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Dispute Settlement Body
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MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 20 JULY 2017

Chairman: Mr. Junichi Ihara (Japan)

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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.174)

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.149)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.112)

D. European Union – Anti-dumping measures on biodiesel from Argentina: Status report by the European Union (WT/DS473/17/Add.1)

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

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.174)

1.2. The Chairman drew attention to document WT/DS184/15/Add.174, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.3. The representative of the United States said that the United States had provided a status report in this dispute on 7 July 2017, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the DSB's recommendations and rulings 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. Japan called on the United States to fully implement the DSB's recommendations and rulings in order to resolve this matter.

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

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.149)

1.6. The Chairman drew attention to document WT/DS160/24/Add.149, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.7. The representative of the United States said that the United States had provided a status report in this dispute on 7 July 2017, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the EU, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

1.8. The representative of the European Union said that his delegation thanked the United States for its status report and its statement. The EU referred to its previous statements on this matter and said that it 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.112)

1.10. The Chairman draw attention to document WT/DS291/37/Add.112, 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, on 4 July 2017 the European Commission had adopted five authorisations for GMOs (for food and feed use): two types of genetically modified cotton[1], two types of genetically modified maize[2] and the renewal of one type of genetically modified maize.[3] The draft authorisation decision for one type of genetically modified soybean[4] (for food and feed use) had been submitted for a vote at the Appeal Committee on 12 July 2017, with a "no opinion" result. Furthermore, as had been stated at the 19 June 2017 DSB meeting, the draft proposals for the authorisation of three types of maize[5] (for cultivation use) had been submitted for vote at the Appeal Committee on 27 March 2017, with a "no opinion" result. The European Commission would now decide on these authorisations. In addition, on 17 July 2017, the draft authorisations for two types of genetically modified soybeans[6] (for food and feed use) had been submitted for a vote at the member States Committee, with a "no opinion" result. These measures would now be submitted for discussion, and possible opinion, to the Appeal Committee in September 2017. The EU said that it continued to be committed to acting in line with its WTO obligations. More generally, and as it had stated previously on many occasions, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.12. The representative of the United States said that the United States thanked the EU for its status report and its statement. The United States took note that, earlier in July 2017, the EU had approved four biotech products, including two varieties of corn. The EU had also reauthorized one product for cultivation in the EU. The United States welcomed these developments. The EU's actions had, nonetheless, served to highlight the US concerns with the EU measures affecting the approval of biotech products. For example, the EU approval process for the two biotech corn products had taken six and seven years, respectively. The initial applications for approval of the corn products had been submitted in 2010 and 2011. Positive opinions from the EU's scientific authority had been issued in the fall of 2016. Despite these positive safety opinions, the EU regulatory committee had failed to approve the products. Instead, approvals could not be made until the Commission had finally taken up these matters earlier in July 2017. In short, the EU measures affecting the approval of biotech products continued to involve prolonged, unpredictable, and unexplained delays at every stage of the approvals process. Furthermore, numerous products remained in the biotech approval pipeline. The United States urged the EU to take action to ensure that the safety of pending biotech applications would be evaluated on the basis of scientific evidence, and that decisions be taken without further delay.

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

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[1] Cotton: 281-24-236 x 3006-210-23 x MON 88913 and GHB119.
[2] Maize: Bt11 × 59122 × MIR604 × 1507 × GA21 and DAS-40278-9.
[3] Renewal of maize: MON810.
[4] DAS-68416-4.
[5] Cultivation: Bt11, 1507 and MON810 (renewal).
[6] DAS-44406-4 and FG72 x A5547-127.

D. European Union – Anti-dumping measures on biodiesel from Argentina: Status report by the European Union (WT/DS473/17/Add.1)

1.14. The Chairman drew attention to document WT/DS473/17/Add.1, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning anti-dumping measures on biodiesel from Argentina.

1.15. The representative of the European Union said that the EU intended to comply with the DSB's recommendations and rulings by the agreed reasonable period of time (RPT), which would expire on 10 August 2017. The European Commission had launched a review investigation, which was ongoing. The Commission had disclosed its intention to amend the Implementing Regulation (EU) No. 1194/2013 to Argentina and other interested parties, which had been given the opportunity to provide comments.

1.16. The representative of Argentina welcomed the status report submitted by the EU in accordance with Article 21.6 of the DSU. Argentina was an interested party to the review initiated on 20 December 2016 by the EU, pursuant to its "WTO Enabling Regulation", with regard to the anti-dumping measures imposed on Argentine biodiesel, and was closely monitoring developments in these proceedings. Argentina hoped that the EU would publish its dumping and injury findings before the expiry of the reasonable period of time for implementation and reiterated its firm belief that a review, consistent with the DSB's recommendations and rulings in this dispute, should result in full access to the EU market for biodiesel from Argentina.

