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Dispute Settlement Body
23 March 2016

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 23 MARCH 2016

Chairman: Mr. Xavier Carim (South Africa)

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1 SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

A. United States – Anti–dumping measures on certain hot–rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.158)

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.133)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.96)

D. United States – Anti–dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.44)

E. United States – Countervailing measures on certain hot–rolled carbon steel flat products from India: Status report by the United States (WT/DS436/14/Add.4)

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

A. United States – Anti–dumping measures on certain hot–rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.158)

1.2. The Chairman drew attention to document WT/DS184/15/Add.158, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.3. The representative of the United States said that his country had provided a status report in this dispute on 10 March 2016, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that his country thanked the United States for its statement and status report submitted on 10 March 2016. Japan referred to its previous statements that this matter should be resolved as soon as possible.

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

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.133)

1.6. The Chairman drew attention to document WT/DS160/24/Add.133, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.7. The representative of the United States said that his country had provided a status report in this dispute on 10 March 2016, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

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

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

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.96)

1.10. The Chairman drew attention to document WT/DS291/37/Add.96, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

1.11. The representative of the European Union said that, in recent meetings, the EU had already reported on authorisation decisions and other actions towards approval decisions taken up to February 2015. There were no new developments regarding the authorisations in the EU since the previous DSB meeting. More generally, and as stated many times previously, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.12. The representative of the United States said that his country thanked the EU for its status report and its statement made at the present meeting. As the United States had noted at past meetings of the DSB, the EU's measures affecting the approval and marketing of biotech products remained of substantial concern to the United States. Delays in the consideration of biotech products continued, as well as EU member State bans on products previously approved by the EU, represented serious obstacles to trade in agricultural products. The United States was not aware of any recent positive developments in relation to the EU's measures. As previously noted, even the EU official responsible for reviewing EU administrative actions had recently confirmed that the Commission had failed to take biotech approval decisions within a reasonable time. And with regard to the problem of EU member State bans, the situation appeared to be growing worse, not better. At least 19 member States or sub-regions had "opted-out" of certain biotech approvals without providing any scientific basis. The United States urged the EU to ensure that its biotech approval measures were applied in a timely manner and were consistent with the EU's obligations under the SPS Agreement.

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

D. United States – Anti–dumping measures on certain shrimp from Viet Nam: Status report by the United States (WT/DS404/11/Add.44)

1.14. The Chairman drew attention to document WT/DS404/11/Add.44, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain shrimp from Viet Nam.

1.15. The representative of the United States said that his country had provided a status report in this dispute on 10 March 2016, 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 the other recommendations and rulings of the DSB.

1.16. The representative of Viet Nam said that her country thanked the United States for its statement and its status report in this dispute. Viet Nam continued to expect the relevant parts of the DSB's rulings and recommendations in this dispute to be implemented by the United States in the context of the implementation of the second shrimp dispute (DS429). Any delay in the implementation of the DS429 dispute may also delay the implementation of relevant parts of the DS404 dispute.

1.17. The representative of Cuba said that her country thanked Viet Nam for its statement. Cuba was concerned about the lack of compliance with the DSB's recommendations and rulings in this dispute. Cuba called on the United States to promptly comply with the DSB's recommendations.

1.18. The representative of the Bolivarian Republic of Venezuela said that his country supported the statement made by Viet Nam. Venezuela noted the most recent US status report. Venezuela wished to refer to its previous statements made under this Agenda item and reiterated that the United States should comply with the DSB's recommendations in this dispute. If not, Members' confidence and trust in the system would be undermined. Venezuela urged the United States to take the necessary measures in order to rectify this situation and to comply with the DSB's rulings. Venezuela looked forward to a positive update at the next DSB meeting that would finally resolve this matter.

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

E. United States – Countervailing measures on certain hot–rolled carbon steel flat products from India: Status report by the United States (WT/DS436/14/Add.4)

1.20. The Chairman drew attention to document WT/DS436/14/Add.4, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US countervailing measures on certain hot-rolled carbon steel flat products from India.

