process. Unfortunately, there was only one place available, so not all seven candidates could have been appointed. Mexico congratulated Mr. Servansing on his appointment and wished him all the best in his new job.

2.22. The Chairman thanked all Members for their contribution to the successful conclusion of the selection process. Members had participated actively and made the process a success. He thanked and congratulated all the members of the Selection Committee. This had been very hard and difficult work, but the Selection Committee rose to the circumstances. As many delegations had mentioned, all candidates were highly qualified, which made the process even more difficult. At the same time, this encouraged Members to become more active in their participation in this process. He thanked all Members and those that had nominated such outstanding candidates. He congratulated Mr. Servansing on his appointment as a new Appellate Body member. He noted that, under Agenda item 1 of the present meeting, the Director-General had mentioned the workload of the Appellate Body, and with six members the Appellate Body was short of human resources. Therefore, the appointment of a new member as of 1 October 2014 would rectify the situation. In conclusion, he noted that the selection process was not perfect. It was something that Members had been constructing since Marrakesh and though it had been working, there was still room for improvement. He invited all delegations to continue thinking collectively about the process.

2.23. The DSB took note of the statements.

3 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.141)

B. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.141)

C. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.116)

D. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.79)

E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.27)

3.1. The Chairman noted that there were five sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. He recalled that Article 21.6 required that: "Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and shall remain on the DSB's Agenda until the issue is resolved". Under this Agenda item, he invited delegations to provide up-to-date information about compliance efforts and to focus on new developments, suggestions and ideas on progress towards the resolution of disputes. In the context of this Agenda item, he also wished to remind delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record." 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.141)

3.2. The Chairman drew attention to document WT/DS176/11/Add.141, 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.

3.3. The representative of the United States said that his country had provided a status report in this dispute on 15 September 2014, in accordance with Article 21.6 of the DSU. Several bills had been introduced in the current Congress in relation to the DSB's recommendations and rulings in this dispute, some of which would repeal Section 211 while others would modify it. In prior meetings of the DSB, the United States had described the status of each of these bills. The US Administration would continue to work on solutions to implement the DSB's recommendations and rulings.

3.4. 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.

3.5. The representative of Cuba said that her country, once again, noted that despite the DSB's recommendations and rulings of February 2002 in the Section 211 dispute, the United States continued to violate intellectual property rights relating to the Havana Club rum trademark and allowed the Bacardi company to fraudulently market and use this Cuban trademark for products not manufactured in Cuba. The continued US non-compliance reflected the unlawful US policies in support of the economic, commercial and financial blockade that the United States had maintained against Cuba for more than 50 years. Under the blockade policy, Cuba remained unable to freely export and import products and services to and from the United States. Cuba could not use the US dollar in its international financial transactions or hold accounts in this currency with banks in third countries. Nor did Cuba have access to credit from banks in the United States or their branches in third countries. Furthermore, any boat that docked at a Cuban port may only enter US ports after 180 days. This policy constituted total economic asphyxiation for Cuba, a small developing country. Cuba wished to point out that this hostile blockade policy that, among other serious effects, prevented compliance with the DSB's rulings in this case, had also been expressly rejected by the international community for 22 consecutive years before the UN General Assembly. Recently, in 2013, 188 UN member States, almost all of which were also WTO Members, had voted in favour of the General Assembly resolution entitled "Necessity of Ending the Economic, Commercial and Financial Blockade Imposed by the United States of America against Cuba". On 28 October 2014, this resolution would be put to the vote for the 23rd consecutive year in the UN General Assembly. Cuba was certain that the resolution would, once again, be overwhelmingly endorsed by the international community.