1.17. 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. Statement by the European Union

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

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

2.3. The representative of Canada said that his country thanked the EU for placing this item on the DSB's Agenda. Canada shared the EU's view that the Byrd Amendment remained under the DSB surveillance until it was no longer applied.

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

2.5. The representative of the United States said that, as the United States had noted at previous DSB meetings, the Deficit Reduction Act – which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 – had been enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that the EU had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, over nine years ago. With respect to the EU's

request for status reports in this matter, as the United States had already explained at previous DSB meetings, there was no obligation under the DSU to provide further status reports once a Member had announced that it had implemented the DSB's recommendations and rulings, regardless of whether the complaining party disagreed about compliance. As the United States had noted previously, the EU had demonstrated repeatedly that it shared this understanding, at least when it was the responding party in a dispute. Once again, at the present meeting in July 2017, the EU had provided no status report for disputes in which there was a disagreement between the parties on the EU's compliance. If the EU considered that it had no obligation to provide status reports once it had announced that it had implemented the DSB's recommendations and rulings in a dispute, then surely the same applied to other Members under any reasonable reading of the DSU.

2.6. The representative of the European Union said that his delegation had provided status reports in all disputes that involved the EU (i.e. DS291 and DS473). The EU did not believe that there were any cases in which the EU should have submitted status reports.

2.7. The representative of the United States said that, as the United States had noted at prior DSB meetings, the EU had not submitted status reports in the "EC – Large Civil Aircraft" (DS316) dispute, despite a disagreement between the parties on the EU's compliance.

2.8. The representative of the European Union said that in the EU's view the dispute DS217 was different the Airbus dispute since the DS217 the dispute had been fully adjudicated and no further compliance proceedings were pending.

2.9. The DSB took note of the statements.

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

A Statement by Canada

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

3.2. The representative of Canada said that in July 2016, 17 Members had endorsed a "Mechanism for Developing, Documenting, and Sharing Practices and Procedures in the Conduct of WTO disputes". These Members had considered that the Mechanism would improve the operation of the dispute settlement system. Recently, Members had been discussing four new practice documents, which had been circulated prior to the present meeting as JOB documents. Copies of these documents were available in the meeting room. The documents related to: (i) streamlining panel composition by inviting nominations and appointments of non-governmental third-party nationals and suitable candidates who had not previously served on a panel (JOB/DSB/1/Add.7); (ii) promoting electronic filing and service procedures in disputes (JOB/DSB/1/Add.8); (iii) encouraging prompt responses to third party requests to participate in consultations (JOB/DSB/1/Add.9); and (iv) publishing disputes' procedural documents and preliminary rulings (JOB/DSB/1/Add.10). Canada was pleased that a number of Members had indicated that they would endorse these documents. Canada encouraged Members that had not yet done so to endorse the Mechanism and embrace it as the best means through which incremental improvements could be made to the dispute settlement system. Canada recalled that, in his speech on the occasion of the presentation of the Appellate Body's 2016 Annual Report, Appellate Body Chairman Mr. Ujal Singh Bhatia had noted that the WTO dispute settlement system should not be taken for granted and that it required nurturing through timely interventions. Canada agreed with Mr. Bhatia and hoped that others would join with Canada in nurturing the system both through these practice documents and through engagement with the Mechanism. Canada said that it would circulate an updated endorsements document (JOB/DSB/1/Add.1) in advance of the August DSB meeting.

3.3. The representative of Australia said that her country welcomed Canada's initiative in developing and circulating the proposed practice documents, under the Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes. Australia believed that the dispute settlement system was the cornerstone of the multilateral trading system

and that it was essential for the health of the WTO that its effectiveness and efficiency was maintained. The four proposed new practice documents that had been circulated at the present meeting sought to improve key practices and procedures for the benefit of all Members by: (i) simplifying the filing procedure by way of electronic filing of all documents; (ii) expanding the range of eligible panellists and by doing so, contributing to a more efficient panel composition process providing greater transparency to the procedures and timetabling of disputes by timely publication on the DS document series for the dispute; and (iii) reducing unnecessary delays, by seeking prompt responses by Members to a dispute to third party requests. These added to the positive contribution made by the practice documents circulated in July 2016 in relation to: written notifications, transparency of dispute settlement proceedings, participation of third parties in dispute proceedings, and improving and streamlining dispute proceedings. The endorsement of both the new and previously circulated practice documents would produce much-needed efficiency gains in the dispute settlement system, which had come under increased workload pressures. Australia was happy to join other Members in endorsing these documents. All Members shared a responsibility to continue to work to support and improve the operation of the WTO dispute settlement system. Australia was committed to working to make improvements and encouraged all Members to do likewise by giving positive consideration to supporting the Mechanism itself and to endorsing the practice documents which had been circulated under it. Australia also considered it important to thank the WTO Secretariat staff from the Rules Division, Legal Affairs Division and the Appellate Body Secretariat for their hard work and dedication. The dispute settlement system could not function without them and their efforts were greatly appreciated.