1.21. The representative of the United States said that his country had provided a status report in this dispute on 10 March 2016, in accordance with Article 21.6 of the DSU. The United States recalled that the findings in this dispute involved determinations by the US Department of Commerce and the US International Trade Commission (USITC). On 5 October 2015, the US Trade Representative had requested the US Department of Commerce to issue a determination in the underlying proceeding that was not inconsistent with the findings of the Panel and the Appellate Body in this dispute. On 6 November 2015, the US Trade Representative had requested that the USITC issue a determination in the underlying proceeding that was not inconsistent with the findings of the Panel and the Appellate Body in this dispute. On 7 March 2016, the USITC had issued a new determination rendering the findings with respect to injury in the underlying proceeding concerning subsidized hot-rolled steel from India consistent with the findings of the Panel and the Appellate Body in this dispute. On 9 March 2016, India and the United States had agreed to extend the reasonable period of time by 30 days, so as to expire on 18 April 2016. The United States would continue to work to address the recommendations and rulings of the DSB and to consult with interested parties.

1.22. The representative of India said that his country thanked the United States for its status report in this dispute in accordance with Article 21.6 of the DSU. India noted that, on 6 November 2015, the USTR had requested that the USITC issue a determination that would render its action in that proceeding not inconsistent with the DSB's recommendations and rulings. India also noted that on 7 March 2016, the USITC had issued a determination pursuant to Section 129(a)(4). India had significant concerns about the steps taken thus far in implementing the DSB's recommendations in this dispute. To highlight a few, even after 16 months since the

adoption of the Panel and Appellate Body Reports and the reasonable period of time soon coming to an end, the United States seemed to have made no efforts to repeal or amend Section 1677(7)(G) of its domestic law so as to bring it into conformity with Articles 15.1, 15.2, 15.3 and 15.5 of the SCM Agreement despite the categorical finding and recommendation of the Appellate Body to that effect. The failure to initiate any good faith efforts in this direction, with the reasonable period of time deadline being so close, was a cause for serious and systemic concern. India also observed that the USITC had recently issued a consistency determination to remove the inconsistency of its earlier injury finding in the underlying investigation. India was closely examining these findings to ensure conformity with Article 15 of the SCM Agreement. India further observed that USDOC had also recently issued certain preliminary findings to bring into conformity some of its determinations previously found inconsistent in this dispute. These were, of course, only preliminary determinations of the USDOC, and India would not wish to prematurely comment on its outcome. Nonetheless, India noted that while there was some progress, it appeared to be very slow. India urged the United States to give priority to fully implementing the DSB's ruling in this dispute within the mutually agreed time-frame. India looked forward to the United States fully implementing the DSB's recommendations and rulings in this dispute by the expiration of the reasonable period of time on 18 April 2016.

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

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

A. Statements by the European Union and Japan

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

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

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

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

2.5. 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. India was of the view that this item should continue to remain on the DSB's Agenda until such time that full compliance was achieved in this dispute.

2.6. The representative of China said that her country thanked the EU and Japan for placing this item on the Agenda of the present meeting. China urged the United States to fully comply with the DSB's rulings in this dispute.

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

2.8. 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. The United States recalled, furthermore, that the EU, Japan, and other Members had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, over eight years ago. The United States therefore did not understand the purpose for which the EU and Japan had inscribed this item on the Agenda of the present meeting. With respect to comments regarding further status reports in this matter, as it had already explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports which would repeat, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Indeed, as these very WTO Members had demonstrated repeatedly when they had been a responding party in a dispute, there was no obligation under the DSU to provide further status reports once a Member announced that it had implemented those DSB recommendations and rulings, regardless of whether the complaining party disagreed about compliance.

2.9. The DSB took note of the statements.

3 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. Statement by the United States

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

3.2. 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 United States recalled that the DSB had adopted its recommendations and rulings in this dispute in August 2012, and China's agreed reasonable period of time had expired in July 2013. But, as the United States had noted at past meetings of the DSB, China continued to impose its ban on foreign suppliers of electronic payment services ("EPS") by requiring a license, while at the same time failing to issue all specific measures or procedures for obtaining that license. The United States previously had taken note of an April 2015 State Council decision, which indicated China's intent to open up its EPS market following issuance of implementing regulations by the People's Bank of China and the China Banking Regulatory Commission. That decision, however, was issued one year ago, and, to date, China had not issued the implementing regulations. As required under its WTO obligations, China must adopt the implementing regulations necessary for allowing the operation of foreign EPS suppliers in China. Furthermore, once adopted, any regulations must be implemented in a consistent and fair way. The United States continued to seek the prompt issuance and implementation of all measures necessary to permit foreign EPS suppliers to do business in China.