3.6. However, the United States was ignoring the overwhelming and almost universal international condemnation of its blockade policy against Cuba. Regrettably, neither its failure to comply with the DSB's rulings for more than 12 years nor the discredit that had befallen it in the UN General Assembly appeared to be of any concern to the United States. Cuba also noted that, in the midst of the current negotiating process and with a view to materializing the results of the MC-9 in Bali, the entire WTO Membership faced major challenges to meet its commitment to move forward with the WTO system. In Cuba's view, the role of the dispute settlement system as an instrument of compliance with the Agreements and support for the credibility of the multilateral trading system could not be underestimated. The Agenda of the present meeting was a reminder that one Member in particular, who was behind many of the Bali negotiating issues and one of the main proponents of the Trade Facilitation Agreement, remained inflexible on many issues and continued to neglect its obligation to respect specific commitments set forth in the WTO legal text. As the Agenda of the present meeting demonstrated, at least six Members, most of them developing-country Members, were still waiting for the United States to comply with the DSB's recommendations and rulings in disputes that had already been settled. The failure to comply throughout this process forced Cuba to reflect on the balance between the WTO rules and the new commitments that Members were being asked to make. Cuba could not accept that certain Members, because of their economic hegemony, ignored with impunity their legal responsibilities and the rules making up the WTO legal system which Members were trying to salvage and improve. Cuba, therefore, reiterated that it would continue to denounce the impact of non-compliance by the United States, not only on Cuba but also on the WTO system of rules.

3.7. The representative of the Plurinational State of Bolivia said that his country noted that for the past 12 years, there had been no progress in resolving this dispute. Bolivia, once again, reiterated its concern about the systemic implications of the US failure to comply with the DSB's rulings and the lack of political will to resolve this dispute. Such non-compliance undermined the credibility of the multilateral trading system and affected the interests of a developing-country Member. Bolivia, again, reiterated its concern and urged the United States to comply with the DSB's recommendations and rulings by removing the restrictions imposed under Section 211. Bolivia supported the concerns expressed by Cuba in its statement made at the present meeting.

3.8. The representative of Jamaica said that her country thanked both Cuba and the United States for the updates and the status report under this Agenda item. Jamaica noted that the circumstances of this dispute had not changed and that no progress had been reported since the previous DSB meeting. As it had done at previous DSB meetings, Jamaica expressed its concern about the continued US failure to implement the DSB's recommendations adopted on 2 February 2002 with respect to Section 211. The protracted US failure to take the steps necessary to comply with its obligations under the DSU was incompatible with its requirement for prompt and effective implementation of decisions. This was of particular concern in cases such as this where the failure to meet an obligation had a negative impact on the economic interests of a developing-country Member. Jamaica reiterated its deep concern about the systemic implications of any disregard for DSB decisions. Such disregard could undermine the overall integrity of the dispute settlement system, which remained a key pillar of the WTO. Jamaica, once again, joined others in urging the United States to take the required steps to promptly implement the relevant DSB decisions. After more than 12 years since the adoption of the DSB's recommendations in this dispute, it was more than reasonable for Members to expect that this matter be resolved and consequently removed from the DSB's Agenda.

3.9. The representative of Mexico said that, as it had done in the past, Mexico urged the parties to this dispute to take the necessary measures to comply with the DSB's recommendations and rulings.

3.10. The representative of Argentina said that his country thanked the United States for its status report. However, Argentina noted that there was lack of progress in this dispute. As Argentina had stated in the past, this lack of progress was inconsistent with the principle of prompt and effective compliance stipulated in the DSU provisions, in particular since the interests of a developing-country Member were concerned. Argentina joined Cuba and the previous speakers and urged both parties to the dispute to take the necessary steps and then to remove this item from the DSB's Agenda.

3.11. The representative of China said that his country thanked the United Sates for its status report and its statement made at the present meeting. China noted that the United States reported no progress. The prolonged situation of non-compliance in this dispute was highly incompatible with the principle of prompt implementation required 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.

3.12. The representative of Ecuador said that his country supported the statement made by Cuba. Ecuador, once again, noted that Article 21 of the DSU referred specifically to the prompt compliance with the DSB's recommendations and rulings, in particular since the interests of a developing-country Member were affected. Ecuador hoped that the United States would step up its efforts in order to ensure prompt implementation of the DSB's recommendations and rulings by repealing Section 211. In Ecuador's view, the prolonged non-compliance in this dispute demonstrated the shortcomings of the WTO's dispute settlement system.