3.4. The representative of Singapore said that, in July 2016, his country had supported the "Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes." At the present meeting Singapore was pleased to indicate its endorsement of four new practice documents under the Mechanism such as electronic filing (JOB/DSB/1/Add.8); panel composition (JOB/DSB/1/Add.7); responses to third party requests to participate in consultations (JOB/DSB/1/Add.9); and the publication of Working Procedures, Timetables, Working Schedules, and preliminary or procedural rulings (JOB/DSB/1/Add.10). All Members recognized the importance of the dispute settlement system for the security and predictability of the multilateral trading system. However, various issues affected the functioning of the dispute settlement system, including the workload issue. The Mechanism, or the relevant practice documents, would not necessarily resolve the issues, but they would certainly play a small part by developing, documenting and sharing practices and procedures for WTO disputes. This would, in turn, help with the resolution of disputes by reducing procedural disagreements and delays, and by generating practical experience.

3.5. Singapore wished to highlight some elements and safeguards in the relevant practice documents, which would allow for more Members to participate in the Mechanism. With regard to electronic filing, Singapore noted that electronic filing was already used by most, if not all, Members. Singapore also noted there was a "without prejudice" clause on the endorsing Members' positions on the Digital Dispute Settlement Registry. With regard to panel composition, the documents aimed to simply invite nominations by the Secretariat and appointments by the Director General of certain individuals as possible panelists. This would not prejudice the right of the endorsing Member to object to nominations proposed by the Secretariat, if there were compelling reasons. With regard to the responses to third party requests to participate in consultations, Singapore noted that the requirement of an endorsing Member to respond within a stipulated time-frame was simply on a "best endeavour" basis. With regard to the publication of working procedures, time-tables, working schedules and preliminary or procedural rulings, Singapore believed that there must be flexibility on this practice that such publications were as the endorsing Members determined them to be appropriate. Singapore looked forward to more Members participating in this Mechanism and the relevant practice documents, which would provide all Members with more information and could assist with the ongoing discussions in the DSB Special Session. With more information flowing through this Mechanism, there could be greater awareness and acceptance of certain practices. This could, in the long run, lead to possible codification of certain practices, with the agreement of all Members. Singapore thanked Canada and other Members for their efforts in this initiative.

3.6. The representative of Chinese Taipei said that her delegation wished to join other Members who had expressed their appreciation for Canada's efforts. In Chinese Taipei's view, the streamlined procedures provided in these practice documents facilitated coordination among disputing parties. It would reduce delays and improve the overall effectiveness of the WTO dispute

settlement system. Delays faced by the system were pressing matters and required Members' immediate attention. Chinese Taipei believed that the practice documents circulated by Canada accommodated such concerns while their voluntary nature allowed some flexibility. All this made the Mechanism to be pragmatic and constructive. Therefore, Chinese Taipei welcomed the approach adopted by Canada. Chinese Taipei had endorsed the practice documents relating to written notifications and participation of third parties in dispute settlement proceedings in 2016. Among the documents circulated recently, Chinese Taipei would endorse the practice document related to responses to third party requests to participate in consultations (JOB/DSB/1/Add.9). The other documents were still under consideration by capital and Chinese Taipei hoped to receive positive instructions soon. Chinese Taipei thanked Canada for its contribution, thanked the Secretariat for its hard work and encouraged all Members to participate in the Mechanism.

3.7. The representative of Norway said that her country thanked Canada for its efforts in order to bring this initiative forward and for working with other Members in developing new practice documents under the initiative. Norway believed that the Mechanism would continue to be a useful contribution in tackling some of the current challenges faced by the WTO dispute settlement system. Norway had previously endorsed document JOB/DSB/1 as well as the practice documents on transparency and written notifications. Norway would endorse the four new practice documents on: (i) responses to third party requests (JOB/DSB/1/Add.9); (ii) electronic filing (JOB/DSB/1/Add.8); (iii) publication of working procedures, timetables and working schedules (JOB/DSB/1/Add.10); and (iv) panel composition (JOB/DSB/1/Add.7). In Norway's view these four practice documents covered topics that would contribute to a prompt and effective dispute settlement procedure. Norway encouraged Members, who had not already done so, to endorse and use the Mechanism and its practice documents.

3.8. The representative of Costa Rica said that his country thanked Canada for its update on the Mechanism for the Development, Documenting and Sharing of Practices and Procedures in the Conduct of WTO Disputes. Costa Rica was not an active user of the dispute settlement mechanism but attached great importance to the system. As such, Costa Rica endorsed the Mechanism as a way to contribute to and improve the dispute settlement mechanism. Costa Rica also supported some of the practices proposed, in particular those related to requests of third parties to participate in consultations (JOB/DSB/1/Add.9) and electronic filing (JOB/DSB/1/Add.8). Costa Rica considered the Mechanism to be a valuable initiative and therefore encouraged other Members to join this Mechanism.