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

3.4. The DSB took note of the statements.

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

A. Statement by the Philippines

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

4.2. The representative of the Philippines said that, once again, his country wished to express its deep concerns about Thailand's recent action of prosecuting an importer of Philippine cigarettes for the alleged under-declaration of customs value. The circumstances surrounding the prosecution demonstrated a very close relationship to the circumstances surrounding the measures at issue in

the original proceedings. Both concerned the same exporter, the same exporting country, the same product, the same declared customs values for the same brands, and the same circumstances of sale. Moreover, Thailand's criminal prosecution was based on the same type of legal determination that Thailand itself had abandoned as grounds for its valuation decision in the original proceedings. As the WTO Panel had found, Thailand enjoyed no legitimate grounds to reject the customs values that Thailand now sought to criminalize. The Thai Customs Board of Appeals had explicitly accepted those customs values, in a ruling heralded by Thailand itself as a measure taken to comply. In addition to the criminal prosecution, there remained a series of outstanding compliance issues, nearly four years after Thailand was supposed to have complied fully with the DSB's rulings. The Philippines reiterated the particular importance of a ruling by the Thai Customs Board of Appeals, rejecting transaction value for 210 entries that were covered by the DSB's rulings and recommendations in the original proceedings. As the Philippines had previously noted, the ruling was based on the application of a WTO-inconsistent methodology with respect to the customs valuation of related party transactions. Furthermore, the Philippines was deeply concerned that Thai Customs had explicitly advised the Thai court that they did not need to follow the WTO ruling because it supposedly bound only the Philippines, as the party that had brought the dispute, and did not bind Thailand. In achieving compliance with the WTO's rulings, all levels of the Thai government, whether executive, legislative or judicial, were bound by the WTO rulings and Thailand's WTO obligations, in particular those under the WTO Customs Valuation Agreement where, as in the present dispute, the measures concerned customs valuation. While it once again reiterated its openness to resolving these issues bilaterally, the recent developments compelled the Philippines to reserve its right to return to dispute settlement.

4.3. The representative of Thailand said that his country noted the statement made by the Philippines. As stated in its previous status reports and at the DSB meetings, Thailand had taken all actions necessary to implement the DSB's recommendations and rulings with regard to this dispute.

4.4. The DSB took note of the statements.

5 EUROPEAN COMMUNITIES – DEFINITIVE ANTI-DUMPING MEASURES ON CERTAIN IRON OR STEEL FASTENERS FROM CHINA

A. Statement by the European Union

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

5.2. The representative of the European Union said that, in the interest of transparency, the EU wished to inform the Membership about developments relating to the DS397 dispute. On 12 February 2016, the DSB had adopted the compliance Reports in this dispute, in which certain aspects of EU anti-dumping measures on fasteners from China were found to be inconsistent with the Anti-Dumping Agreement. At that meeting, the EU had stated its clear intention to fully comply, so that a definitive end could be put to this dispute as soon as possible. On 26 February 2016, the EU had adopted a Regulation repealing the measures at issue. The EU referred to Commission Implementing Regulation (EU) 2016/278 of 26 February 2016 repealing the definitive anti-dumping duty imposed on imports of certain iron or steel fasteners originating in the People's Republic of China, as extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not. This Regulation was published in the Official Journal of the EU on 27 February 2016 (OJ L 52/24 of 27.02.2016). The repeal had taken effect on 28 February 2016. Thus, the measures found to be inconsistent with the covered agreements had clearly been removed, ensuring the EU's full compliance. The EU considered that the repeal of those measures amounted to a final resolution of the matters raised in this dispute.