3.13. The representative of Brazil said that his country remained concerned about the lack of concrete progress in this matter. Brazil encouraged the parties to this dispute to engage constructively towards a reasonable solution to this dispute.

3.14. The representative of El Salvador said that her country thanked the United States for its status report. El Salvador also thanked Cuba for its update regarding this dispute. Like other delegations, El Salvador noted with great concern that the lack of compliance with the DSB's recommendations undermined the multilateral trading system. El Salvador urged the parties to

this dispute to ensure compliance with the DSB's recommendations and rulings so as to bring an end to this protracted dispute.

3.15. The representative of the Bolivarian Republic of Venezuela said that her country supported Cuba's statement. Venezuela, once again, noted with concern that the US status report was not only monotonous and repetitive, but did not contain any new information on progress towards compliance with the DSB's recommendations and rulings. Section 211 had remained in force since 1998 and the US status report showed that no action had been taken to comply in this dispute. This prolonged situation of non-compliance for the past 12 years undermined the interests of a developing-country Member and showed the lack of political will on the part of the US Administration to resolve the dispute. It also reiterated the US intention to continue maintaining the illegal economic, commercial and financial blockade against Cuba, which had been rejected by the UN General Assembly. It was a violation of international law. Venezuela found this situation unacceptable. Not just because it represented a serious injury to a developing-country Member, but also because it was inconsistent with the US obligations. The United States disregarded the DSB's recommendations and rulings and set an unacceptable precedent for the multilateral trading system. Venezuela supported Cuba, a member of the Bolivarian Alliance for Latin American people, and condemned the behaviour of the US Administration. Venezuela urged the United States to put an end to this flagrant disrespect of the DSB's rulings and recommendations in this dispute.

3.16. The representative of Zimbabwe said that his country thanked both Cuba and the United States for the reports on the matter at hand. Zimbabwe, once again, was disappointed and regretted that the United States had continued to disregard the DSB's rulings and recommendations in this dispute. The continued US failure to comply seriously undermined the integrity of the DSB, as well as the efficacy and the effectiveness of its rulings. Zimbabwe, like a large number of many other Members, called on the United States to desist from this flagrant violation of WTO rules and to meet its obligations. Therefore, Zimbabwe reiterated its strong support for Cuba's position, and urged the United States to comply with the relevant DSB rulings and recommendations.

3.17. The representative of South Africa said that her country wished to refer to its previous statements stressing its systemic concerns that this non-compliance with the DSB's rulings undermined the integrity of the enforcement pillar of the WTO and the credibility and legitimacy of the multilateral trading system as a whole. South Africa was also concerned that protracted non-compliance with the DSB's recommendations and rulings would compromise ease of access to the dispute settlement enforcement mechanism and, accordingly, the perceived value of the dispute settlement mechanism for new Members and lesser-resourced developing countries. South Africa remained particularly concerned that non-compliance with the DSB's rulings and recommendations may perpetuate serious, negative economic consequences for a particular developing-country Member's economic interests. Therefore, South Africa urged the United States to bring its legislation into compliance with the DSB's rulings and recommendations.

3.18. The representative of Antigua and Barbuda, speaking on behalf of the OECS countries, said that the OECS countries thanked the United States and Cuba for their respective statements on this matter. The OECS countries supported Cuba and remained concerned about the lack of progress and the continued non-compliance with the DSB's rulings and recommendations in this dispute. In particular, non-compliance in this dispute had a negative economic impact on the economy of a small developing country. This prolonged non-compliance seriously undermined the dispute settlement system and the WTO's integrity in its capacity as the custodian of the multilateral trading system. In that context, the OECS countries urged prompt compliance with the DSB's rulings and recommendations in order to resolve this dispute.