3.9. The representative of Japan said that his country thanked Canada for its statement and its initiative to circulate four new documents setting out additional practices and procedures. Japan was among the WTO Members that participated in the Mechanism. It was a voluntary, Member-driven, incremental, non-binding, transparent, and experimental exercise which, in Japan's view, could enhance the transparency and predictability of the system, reduce procedural uncertainty and unnecessary burden in dispute proceedings, and, importantly, "generate practical experience"[7] which could be collectively shared by the entire Membership. With respect to the new documents circulated by Canada, Japan could support the following three documents: the document on "Electronic Filing"[8]; the document on "Responses to Third Party Requests to Participate in Consultations"[9]; and the document on the "Publication of Working Procedures, Timetables, Working Schedules, and Preliminary or Procedural Rulings".[10] In supporting these documents, Japan said that it understood that the language used in these documents was flexible enough to allow the actual implementation of these documents to be adapted for the particular needs and circumstances of each individual dispute.

3.10. The representative of New Zealand said that her country was pleased to have endorsed the Mechanism in 2016 and thanked Canada for its ongoing efforts to progress this initiative with the new practice documents that had been tabled at the present meeting. New Zealand agreed that such efforts could make incremental progress by removing ambiguity, facilitating coordination, and reducing workload and delays on specific issues. While New Zealand was not in a position to endorse the documents at the present meeting, Wellington was actively consulting on them.

[7] JOB/DSB/1
[8] JOB/DSB/1/Add.8
[9] JOB/DSB/1/Add.9
[10] JOB/DSB/1/Add.10

3.11. The representative of the Ukraine said that his country wished to join other Members in thanking Canada for its efforts to improve practices and procedures in the context of WTO disputes and for presenting four new practice documents in this regard. Ukraine had already endorsed the previous documents relating to the Mechanism in July 2016 and said that it was pleased to indicate its readiness to endorse the new practice document in respect of electronic filing (JOB/DSB/1/Add.8). He said that the Capital was still evaluating the rest of proposed new practice documents and that he would be able to update on its status within further discussions. Once again, Ukraine thanked Canada and the Secretariat for the Mechanism which, in Ukraine's view, could provide a practical opportunity for improving a number of technical and procedural aspects of dispute settlement proceedings.

3.12. The representative of Switzerland said that his country was among the Members that had endorsed the Mechanism in 2016. Switzerland remained fully supportive of the innovative and pragmatic initiative, particularly considering that even the most modest changes to the DSU continued to elude Members and that the system was under strain. Accordingly Switzerland welcomed the new set of practices documents, especially where these could contribute to easing the workload on the system. Switzerland thanked Canada for its ongoing, able leadership and encouraged more Members to join the Mechanism.

3.13. The representative of Colombia said that his country wished to thank Canada. As an original signatory to the Mechanism, Colombia said that it was pleased to endorse the practice documents on: responses to third party requests (JOB/DSB/1/Add.9), electronic filing of documents in disputes (JOB/DSB/1/Add.8), and the publication of working procedures, timetables and working schedules (JOB/DSB/1/Add.10). Colombia expressed its appreciation for the Mechanism and believed that the Mechanism would assist the dispute settlement system.

3.14. The representative of the United States said that the United States thanked Canada for circulating various documents and for its willingness to work with Members in an effort to improve the WTO dispute settlement system. As it had noted in the past, the United States had certain questions about the overarching mechanism suggested by Canada as well as the associated documents. For example, one key issue was the intended legal effect, if any, of Members "endorsing" Canada's suggested mechanism or individual documents. Nonetheless, at the present meeting, the United States appreciated the opportunity for Members to discuss the four proposals. With respect to the document concerning the publication of panel working procedures, timetables, and other documents, the United States agreed that the WTO dispute settlement system would benefit from greater transparency. In fact, transparency in dispute settlement proceedings benefited all WTO Members, including in particular those with more limited resources who may not be able to follow every dispute closely. The United States had long sought to increase transparency in WTO dispute settlement, including through its DSU review proposal, and it looked forward to collaborating with Canada and other Members on increasing transparency. The United States also inquired whether Members considered that there was currently any basis for keeping any working procedures and timetables confidential. In that regard, the United States noted that the Appellate Body's working procedures, including the timeline for submissions, were already public, and this had not raised concerns among WTO Members. With respect to the proposal on third party requests to participate in consultations, the United States considered that it was appropriate to inform the requesting Member in a timely manner and it had seen this occur in numerous disputes. Finally, on electronic filing, the United States welcomed the opportunity to continue to discuss with Members practical issues and experience with electronic filing, including in the context of the DDSR initiative.

3.15. The representative of Korea said that his country wished to join other Members in thanking Canada for its continued efforts to improve and clarify the dispute settlement mechanism. Korea was also one of the Members that had endorsed Canada's original Mechanism document (JOB/DSB/1) in July 2016. Korea was pleased to endorse three of the four new practice documents on: electronic filing (JOB/DSB/1/Add.8), responses to third party requests (JOB/DSB/1/Add.9) and streamlining panel composition (JOB/DSB/1/Add.7). Korea looked forward to deepening constructive cooperation regarding the Mechanism in order to strengthen the WTO dispute settlement system.