5.3. The representative of China said that her country thanked the EU for the information provided at the present meeting and welcomed the Commission Implementing Regulation of 26 February 2016 to repeal the definitive anti-dumping duty imposed on imports of certain iron or steel fasteners originating in China. The DSB's recommendations and rulings in this dispute revealed once again that some WTO Members' discriminatory investigation practice and trade defence measures against products from China could not be justified by the WTO rules. China would pay close attention to such practices and measures, and would not hesitate to protect the

industrial interests through the dispute settlement mechanism, when necessary. Since the EU's imposition of the high anti-dumping duty on imports of certain iron or steel fasteners originating in China in 2009, China's industries and jobs had suffered heavy losses. China hoped that the bilateral trade of certain iron or steel fasteners would be restored to the normal level as early as possible and would make a contribution to the healthy development of trade between China and the EU. China also expected that the EU would keep strictly to the conditions and procedures provided for in the Anti-Dumping Agreement when imposing anti-dumping measures in the future.

5.4. The DSB took note of the statements.

6 UKRAINE – ANTI-DUMPING MEASURES ON AMMONIUM NITRATE

A. Request for the establishment of a panel by the Russian Federation (WT/DS493/2)

6.1. The Chairman drew attention to the communication from the Russian Federation contained in document WT/DS493/2, and he invited the representative of the Russian Federation to speak.

6.2. The representative of the Russian Federation said that his country requested the establishment of a panel in this dispute with standard terms of reference as set out in Article 7.1 of the DSU. This request was made following Russia's attempts to find an acceptable solution with Ukraine bilaterally, in particular in the course of formal consultations between Russia and Ukraine as the first stage of this dispute. The consultations had taken place on 25 June 2015. Unfortunately, the matter had not been resolved during those consultations. The anti-dumping measures imposed on imports of ammonium nitrate originating in Russia following expiry and interim reviews were still active. Russia believed that they were imposed and were currently applied in violation of numerous provisions of the WTO Agreements. Russia, therefore, believed that all other ways of settling this matter were exhausted and that it had no choice but to request the establishment of a WTO panel to examine this dispute.

6.3. The representative of Ukraine said that his country regretted that Russia had taken the decision to request the establishment of a panel with regard to anti-dumping measures on ammonium nitrate adopted by Ukraine. The measures at issue had been introduced as a result of a thorough and objective investigation by the competent authorities in Ukraine and were applied according to the Agreement on Implementation of Article VI of the GATT 1994. Ukraine had engaged in constructive and meaningful consultations with Russia in an effort to find a mutually acceptable solution that would respect Ukraine's rights under the relevant WTO Agreements. Ukraine's officials had provided extensive comments on issues identified in Russia's request for consultations. Ukraine believed that it had provided all necessary information and clarification explaining its position. Ukraine remained open to continue these discussions in order to achieve a mutually acceptable solution, which was the preferred option under the DSU provisions. Ukraine, therefore, did not agree to the establishment of a panel at the present meeting.

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

7 UNITED STATES – MEASURES CONCERNING THE IMPORTATION, MARKETING AND SALE OF TUNA AND TUNA PRODUCTS

A. Recourse to Article 22.2 of the DSU by Mexico (WT/DS381/29)

7.1. The Chairman drew attention to the communication from Mexico contained in document WT/DS381/29 and he invited the representative of Mexico to speak.

7.2. The representative of Mexico said that, on 10 March 2016, his country had filed a request for authorization to suspend concessions vis-à-vis the United States contained in document WT/DS381/29. Since that document provided the background and the specific requests pertaining to this dispute, there was no need to repeat them at the present meeting. On 22 March 2016, the United States had submitted document WT/DS381/30 objecting to that request and challenging the level of suspension of concessions or other obligations proposed by Mexico, adding that "[a]ccordingly, as required by Article 22.6 of the DSU the matter has been referred to arbitration". Mexico was ready to explain and defend, in the course of the arbitration proceedings under Article 22.6 of the DSU, the calculation of the retaliation amount requested at the present

meeting. Mexico, therefore, hoped that the Secretariat would proceed with the constitution of the Arbitrator.