3.19. The representative of Viet Nam said that his country thanked the United States for its status report and the statement made at the present meeting. Viet Nam, once again, supported Cuba. Viet Nam urged the United States to implement, without any further delay, the DSB's recommendations and rulings so as to ensure the discipline in multilateral trading system and for the benefit of Cuba as a developing-country Member.

3.20. The representative of Uruguay said that his country thanked the United States for its status report. However, Uruguay, once again, was disappointed that there had been no progress

in this matter. This item had remained on the DSB's Agenda and had adverse consequences for the WTO.

3.21. The representative of Trinidad and Tobago said that his country thanked Cuba for its update and the United States for its status report under this Agenda item. For the past several months Trinidad and Tobago had been paying close attention to this Agenda item concerning the implementation of the DSB's recommendations regarding Section 211. Trinidad and Tobago noted the lack of progress and the continued non-compliance with the DSB's rulings and recommendations in this dispute. Such non-compliance placed at risk the integrity of the dispute settlement system and the rules-based WTO system. Small countries like Trinidad and Tobago and Cuba sought the protection and predictability guaranteed by the system, which when removed as in this case, created a negative impact. In that context, Trinidad and Tobago urged prompt compliance with the DSB's rulings and recommendations in order to preserve the integrity of the WTO system.

3.22. The representative of India said that his country thanked the United States for its status report and its statement made at the present meeting. India noted with concern that there was no progress in the implementation of the DSB's recommendations. India further noted that, in his opening remarks in the DSB meeting of 26 March 2013, the former Chairman of the DSB had rightly noted with concern that Members were submitting status reports that generally provided very limited information about specific efforts undertaken to achieve compliance, and that the surveillance function was one of the unique and distinguishing features of the dispute settlement mechanism. India joined other delegations in renewing its systemic concerns about the continuation of non-compliance. Non-compliance undermined the credibility of the WTO and the confidence that Members placed in a predictable, rules-based multilateral trading system, especially in the context of a developing-country Member seeking compliance. India urged the United States to report compliance in this regard without further delay.

3.23. The representative of the Russian Federation said that her country regretted that, once again, it had to express its concern about the lack of progress in this long-standing dispute. As other Members had noted this dispute was as an example of non-compliance with the DSB recommendations and decisions, and as such it attracted the attention of many Members. Russia believed that due and timely implementation of the DSB's recommendations and rulings by all Members was essential to maintaining Members' trust and credibility under the WTO framework. As it had previously stated, Russia urged the parties to this dispute to address their outstanding issues and resolve this dispute as soon as possible.

3.24. 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.141)

3.25. The Chairman drew attention to document WT/DS184/15/Add.141, 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.

3.26. The representative of the United States said that his country had provided a status report in this dispute on 15 September 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 this matter.

3.27. The representative of Japan said that his country thanked the United States for its statement and its status report. Japan referred to its previous statements in which it had indicated its wish for this issue to be resolved as soon as possible.

3.28. 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.116)

3.29. The Chairman drew attention to document WT/DS160/24/Add.116, 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.

3.30. The representative of the United States said that his country had provided a status report in this dispute on 15 September 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 this matter.

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

3.32. 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.79)

3.33. The Chairman drew attention to document WT/DS291/37/Add.79, 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.

3.34. The representative of the European Union said that, in recent DSB meetings, the EU had already reported on authorization decisions and other actions towards approval decisions taken up to August 2014. The EU Standing Committee would vote on 24 October 2014 on the food chain and animal health on a draft decision for authorization of two cotton products[1], one soybean[2] and one oilseed rape[3] for food and feed uses. As 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.

3.35. 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 recent meetings of the DSB, the United States had noted with increasing concern that the EU had not approved a single new biotech product in 2014. Under the EU system, biotech approvals should be made by EU regulatory committees, consisting of EU member State representatives. The regulatory committees should act in accordance with the scientific recommendations of the EU's scientific authority, which was called the European Food Safety Authority, or EFSA. However, not once in at least 10 years had these EU regulatory committees performed their role of taking decisions based on the science-based recommendations. Instead, all biotech approval decisions had been left to the political level of the EU Commission. The United States understood that the EU College of Commissioners was scheduled to hold a meeting the following week, and would have an opportunity to act in accordance with the EFSA recommendations by approving long-pending biotech product applications. The current Commission was nearing the end of its five-year term. The United States was concerned that if the current Commission did not act now, all pending applications would face yet further delays pending action by a new set of Commissioners. The United States also recalled that the ongoing delays were causing serious disruption of trade in agricultural products. The United States urged the EU to take steps to address these matters.