3.16. The representative of the Brazil said that his country welcomed the "Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO disputes". It also welcomed the efforts by all users of the dispute settlement system to search for better

practices and more-streamlined, efficient procedures, provided that they were in line with the DSU. Brazil would continue to closely follow the operation of the Mechanism and could, in the future, also participate in sharing and documenting some practices that could be helpful to parties involved in disputes. The transparency provided by the Mechanism was positive. In particular, Brazil was considering endorsing those practices related to electronic filing of submissions (JOB/DSB/1/Add.8), time-frames of responses to third parties in consultations (JOB/DSB/1/Add.9) and the publication of time-tables and working procedures (JOB/DSB/1/Add.10). Sharing and documenting practices could prove useful when dealing with the unavoidable procedural hurdles faced by Members in their disputes, Brazil would remain attentive to the aspect of "developing practices and procedures", included in the title of mechanism. It was important that Members were able to monitor and verify whether new practices were in line with the mandatory provisions of the DSU. Therefore, it would be useful if Members notified the DSB of the use of practices or procedures in specific disputes. All Members should monitor closely the mechanism and its application.

3.17. The representative of the China said that her country welcomed the efforts made by Canada in initiating the mechanism for sharing practices and procedures in order to achieve the prompt and effective settlement of disputes. China believed that it would be helpful if the endorsing Members could share their past experiences in implementing the practices and procedures under the Practices Mechanism. Such sharing would enable other Members to achieve a better understanding of the Mechanism. China would continue to monitor the discussion on this matter.

3.18. The representative of the European Union said that his delegation thanked Canada for its efforts regarding the Mechanism. As it had already stated in July 2016, the EU supported this Member-driven initiative. In part, it responded to the call by the Director-General for Members to do more to respond to the workload issues. The EU agreed that additional practices and procedures exchanged via the Practices Mechanism could facilitate the resolution of disputes and reduce the scope for procedural disagreements and delays. Therefore, the EU had already supported a number of these documents in 2016 and was pleased to inform the DSB that it would be endorsing the documents on responses to third party requests to participate in consultations (JOB/DSB/1/Add.9), and on publication of working procedures, timetables, working schedules, and preliminary or procedural rulings (JOB/DSB/1/Add.10). This being said, the EU wished to make clear that it did not see this exercise as a substitute for DSU review. Rather, this exercise could generate practical experience with approaches that Members could choose to follow. The EU would continue to engage in the DSB Special Session with a view to identifying and codifying improvements and clarifications to the DSU.

3.19. The representative of the Chile said that her county thanked Canada for their initiative and the opportunity to discuss different topics and means of improving practices in dispute settlement. Chile thanked Members for their statements with regard to various documents submitted by Canada. Chile believed that transparency with regard to the effects of joining and adopting different proceedings would be desirable. Chile supported the suggestion that Members should share their experience in implementing the practice documents. Chile hoped that this could be discussed in future DSB meetings and would closely follow the developments of the Mechanism.

3.20. The DSB took note of the statements.

4 APPOINTMENT OF APPELLATE BODY MEMBERS: PROPOSAL BY THE EUROPEAN UNION (WT/DSB/W/597/REV.2)

4.1. The Chairman said that this item was on the Agenda of the present meeting at the request of the European Union. He drew attention to document WT/DSB/W/597/Rev.2 and invited the representative of the European Union to speak.

4.2. The representative of the European Union said that his delegation referred to its previous statements made with regard to the issue of Appellate Body appointments. The EU fully supported the selection of new Appellate Body members without delay. The EU therefore encouraged all Members to support its proposal so that both selection processes could be launched at the present meeting. Regarding the details of its proposal, the EU believed that its proposal spoke for itself. The proposal strictly followed the models of similar DSB decisions taken in the past. It incorporated the proposal made by Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru

but, in addition, it provided for the launching of the selection process for the replacement of Professor Peter Van den Bossche. The proposal provided for the selection process to be conducted and concluded as soon as possible.

4.3. The representative of the United States said that, as the United States had indicated at the 22 May 2017 DSB meeting and at the 19 June 2017 DSB meeting, the United States was not in a position to support the proposed decision to launch a process to fill a position on the Appellate Body that would become vacant in December 2017. Nevertheless, the United States was willing to join a consensus for the DSB to take the decision proposed by Argentina, Brazil, Colombia, Chile, Guatemala, Mexico, and Peru. That decision was focused on a process to fill a position that was now vacant with the expiry of Mr. Ricardo Ramírez Hernández's term on 30 June 2017.

4.4. The DSB took note of the statements.

5 PROPOSAL REGARDING THE APPELLATE BODY SELECTION PROCESS (WT/DSB/W/596/REV.2)

5.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru. He drew attention to the communication contained in document WT/DSB/W/596/Rev.2 and he invited the respective delegations to speak.