7.3. The representative of the United States said that, on 22 March 2016, his country had submitted a written objection to Mexico's request for authorization to suspend the application to the United States of concessions or other obligations. Pursuant to the US objection on 22 March to Mexico's request, this matter had thereby been referred to arbitration pursuant to Article 22.6 of the DSU. In this circumstance, there was no need for this item to remain on the Agenda of the present DSB meeting as there was no action the DSB may take with respect to Mexico's request. Nevertheless, while not an efficient use of the resources of the WTO and of Members, the United States had no objection if the DSB wished to take note of the fact that no action could be taken on Mexico's request for authorization since the matter had been referred to arbitration. Regarding the US objection submitted the previous day to Mexico's request for authorization, the United States strongly disagreed with Mexico's request. For example, and aside from any other issues, the level Mexico had requested was unsupportable compared to its actual or potential exports. The United States also wished to take the opportunity to provide an update on US actions relating to this dispute. On 22 March 2016, the US National Oceanic and Atmospheric Administration (NOAA) had issued a new rule modifying the dolphin safe labelling measure. The new rule directly addressed the WTO's findings on the US dolphin safe labelling measure and was being published in the US Federal Register on the present day. In revising the measure, the United States had carefully analysed not only the Appellate Body's findings, but all the issues debated during the compliance proceeding. This rule directly addressed issues raised by both the Appellate Body and the compliance Panel.

7.4. The United States summarized briefly five changes in the rule. First, the rule changed the design of the so-called determination provisions to set one standard for all purse seine and non-purse seine fisheries, eliminating any alleged "gaps" that existed previously. This change directly responded to the only basis that the Appellate Body had relied on in finding that the measure was discriminatory. Second, the rule required that, where NOAA had made a positive finding under the determination provision with respect to a particular fishery, NOAA would require that a government certificate validating the catch documentation, segregation, and chain of custody would accompany the tuna and tuna product produced from that fishery. Third, the rule now required the captain to certify that he or she had completed training to identify intentional deployment of fishing gear and dolphin mortality and serious injury, in addition to certifying that the tuna met the dolphin safe standard. Fourth, the rule now required that the industry collect sufficient information to allow NOAA to track and verify tuna product throughout the entire supply chain. Fifth, the rule provided for one straightforward certification, making clear that all tuna product must meet the same standard to be labelled "dolphin safe" in the US market. The United States would be pleased to provide any interested Member with a copy of the new rule. As just described, the United States considered that this measure fully addressed the DSB's recommendations and rulings, and more.

7.5. The representative of the European Union noted that the issue whether a request under Article 22 of the DSU should be addressed by the DSB was controversial. The EU wished to refer to its well-established position on this matter without explaining it in detail at the present meeting. The EU welcomed the fact that Mexico had maintained the item on the Agenda of the present meeting.

7.6. The representative of Mexico said that his country thanked the United States for the updated information. Since the interim final rule had only just been published, it was still early for Mexico to comment thereon. Mexico wished to point out that in the US objection to Mexico's request to suspend concessions, there was no reference to the interim final rule. Mexico's request for the suspension of concessions complied with all of the requirements under Article 22.2 of the DSU, in particular the failure by the United States to comply with the DSB's recommendations and rulings within the reasonable period of time. The interim final rule was not legally relevant for the consideration of the request submitted by Mexico to the DSB at the present meeting. Furthermore, under Rules 2 and 4 of the Rules of Procedures for DSB meetings, documentation for consideration at a meeting must be circulated ten days prior to the meeting. As such, the interim final rule had not been properly submitted. Mexico's request for the suspension of concessions had already been referred to arbitration. Finally, Mexico regretted that, once again, the United States had adopted unilateral measures to solve international problems. This only showed that the United States was convinced that its dolphin safe label was not in compliance with the WTO; otherwise, it made no

sense to request enhanced requirements for other fisheries. Unfortunately, Mexico did not have a complete analysis, but any new system would take time to implement. In the meantime, Mexico would go ahead with the procedures to suspend concessions as soon as the arbitration proceedings were completed.

7.7. The representative of Canada said that, regarding the DSB's role in referrals to arbitration under Article 22.6 of the DSU, Canada agreed in part with the EU's position, that requests for authorization to suspend concessions, and objections to such requests, should at least be considered by the DSB in the course of a meeting in order for the referral to arbitration to occur. Canada did not consider that a referral to arbitration, without the request and corresponding objection being considered by the DSB, should be seen as an appropriate practice. Canada, therefore, discouraged other Members from adopting this approach in future disputes.

7.8. The representative of Japan said that, with regard to the issue of "referral of the arbitration to the DSB", Japan supported the US view and believed that it was not necessary to keep this matter on the Agenda of the present meeting, although the discussion at the present meeting was useful to Members that were not parties to this dispute.

