

**HEID DSB Evening
Wednesday 10 April 2019**

**Speaking points for Ambassador Sunanta Kangvalkulkij,
2018 DSB Chair and 2019 GC Chair**

Ladies and Gentlemen,

Distinguished Guests,

Good evening and thank you very much for inviting me to speak here today. I would also like to thank the Graduate Institute for organizing this annual event.

Margaret Atwood said that civilization is based on exchanges – on gifts, trades, loans – and the revenges and insults that come when they are not paid back. It is not surprising that this avant-garde author was a woman. I am here tonight to speak about the Dispute Settlement Body as the DSB Chair for 2018, which was one of its most challenging years. Yet, we endure.

The DSB is facing a unique situation, even contradictory. On the one hand, the ongoing impasse on the appointment of the vacant Appellate Body Members questions the survival of the dispute settlement system as we know it. On the other, dispute settlement activity has been on the rise, emphasizing the WTO Members'

reliance on the system. This somewhat contradictory situation has seen DSB activity significantly boosted during 2018.

The DSB has been the forum that held most of the discussions concerning the Appellate Body crisis. This was against the backdrop of another crisis that some like to call the "trade war" triggered through a range of policies that Members have put in place, several which, along with the responses to which, are now the subject of WTO dispute settlement processes in themselves.

The length of the DSB meetings has beaten records. In October and November of 2018, we had the lengthiest sessions of the DSB's history; with 21 and 24 items on the agenda respectively.

While on the one hand some Members challenge the efficiency and legitimacy of the WTO dispute settlement system, on the other hand and at the same time, the number of disputes brought to the DSB have continued to increase. Allow me to bore you – but only very briefly – with some statistics; I know that they are no one's favorite, but they allow us to have perspective on the magnitude of the dispute settlement workload. In 2018, the DSB was notified of 38 requests for consultations and established 33 panels. This already implies an increase of 44% for consultations, and of 69% for panels established, from 2017. In absolute terms, 2018 has been the year with the most panels established in the history of WTO dispute settlement, and the year with the most requests for consultations since 1998.

The numbers are equally impressive for panel adoptions and active proceedings. In 2018, the DSB adopted 9 Appellate Body reports covering 6 matters, and 18 panel reports and 1 arbitration decision covering 15 matters were circulated. On average, 42 proceedings were ongoing each month (compared with 38.5 in 2017). That makes 2018 the most productive year in terms of active proceedings.

It is worthy of mention that the disputes on steel and aluminum and additional duties brought at least 15 panels.

Importantly, participation in the dispute settlement system is becoming broader and more diverse. The average number of third parties participating in a dispute has risen to 18, which already implies an average increase of 33% in comparison with 2017. This massive increase in third party participation is yet another sign of the strength of and the support given to the dispute settlement system.

Out of the panels which were established in 2018, 68% of the complainants were developed Members, as were 72% of the respondents. This means that 28% of the complainants and 32% of the respondents were developing Members.

There are changes also in the panelists who work on panels. 70% of the panelists who worked on panels in 2018 came from developing countries.

Nevertheless, Developing Members' participation in the WTO dispute system remains low. It is without doubt that the very existence of the dispute settlement system itself is to ensure that WTO Rules are faithfully implemented. Therefore, it is also an interest of smaller countries to secure the proper functioning of the Appellate Body and the WTO dispute settlement system.

The current situation of WTO dispute settlement mechanism draws more attention from members who believe and trust in the multilateral rule-based trading system.

Regrettably, the Appellate Body crisis has threatened to paralyze the mechanism of resolving international trade disputes that we have successfully built and confidently relied upon for more than two decades.

A proposal to launch the selection process to fill the vacancies in the Appellate Body has been tabled for the DSB's consideration for more than a year, even before I assumed the chairmanship of the DSB.

During the past year, I have been conducting several informal consultations on the issue of possible reappointment of one Appellate Body member whose term of office were to expire on 30 September 2018. My door has also been open to several delegations that have been part of broader good faith efforts to resolve the impasse. Unfortunately, the DSB was unable to agree to reappoint that Appellate Body member. It is also regrettable that no consensus was reached to launch new selection processes to replace four Appellate Body members.

In order to better understand the implications of the crisis, I would like to provide some certain background to those who may not be familiar with the issue. I hope that those who know the issue well, do not mind to revisit the subject. The Appellate body is composed of 7 members. Three Appellate Body Members are required to hear an appeal as a quorum and make a final ruling. In the beginning of 2017, we had the full composition of seven Appellate Body Members. On 31 December 2017, we were left with four. On 1 October 2018, the number was down to only three, the bare minimum required for each appeal. If the appellate body impasses continue, there would be only one Appellate Body member left in the office by 10 December this year. The result would render the Appellate Body inoperable due to insufficient number to discharge the functions at the appeal stage.

Against this background together with some concerns raised on systemic issues, the General Council appointed Ambassador David Walker as a facilitator to conduct the informal process under

the auspices of the General Council on matters related to the functioning of the Appellate Body. These informal processes have been convened in a range of formats, based on the solution-oriented spirit. The aim of these informal processes are to actively and constructively review and discuss the concerns raised, issue-by-issue; and to provide an opportunity to hear new or alternative proposals, concerns and other ideas.

Ladies and Gentlemen,

As I mentioned, this year is a challenging year for the dispute settlement system. In an attempt to solve the impasse, I observed the endeavors of several members to put forward proposals at various occasions. As the DSB Chair, I would like to reiterate the necessity of the constructive engagement by active members in Geneva and energetic participation from their capitals. These will lead to closer collaborations between officers here in Geneva and relevant officers at home. It is indispensable to raise the level of the engagement to include higher authorities in capitals to overcome the impasse with flexibility and compromise in mind. I encourage all Members to join our collective efforts to find the common ground to unlock the impasse.

Ladies and Gentlemen,

It has been a pleasure serving as Chair of the DSB this year. I have learnt a lot of dispute cases and faced with unprecedented challenges. So, I will not lie, being the chair of the DSB has been very demanding.

I have to admit that before assuming this Chairmanship, I have never been aware of a gender balanced panelist. This brings me to my last point. In the 34 panels composed last year, only 19% of the panelists chosen were women. And if we take a closer look at the WTO Indicative List of government and non-government panelists, out of 434 names on the list, only 85 are women which is just over 19%. At the same time, more women panelists are often requested.

Perhaps before I relinquish from the DSB Chair, I have to put to Members that it is their duty and obligation to close the gap, and one of the ways in which they can do so is by suggesting more women for the indicative list.

Last but not least, I could have not chaired the DSB with ease meeting after meeting without excellent supports from the Secretariat. My special appreciation goes to Ms. Bozena Mueller-Holyst for her unwavering efforts for multiple success DSB meetings.

I have witnessed personally that behind the statistics, lies a strong belief that the dispute settlement system is one of the pillars of the WTO and that the membership wants it to continue to be so. A system that needs to remain inclusive and fair for all Members. We need a strong dispute settlement system to be able to face 2019.

Thank you.