5.2. The representative of Mexico, speaking on behalf of Argentina, Brazil, Colombia, Chile, Guatemala and Peru, recalled that at the DSB meeting on 22 May 2017, the respective delegations had proposed that a decision be taken to initiate the selection process for the vacancy that would arise on 30 June 2017. However, due to the lack of consensus, the DSB had not been in a position to make a decision on this matter. At the DSB meeting on 19 June 2017, the same delegations had proposed a revised draft decision. Despite the support shown by a significant number of Members in favour of initiating this selection process, the DSB had been unable to adopt a decision by consensus. The present meeting was the third attempt by the respective delegations to break this impasse, which was difficult to understand. Article 17.2 of the DSU stated that: "Vacancies shall be filled as they arise". Unlike the previous DSB meetings held in the beginning of the year, the matter at issue was neither when nor how the selection process to replace Mr. Ramírez Hernández should be launched. The matter at issue now was the overriding need to fill a vacancy that has already arisen. Mexico hoped that, on this occasion, Members would understand the sense of urgency and would be able to reach a consensus in order to initiate the selection process for the vacancy that has arisen. Mexico noted that the current proposal comprised the following four elements: (i) to launch a selection process to replace Mr. Ricardo Ramírez Hernández, whose second term of office expired on 30 June; (ii) to establish a Selection Committee; (iii) to set a deadline of 31 August for submitting nominations of candidates; and (iv) to request the Selection Committee to issue its recommendation by 22 November at the latest.

5.3. The representative of the European Union said that, as his delegation had previously stated, the EU fully supported the launching of the selection processes for new Appellate Body members as quickly as possible. In fact, the EU proposal entirely incorporated the proposal made by Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru. The EU regretted that the Membership had not endorsed its proposal and that it failed to see any valid reasons, against the background of past practice, why one selection process should be singled out at this point. The EU encouraged the Chairman to continue his consultations with Members on this issue so that both processes could be launched as quickly as possible.

5.4. The representative of Australia, speaking in relation to both Agenda items 4 and 5, said that her country thanked those delegations that had, once again, put forward revised proposals. Australia recalled its statements made at recent DSB meetings on this issue and restated its deep disappointment that the DSB was, once again, unable to reach agreement on a process or processes to make appointments to the Appellate Body. As it had noted in previous DSB meetings, it was Australia's view that the DSB's failure to do so was contrary to Article 17 of the DSU, which required a seven member Appellate Body, where vacancies were to be filled as they arose. Delays in commencing a selection process or processes had resulted in the Appellate Body having only six members. Australia said that it was deeply concerned about the risk of that number being

reduced to five by January 2018. This came at a time when Members were all aware that the workload on the Appellate Body was intensive, and that a full contingent of Appellate Body members was required to promote the effective and efficient resolution of disputes. Once again, Australia urged all Members to engage positively and constructively to find a solution to the current impasse and to fill the current and upcoming vacancies on the Appellate Body as soon as possible, as Members had committed to do under the terms of the DSU.

5.5. The representative of Singapore thanked the EU and the group of Latin American Members for their revised proposals. Singapore reiterated its serious systemic concerns and regrets on the lengthy delay in the launch of the Appellate Body selection process. It urged Members to show flexibility with the proposals and to be pragmatic in order to reach consensus to launch the selection process or processes as soon as possible.

5.6. The representative of Canada thanked the proponents of both proposals and reiterated the concerns expressed by Canada at the 19 June 2017 DSB meeting where the proposals had been discussed. Canada noted that the DSB was now almost late in launching the selection process to fill the vacancy that would arise in December 2017. Therefore, like Singapore, Canada asked Members to show their flexibility on this matter.

5.7. The representative of Japan, speaking in relation to both Agenda items 4 and 5, said that Japan would be able to join a consensus to support either of the two revised proposals. Japan would not repeat its position on this matter, which had been expressed in previous DSB meetings. All Members, acting as the DSB which governed the dispute settlement system, were responsible for ensuring the proper functioning of the Appellate Body, including at a time of transition.

5.8. The representative of China said that his country thanked the proponents for submitting their revised proposals with regard to the Appellate Body selection process. China referred to its previous statements and reiterated its serious systemic concerns over the delay in the selection of new Appellate Body members. China called upon Members to be flexible and constructive so that the selection process could start as soon as possible to fill the vacancies in order to ensure the smooth functioning of the dispute settlement mechanism.

5.9. The representative of Chinese Taipei, speaking in relation to both Agenda items 4 and 5, said that her delegation was disappointed that Mr. Ricardo Ramírez Hernández's term had expired at the end of June 2017 and that now Members had to face an inevitable vacancy in the Appellate Body. Members were still uncertain about how long the vacancy would remain. While there may be some very qualified candidates, Chinese Taipei regretted that the disagreement on the selection process prevented them from doing the task. Chinese Taipei encouraged Members to find a solution to this matter as soon as possible and to ensure that the Appellate Body had enough resources to conduct its work. As mentioned at previous DSB meetings, Chinese Taipei remained ready to support either proposal.