7.9. The representative of the United States said that his country's position on this subject was well-known. As recently confirmed, no decision by the DSB was necessary to refer the matter to arbitration.[1] Article 22.6 of the DSU did not refer to any action of the DSB, and the text was clear that once a Member objected to another Member's request, that matter was automatically referred to arbitration. The situation at present was not unique. Members may recall that no DSB decision was needed in this dispute to refer the matter to the Appellate Body, nor had any DSB decision been needed in past disputes to refer the matter of the reasonable period of time to an Article 21.3(c) arbitrator. As just one illustration of why the DSB was not deciding at present to refer these matters to arbitration, the United States would note that the DSB did not have before it any proposed decision to refer the matter to arbitration. DSB rules would require such a decision to be submitted ten days before the DSB meeting. Clearly, the DSB was not taking a decision at the present meeting, nor had it on any of the previous occasions when requests were referred to arbitration. Indeed, arbitration had commenced in the past without the need for a DSB meeting.[2] For example, the United States would refer Members to the minutes of the 21 January 2008, DSB meeting, where it was agreed to remove the Agenda item with respect to requesting authorization to suspend concessions in light of the filing of an objection.[3]

7.10. The representative of Argentina said that his country had not intended to intervene under this Agenda item; but, since the question of procedure was raised, Argentina wished to state that it was not necessary to keep the matter on the Agenda in order to refer it to arbitration.

7.11. The DSB took note of the statements and that the matter raised by the United States in document WT/DS381/30 has been referred to arbitration, as required by Article 22.6 of the DSU.

8 PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/564)

8.1. The Chairman drew attention to document WT/DSB/W/564, which contained one additional name proposed by Israel for inclusion on the Indicative List of Governmental and

[1] See Decision by the Arbitrator, "United States – Certain Country of Origin Labelling (COOL) Requirements: Recourse to Article 22.6 of the DSU by the United States", WT/DS386/ARB, paragraph 2.17 (7 December 2015) ("As indicated above, the text of Article 22.6 does not explicitly require referral to arbitration by the DSB. Furthermore, the context found in other provisions of the DSU, particularly regarding other arbitration procedures, suspension and lapsing of panels, and initiation of appeals, suggests that it is not necessary for the DSB to have an active role in all dispute settlement procedures for them to occur.").

[2] See Decision by the Arbitrator, "United States – Certain Country of Origin Labelling (COOL) Requirements: Recourse to Article 22.6 of the DSU by the United States", WT/DS386/ARB, paragraph 2.2 (7 December 2015) ("On 22 June 2015, the United States notified to the DSB its objection to Mexico's proposed level of suspension and stated that '[a]ccordingly … the matter has been referred to arbitration'. Thereafter, Mexico cancelled its request for a DSB meeting. On 26 June 2015, the Secretariat circulated a note indicating that 'the parties agree that the matter has been referred to arbitration under Article 22.6 of the DSU', and noting the composition of the Arbitrator.") (footnotes omitted).

[3] WT/DSB/M/245, page 2 (statements by Japan and the United States).

Non-Governmental Panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the name contained in document WT/DSB/W/564.