[1] MON15985 cotton, LLcotton25xGHB614 cotton
[2] MON87769 soybean
[3] MON88302 oilseed rape

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

E. United States – Anti-dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.27)

3.37. The Chairman drew attention to document WT/DS404/11/Add.27, 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.

3.38. The representative of the United States said that his country had provided a status report in this dispute on 15 September 2014, in accordance with Article 21.6 of the DSU. As the United States had noted at past DSB meetings, in February 2012, the US Department of Commerce had modified its procedures in a manner that addressed certain findings in this dispute. The United States would continue to consult with interested parties as it worked to address other recommendations and rulings of the DSB.

3.39. The representative of Viet Nam said that his country thanked the United States for its status report and the statement made at the present meeting. Viet Nam noted that the reasonable period of time mutually agreed by the parties to this dispute had expired one year and two months ago. However, the US Administration had not taken any action to recalculate the anti-dumping duty for the second and third administrative review that was inconsistent with the DSB's recommendation. Viet Nam, once again, requested that the United States fully comply without any further delay, to maintain the multilateral trading system discipline and for the benefit of Viet Nam exporters.

3.40. The representative of Cuba said that the status reports presented by the United States showed that, at least for 27 months, developing-country Members such as Viet Nam had been affected by the lack of compliance on the part of the United States. The US status reports were inconsistent with Article 21.6 of the DSU which required Members to report on progress in the implementation of the DSB's recommendations and rulings. Cuba noted that, each month, the US status report contained the same information. The last update was provided in June 2012. Cuba requested the United States to update its status report so as to comply with its obligation in this dispute.

3.41. The representative of the Bolivarian Republic of Venezuela said that her country supported the statement made by Viet Nam as well as the concerns expressed by Cuba with regard to the need for effective compliance with the DSB's recommendations and rulings. Venezuela urged the United States to adopt the necessary measures to put an end to this situation of non-compliance.

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

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

A. Implementation of the recommendations of the DSB

4.1. The Chairman recalled that in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In that respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 29 August 2014, the DSB had adopted the Appellate Body Reports and the Panel Reports, as upheld by the Appellate Body Reports, pertaining to the disputes on: "China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum". He invited China to inform the DSB of its intentions in respect of implementation of the DSB's recommendations and rulings.

4.2. The representative of China said that, on 29 August 2014, the DSB had adopted the reports of the Panel and the Appellate Body in the dispute: "China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum". According to Article 21.3 of the DSU, China informed the DSB that it intended to implement the recommendations and rulings of the DSB in a manner that respected its WTO obligations. China needed a reasonable period of time for the implementation of the DSB's recommendations and rulings. China was ready to discuss this matter with the United States, the EU and Japan in due course, in accordance with Article 21.3(b) of the DSU. In fact, a first meeting had been held on 23 September 2014.

4.3. The representative of the European Union said that the EU thanked China for stating its intention to comply. The EU recalled that the Chinese export restrictions at issue had, and continued to, significantly distort the market and had created competitive advantages for the Chinese manufacturing industry to the detriment of foreign competitors. The EU hoped that China would swiftly comply with the DSB's ruling by removing these export restrictions. The EU stood ready to discuss with China the length of the reasonable period of time for compliance with the DSB's recommendations and rulings of the DSB. The EU appreciated China's willingness to have already engaged in discussions.