5.10. The representative of the Russian Federation said that her country referred to its statements made at previous DSB meetings and wished to highlight its serious concern about the current situation. Russia urged all Members to resolve their differences to ensure the proper functioning of the Appellate Body and compliance with the very clear and explicit provision of Article 17 of the DSU on this matter.

5.11. The representative of Ecuador said that, like previous speakers, Ecuador wished to express its concern about this matter and reiterated its previous statements made in the DSB to the effect that it was crucial for the selection process to start as quickly as possible. He recalled that this matter had been raised at the 22 May 2017 DSB meeting and then again at the 19 June 2017 DSB meeting. Ecuador noted that the Chairman had held consultations on this matter and asked the Chairman to inform Members of the results of these consultations. In particular, Ecuador wished to know the reasons as to why there was no consensus to start the selection process.

5.12. The representative of New Zealand, speaking in relation to both Agenda items 4 and 5, said that her country thanked the Chairman for his ongoing efforts to find consensus on this important matter. New Zealand also thanked the proponents for their revised proposals to launch the Appellate Body selection process. It recalled its previous statements and the systemic concerns it had expressed on this matter. New Zealand was deeply disappointed that there was now a

vacancy in the Appellate Body, and that the DSB had not even agreed on the process for selecting a new Appellate Body member to replace Mr. Ricardo Ramírez Hernández before his term had expired. The DSB had to do its utmost to expeditiously launch and conclude that selection process, as well as the one to replace Professor Van den Bossche, so as to keep the current vacancy as short as possible and to avoid a second vacancy arising. This would be necessary to avoid delays and ensure the smooth functioning of the system. New Zealand also encouraged efforts to agree on a standard process to apply in the future so as to avoid this scenario from recurring. Like other Members, New Zealand remained ready to engage in any process or special meetings that were considered necessary to facilitate a solution and it urged all delegations to show flexibility.

5.13. The representative of Norway, speaking in relation to both Agenda items 4 and 5, said that her country thanked the proponents for their revised proposals. The well-functioned Appellate Body was Norway's primary interest when considering these proposals. Ensuring that all vacancies were filled as they arose was an important part of Norway's considerations. Unfortunately, the DSB had failed to meet this obligation. Norway expressed its serious systemic concern in this regard. As it had mentioned at the previous DSB meetings, Norway would be in a position to support either of the two proposals. It had a preference for the proposal submitted for the EU and noted, with regret, that one Member was not in a position to agree to the EU's proposal. The proposal from the group of Latin American Members only provided for the initiation of the process to fill one vacancy – but this was the vacancy that had already arisen. This seemed to be the most pressing matter. Although Norway agreed with the EU that the second process should be launched without delay – and that it was indeed time to launch this second process – it failed to understand why the DSB could not agree to launch the process for selecting a new Appellate Body member whose position was already vacant – at the present meeting. Norway urged all Members to show the utmost flexibility in order to ensure that the DSB surpassed this deadlock – for the benefit of the system.

5.14. The representative of the United States said that, as it had noted under the previous Agenda item, the United States was willing to join a consensus for the DSB to take the decision proposed by Mexico, Argentina, Brazil, Colombia, Chile, Guatemala and Peru. As the United States had stated at previous meetings of the DSB, despite the ongoing transition in its political leadership, it had received guidance that it would be acceptable to launch a process given the expiry of Mr. Ramírez's second term on 30 June 2017.

5.15. The representative of Turkey, speaking in relation to both Agenda items 4 and 5, said that his country was disappointed that the DSB was still not able to initiate the Appellate Body selection process. Turkey referred to its statements made at the 19 July 2017 DSB meeting and said that it continued to urge Members who had concerns with any of these proposals to act responsibly and continue their consultations with the Chairman and with other Members in order to start the selection process as soon as possible.

5.16. The representative of Indonesia, speaking in relation to both Agenda items 4 and 5, said that her country thanked the proponents for their revised proposals. Considering Members' views during previous DSB meetings, Indonesia noted that broad convergence still existed among Members on the need to launch the selection process as soon as possible. Indonesia shared this view. In order to ensure the continuity of Appellate Body's work and the credibility of the multilateral trading system, any further delay on this matter should be avoided. Regarding whether a separate or a single approach should be used in filling the vacancies on the Appellate Body, Indonesia said that it had a preference for the latter method as it believed that it would be more efficient. However, Indonesia was open to any other method in order to prevent further delay. In Indonesia's view, the impasse in selecting an approach for the selection process should be discussed during consultations. Indonesia invited Members to look at the bigger picture that the dispute settlement system was a central element in providing security and predictability to the multilateral trading system – as stipulated in Article 3.2 of the DSU. Hence, once again, Indonesia underlined that Members had to ensure the continuity of the Appellate Body's work and to preserve the credibility of the multilateral trading system.