8.2. The DSB so agreed.

9 APPOINTMENT/REAPPOINTMENT OF APPELLATE BODY MEMBERS

A. Statement by the Chairman

9.1. The Chairman, speaking under "Other Business", said that he wished to make a statement regarding the 2016 selection process for the appointment of a new Appellate Body member and the process for the possible reappointment of one Appellate Body member. In that regard, he recalled that at its meeting on 25 January2016, the DSB had agreed to the previous Chair's proposal to launch a selection process for appointment of a new member of the Appellate Body. At that meeting, the DSB had also agreed to set a deadline of 15 March for Members' nominations of candidates. By the agreed deadline, the names of seven candidates had been submitted by the following Members: Japan, Nepal, China, Australia, Malaysia and Turkey. China had submitted names of two candidates. The CVs of those candidates had been circulated as Job documents and had been made available electronically. He reminded delegations that, as agreed by the DSB and based on the procedures set forth in document WT/DSB/1, the Selection Committee was comprised of the Director General and the 2016 Chairs of the General Council, Goods Council, Services Council, TRIPS Council and the DSB. In that regard, he reminded delegations that, on 17 March 2016, he had sent out a fax indicating that the incoming Chair of the Council for Trade in Goods, H.E. Mr. Hamish McCormick of Australia, had recused himself from the process in light of the fact that Australia had submitted a nomination for consideration in the 2016 selection process. As he had already informed delegations by fax, dated 16 March 2016, the Selection Committee would interview the candidates on 7 and 8 April 2016. Thereafter, on 20 and 25 April 2016, the Selection Committee would be available to meet delegations, upon request, in order to receive their views on the candidates. Interested delegations were invited to contact the Council/TNC Division to make an appointment. Alternatively, delegations may wish to submit their comments in writing by no later than 25 April 2016. Any such comments should be addressed to the Chair of the DSB in care of the Council/TNC Division. As had been agreed by the DSB, the Selection Committee's recommendation would be issued no later than 12 May so that the DSB could take a decision on this matter at its regular meeting on 23 May 2016. Finally, he also recalled that at the 25 January 2016 meeting, the DSB had agreed to ask the Chair of the DSB to carry out consultations on the possible reappointment of Mr. Seung Wha Chang for a second four-year term beginning on 1 June 2016. He recalled that his predecessor, Ambassador Neple, had already invited delegations with views on this matter to contact him directly. He had been briefed by Ambassador Neple regarding this matter, and he would continue to consult with interested delegations. In that regard, he invited any interested delegations with views on this matter to contact him directly as soon as possible. He would then report on the results of his consultations at the next DSB meeting.

9.2. The DSB took note of the statement.

10 THE DISPUTE SETTLEMENT WORKLOAD

A. Statement by the Chairman

10.1. The Chairman, speaking under "Other Business", said that he wished to provide information about the Appellate Body's workload, the number of disputes in the panel queue and at the panel composition stage, and the ability of the Secretariat to meet expected demand over the coming period. With regard to appeals, the Appellate Body was currently dealing with two appeals.[4] The Appellate Body could expect that up to four more appeals may be filed based on the projected dates for the circulation of panel reports in the next three months.[5] This would be followed soon thereafter by the circulation of the panel report in the extremely large compliance proceedings in the "EC and Certain Member States – Large Civil Aircraft" (Airbus – Article 21.5) dispute, in which the Panel's final report was recently issued to the parties. Thus assuming, consistent with historical

[4] DS453 "Argentina – Financial Services"; DS461 "Colombia – Textiles".

[5] DS456 "India – Solar Cells"; DS464 "US – Washing Machines"; DS473 "EU – Biodiesel"; and DS475 "Russia – Pigs".

trends, that two thirds of panel reports were appealed, the Appellate Body may expect, in addition to an appeal in the Airbus dispute, appeals in many of the 21 proceedings currently pending at the panel stage in the course of 2016 and in 2017. Given the limited number of staff available in the Appellate Body Secretariat, as of the second half of 2016, there were likely to be waiting periods before appeals could be staffed and Appellate Body members could turn to dealing with them. With regard to panels/arbitrations, currently, there were 21 composed panels (including 1 panel under Article 21.5 of the DSU) that had not yet issued a final report to the parties. He noted that he was counting multiple disputes that were being considered simultaneously by the same panel as one. For example, the "Australia – Tobacco Plain Packaging" dispute, which in fact comprised four active disputes, was counted as a single panel in his report. In addition, he said that he had excluded suspended panels. As of the present day, there were three composed panels awaiting staff to assist them[6], all of which had been composed after 31 October 2015. All of the panels that were in the queue as of 31 October 2015 had been staffed and were currently active, as undertaken by the Director-General in his address to the DSB at that time. This had been achieved through increasing the number of staff members in both the Rules and Legal Affairs Divisions and also through collaboration between both divisions in sharing the workload. As of the present day, there were four panels at the composition stage. In addition, one matter had been referred to arbitration under Article 22.6 of the DSU.

10.2. The DSB took note of the statement.

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[6] DS480 "EU – Biodiesel" (Indonesia); DS490/DS496 "Indonesia – Iron or Steel Products"; and DS491 "US – Coated Paper" (Indonesia).