4.4. The representative of Japan said that his country thanked China for expressing its intention to implement the DSB's recommendations and rulings as stated in its statement made at the present meeting. In order to ensure clear and prompt settlement of this dispute, Japan expected China to take the necessary actions for prompt implementation of the DSB's recommendations and rulings. As it had already stated, Japan was willing, in good faith, to continue to discuss this matter, including an appropriate reasonable period of time, with China, together with the EU and the United States.

4.5. The representative of the United States said that his country thanked China for its statement made at the present meeting, indicating that it intended to implement the DSB's recommendations and rulings in this dispute. China's export restraints on rare earths, tungsten, and molybdenum had caused and continued to cause real and substantial economic harm to users of these raw materials. The United States therefore urged China to bring its measures promptly into compliance with its obligations through the removal of these restraints. The United States also looked forward to continuing discussions with China on a reasonable period of time for its implementation under Article 21.3(b) of the DSU.

4.6. The DSB took note of the statements, and of the information provided by China regarding its intentions in respect of implementation of the DSB's recommendations and rulings.

5 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

5.1. 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.

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

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

5.4. The representative of India said that his country shared the concerns of the EU and Japan. The WTO-inconsistent disbursements continued unabated to the US domestic industry. The latest

data available[4] in the CDSOA Annual Report of the US Customs and Border Protection for the fiscal year 2013 indicated that approximately US$60 million had been disbursed to the US domestic industry. India was concerned that non-compliance by Members led to a growing lack of credibility of the WTO dispute settlement system. In India's view, this item should continue to remain on the DSB's Agenda until such time that full compliance was achieved in this dispute.

5.5. The representative of Brazil said that, like the previous speakers, Brazil was of the view that the United States had an obligation to provide a status report in this dispute until the issue was resolved within the meaning of the DSU provisions. Brazil also believed that disbursements made after the repeal of the Byrd Amendment, but related to investigations initiated before the repeal were, also not in accordance with the recommendations and rulings adopted by the DSB.

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

5.7. The representative of the United States said that, as his country had noted at previous DSB meetings, the Deficit Reduction Act – which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 – had been enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Furthermore, the United States recalled that the EU, Japan, and other Members had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, which was nearly seven years ago. The United States, therefore, did not understand the purpose for which the EU and Japan had inscribed this item on the Agenda of the present meeting. With respect to comments regarding further status reports in this matter, as it had already explained, the United States failed to see what purpose would be served by further submission of status reports which would repeat, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Indeed, there was no obligation under the DSU to provide status reports once a Member announced that it had implemented those DSB recommendations and rulings, regardless of whether the complaining party disagreed about compliance. Additionally, the United States noted that while some Members had highlighted past statements where they had stated that the United States needed to provide additional status reports despite the fact that the United States had already announced that it had implemented the DSB's recommendations and rulings in this dispute, this was inconsistent with the way that they and other Members had handled the issue in disputes where they were the responding party.

5.8. The DSB took note of the statements.

6 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. Statement by the United States

6.1. 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.

6.2. The representative of the United States said that his country continued to have serious concerns that China had failed to bring its measures into conformity with its WTO obligations. The situation had not changed since the previous month, or since the United States had first begun raising this matter in the DSB. China continued to maintain a ban on foreign suppliers of electronic payment services ("EPS") by imposing a licensing requirement, while at the same time providing no procedures for foreign suppliers to obtain that license. As a result, China's own domestic champion - China Union Pay - remained the only Electronic Payment Services supplier that could operate in China's domestic market. As required for consistency with China's WTO obligations, the United States called on China to move forward promptly with the regulations necessary for allowing foreign EPS suppliers to operate in China.

[4] See: http://www.cbp.gov/sites/default/files/documents/2013%20Annual%20Disbursement%20Report_updated.pdf

6.3. The representative of China said that his country regretted that the United States had, once again, brought this matter before the DSB. China referred to its statements made under this Agenda item at previous DSB meetings. China had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute. China had also further explained that the actions sought by the United States were beyond the scope of China's compliance obligations. With respect to the regulation that the United States had mentioned, China reiterated that it was not relevant to the implementation of the DSB's recommendations and rulings in this dispute. China hoped that the United States would reconsider the systemic implications of its position.