5.17. The representative of Korea said that his country wished to refer to its previous statements on this matter. Korea highlighted that it was important for all Members to show flexibility in order to comply with the obligations posed on the entire Membership under Article 17.2 of the DSU and to safeguard systemic interests.

5.18. The representative of the Bolivarian Republic of Venezuela said that his country wished to express its concern that the selection process to replace Mr. Ricardo Ramírez Hernández had not been launched after his term had expired. Venezuela supported Ecuador's request to seek information about the results of the Chairman's consultations in order to understand the reason for the delay in launching the selection process.

5.19. The representative of Hong Kong, China said that, in the interests of time, his delegation would not repeat what it had already stated on this matter at the 19 June 2017 meeting. However, Hong Kong, China would join other Members in urging the DSB to show flexibility and come up with a solution to this issue as soon as possible.

5.20. The representative of Mexico, speaking on behalf of Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru, said that the proponents had submitted a proposal in line with previous DSB decisions. However, the respective countries noted that nothing in the DSU required a DSB decision in order to initiate the process or to set the dates for the process. In fact what the DSU expressly provided was that vacancies "shall be filled as they arise", in other words, there was a plain and simple obligation that the DSB must fulfil, in particular once the vacancy had arisen. In view of the foregoing, one possible interpretation was that the DSB did not have to take a decision to initiate the process and that it was within the Chairman's prerogative to inform the DSB of the dates for the process. Although it would be the best to have a DSB decision on this matter, it would not appear to be a *sine qua non* condition. In view of the current situation, the countries in question urged the Membership to consider this option, and called on the Chairman to consult with delegations on this matter so that the selection process could be initiated as soon as possible.

5.21. The representative of Canada said that his country thanked Mexico for its statement made on behalf of the seven Latin American countries. Canada would certainly consider the bold proposal that had just made.

5.22. The Chairman thanked Members for their statements and regretted that the DSB was not yet in a position, at the present meeting, to agree to start the process or processes on the appointment of the Appellate Body members at the present meeting. As stated by many delegations, one position had been vacant since 1 July 2017 and it was also time to start a process to fill the second vacancy. He said that he would report under "Other Business" that the Appellate Body was currently dealing with six appeals and up to two additional appeals which could be filed within the next two months. Therefore, it was urgent for the DSB to agree to start the Appellate Body selection process. He noted that in his consultations he detected that delegations did not have flexibility and the necessary instructions from Capitals regarding this matter. He, once again, urged all Members to show more flexibility and to get the necessary instructions in order to make a decision to launch the process or processes as soon as possible. He appreciated Members' understanding and support on this matter. He said that he would continue to consult with delegations, including on the ideas which had been raised at the present meeting, in order to be able to put forward a proposal that would attract consensus.

5.23. The DSB took note of the statements.

6 DISPUTE SETTLEMENT WORKLOAD

A. Statement by the Chairman

6.1. The Chairman, speaking under "Other Business", said that he wished to make a report to provide the DSB with information about the Appellate Body's workload, the number of disputes before panels and at the panel composition stage, and the ability of the Secretariat to meet expected demand over the coming period. This information reflected the status of disputes up until the DSB meeting on 20 July 2017. Other developments in the course of the present meeting would be reflected in the information posted on the Members' website. Regarding panels, there were currently 15 active panels (including four panels under Article 21.5 of the DSU) that had not yet issued a final report to the parties. Multiple disputes that were being considered simultaneously by the same panel were being counted as one. Limited staff resources currently prevented assigning dispute settlement officers to assist panels in three pending disputes before the autumn of 2017. The parties had been informed of the situation, and as soon as the availability of appropriate staff

was clear, the parties would be informed and the organization of the proceedings would commence. Dispute settlement lawyers would be assigned to these disputes in the order in which the panels had been composed. There were a further seven panels at the composition stage. This did not count panels for which there had been no composition activity in the last 12 months. In addition, five final panel reports that had been issued to the parties were currently being translated. Regarding appeals, the Appellate Body was currently dealing with six appeals, including the extremely complex compliance proceedings in "EC and Certain Member States – Large Civil Aircraft (Airbus)" and in "US – Large Civil Aircraft (Boeing)". Two of these appeals could only be partially staffed at this point. Up to two additional appeals could be filed within the next two months. Regarding arbitrations, two matters have been referred to arbitration under Article 22.6 of the DSU. Finally, the Chairman wished to add that the Chairman of the Appellate Body had informed him in a letter that Mr. Ricardo Ramírez-Hernández, who had been selected pursuant to Rule 6 of the Working Procedures for Appellate Review as a member of three divisions hearing appeals, had been authorised by the Appellate Body, in accordance with Rule 15 of the Working Procedures, to complete the disposition of these three appeals.

6.2. The DSB took note of the statement.