6.4. The representative of the United States said that his country disagreed with China's statement that it had complied with the DSB's recommendations in this dispute, and referred Members to past US statements explaining why that was the case. Further, China's recognition that it was working on regulations to address these issues was a recognition that it must take action to provide access to foreign EPS suppliers. The United States urged China to move forward with these regulations expeditiously.

6.5. The representative of China said that his country referred to its previous statements under this Agenda item. China had fully implemented the DSB's recommendations and rulings, and there was no further implementation obligation. The regulation mentioned by the United States was not relevant to the implementation of the DSB's recommendations and rulings in this dispute.

6.6. The DSB took note of the statements.

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

A. Statement by the Philippines

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

7.2. The representative of the Philippines said that her country continued to have concerns regarding Thailand's compliance with the DSB's recommendations and rulings in this dispute. Among the most important outstanding issues was the Thai Attorney General's decision to prosecute an importer of Philippine cigarettes for declaring customs values that, first, the WTO panel ruled Thailand enjoyed no legitimate grounds to reject and, second, that the Thai Customs' Board of Appeals had explicitly accepted in a separate ruling heralded by Thailand itself as a measure taken to comply. The Philippines had also repeatedly addressed its concerns about the WTO-consistency of another ruling by the Board of Appeals regarding entries subject to the DSB's recommendations and rulings. The DSB's recommendations and rulings in this dispute provided a clear path for Thailand to ensure WTO-consistent customs valuation and related tax treatment for imported cigarettes with a view to achieving security and predictability of trade. The Philippines was conscious of the recent political developments in Thailand. Out of consideration for its ASEAN neighbour, the Philippines had thus already allowed considerable additional time for Thailand to address and resolve these outstanding issues consistent with the implementation action Thailand had already taken and the positive results thus far of the bilateral discussions. As these and other issues remained outstanding, the Philippines reserved all of its rights under the DSU provisions, including the option to return to dispute settlement.

7.3. The representative of Thailand said that her country took note of the Philippines' statement made at the present meeting. As stated in its recent status report and at the previous DSB meetings, Thailand had taken all actions necessary to implement the DSB's recommendations and rulings in this dispute. This was without prejudice to any other rights of the Philippines under the DSU. Thailand remained available to discuss the specific concerns of the Philippines on a bilateral basis, including those that had not been addressed in the DSB's recommendations and rulings.

7.4. The DSB took note of the statements.

8 RUSSIA – ANTI-DUMPING DUTIES ON LIGHT COMMERCIAL VEHICLES FROM GERMANY AND ITALY

A. Request for the establishment of a panel by the European Union (WT/DS479/2)

8.1. The Chairman drew attention to the communication from the European Union contained in document WT/DS479/2, and invited the representative of the European Union to speak.

8.2. The representative of the European Union said that, while the consultations had been helpful in clarifying a number of questions concerning the measures applied by Russia, they could not resolve the dispute. The EU believed that the anti-dumping duties imposed on imports of light commercial vehicles from Germany and Italy were inconsistent with the WTO Anti-Dumping Agreement and were thus unjustifiably hampering access to the Russian market. The EU regretted that Russia had not signalled any intention to remove these measures. Therefore, the EU was left with no choice but to request the establishment of a panel to examine this dispute.

8.3. The representative of the Russian Federation said that his country wished to express its regret that the EU had requested the establishment of a panel to examine this matter. As had been requested by the EU, one round of consultations on this issue had been held in June 2014. Russia had participated in those consultations in good faith and had demonstrated its willingness to resolve the issue. However, no effort had been made by the EU to find a mutually agreed solution. In Russia's view, the consultations had been treated by the EU as a mere formality. In accordance with the DSU provisions, finding a mutually agreed solution was the preferred option. Russia believed that the matter may require further clarifications and thus could be resolved through consultations. For these reasons, the Russian Federation was not in a position to agree to the establishment of a panel.

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

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