

**Dispute Settlement Body
31 March 2023**

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 31 MARCH 2023¹

Chairperson: H.E. Dr Athaliah Lesiba MOLOKOMME (Botswana)

Prior to the adoption of the Agenda: (i) the Chairperson welcomed all delegations participating in the present meeting of the DSB both in-person and remotely. The Chair recalled a few technical instructions regarding the virtual participation of delegates. She said that if a Member was unable to take the floor during the meeting because of a technical issue, the delegation could inform the Secretariat and that Agenda item would remain open until the delegation could take the floor. In the alternative, the item would remain open temporarily, the meeting would proceed to the next Agenda item, and the DSB would revert to the open item after the technical issue had been resolved. If a technical issue remained unresolved, the delegation had the option to send the statement to the Secretariat with the request that it be read out by the Secretariat on behalf of that delegation during the meeting so that the statement could be reflected in the minutes of the meeting; (ii) the Chairperson made a short statement regarding item 4 of the proposed Agenda of the 28 April 2021 DSB meeting pertaining to the DS574 dispute. She said that, as Members recalled, that matter had been removed from the proposed Agenda to allow time for the Chair's consultations with each interested party regarding that Agenda item. At the present meeting, she wished to inform delegations that, like the previous Chair of the DSB, she continued to consult with each interested party on this matter and that those consultations were ongoing; (iii) the representative of the United States said that, under "Other Business", the United States wished to make a statement regarding the dispute DS597 on: "United States – Origin Marking Requirement".

The DSB took note of the statements and adopted the Agenda, as amended.

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¹ The proceedings of this meeting were held in a hybrid format.

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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.237)

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.212)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.175)

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.59)

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States (WT/DS471/17/Add.51)

F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.46 – WT/DS478/22/Add.46)

1.1. The Chairperson noted that there were six sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. As Members would recall, 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 Chairperson wished to invite delegations to provide up-to-date information about their compliance efforts. She 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."

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.237)

1.2. The Chairperson drew attention to document WT/DS184/15/Add.237, 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 provided a status report in this dispute on 20 March 2023, 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 of the DSB that had yet to be addressed, the US Administration would confer with the US Congress with respect to the appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that Japan thanked the United States for the most recent status report and the statement made at the present meeting. Japan, once again, called on the United States to fully implement the DSB recommendations and rulings so as 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.212)

1.6. The Chairperson drew attention to document WT/DS160/24/Add.212, 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 20 March 2023, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and 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 European Union thanked the United States for its status report and its statement made at the present meeting. The European Union referred to its previous statements and said that it wished to resolve this case 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.175)

1.10. The Chairperson drew attention to document WT/DS291/37/Add.175, 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 the European Union recalled that the EU approval system was not covered by the DSB's recommendations and rulings. The European Union continued to propose for vote authorisations for genetically modified organisms that, in the European Food Safety Authority's risk assessment, had been concluded to be safe. On 23 March 2023, the Commission referred to the Appeal Committee a draft decision renewing the authorisation of genetically modified cotton 281-24-236 x 3006-210-23. The vote resulted in "no opinion". It was now for the Commission to decide on the adoption of the draft measure. Furthermore, on 31 March 2023, the Commission would present to the Standing Committee three draft decisions authorising the placing on the market of genetically modified Maize² and 3 decisions renewing the authorisation for the placing on the market of genetically modified soybeans.³

² GM maize MON 87429, MON 95379 and DP4114 x MON89034 x MON87411 x DAS-40278-9 and its sub-combinations.

³ GM soybeans MON 87701, MON 87701 x MON 89788 and 40-3-2.

1.12. The representative of the United States thanked the European Union for its status report and its statement made at the present meeting. The United States continued to engage with the EU on these issues, and had provided recommendations on several occasions as to how the EU could address the undue delays in its approval procedures. The United States had described these problems in detail and noted its concerns with the EU's biotech approval procedures monthly in the DSB and during the semi-annual US-EU biotech consultations, including through their most recent consultations in October. The United States again requested that the EU move to issue final approvals for all products that had completed science-based risk assessments at the European Food Safety Authority, including those products that were with the Standing Committee and Appeals Committee. The United States noted the European Union's continued issuance of approvals on a rolling basis and appreciated that approach.

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 and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.59)

1.14. The Chairperson drew attention to document WT/DS464/17/Add.59, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning anti-dumping and countervailing measures on large residential washers from Korea.

1.15. The representative of the United States said that the United States had provided a status report in this dispute on 20 March 2023, in accordance with Article 21.6 of the DSU. On 6 May 2019, the US Department of Commerce published a notice in the US Federal Register announcing the revocation of the anti-dumping and countervailing duty orders on imports of large residential washers from Korea (84 Fed. Reg. 19,763 (6 May 2019)). With that action, the United States had completed implementation of the DSB recommendations concerning those anti-dumping and countervailing duty orders. The United States would consult with interested parties on options to address the recommendations of the DSB relating to other measures challenged in this dispute.

1.16. The representative of Korea said that Korea thanked the United States for its status report and its statement made at the present meeting. Korea again urged the United States to take prompt and appropriate steps to implement the DSB recommendations for the "as such" measures in this dispute.

1.17. The representative of Canada said that Canada wished to recall its statement made under this Agenda item at the 27 January 2023 DSB meeting.

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

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States (WT/DS471/17/Add.51)

1.19. The Chairperson drew attention to document WT/DS471/17/Add.51, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning certain methodologies and their application to anti-dumping proceedings involving China.

1.20. The representative of the United States said that the United States had provided a status report in this dispute on 20 March 2023, in accordance with Article 21.6 of the DSU. As explained in that report, the United States would consult with interested parties on options to address the recommendations of the DSB.

1.21. The representative of China said that China thanked the United States for its most recent status report and the statement at the present meeting. It was disappointing that more than four years after the expiry of the reasonable period of time, the United States had still failed to implement the adopted rulings and recommendations in this dispute. China therefore once again urged the

United States to honour its obligations by bringing its measures into conformity without further delay.

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

F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.46 – WT/DS478/22/Add.46)

1.23. The Chairperson drew attention to document WT/DS477/21/Add.46 – WT/DS478/22/Add.46, which contained the status report by Indonesia on progress in the implementation of the DSB's recommendations in the case concerning importation of horticultural products, animals and animal products.

1.24. The representative of Indonesia said that Indonesia had provided a status report pursuant to Article 21.6 of the DSU. Indonesia had taken note of both complainants' interests expressed at the previous meeting. Indonesia continued to reiterate that significant corrective actions, in relation to this dispute, had been carried out. Indonesia also remained fully committed to implementing the rulings and recommendations of the DSB in this dispute. In this regard, measure 18 concerning self-sufficiency, regulated in relevant laws, had been entirely revoked. With regard to measures 1 to 17, Indonesia had also made significant amendments to the relevant Ministry Regulations through removal of the measures at issue, including: harvest period restriction, import realization requirements, six-month harvest requirement, reference price, and domestic purchase requirement. Indonesia also wished to highlight that the Commodity Balance mechanism served as a tool to support the government's effort in providing comprehensive, detailed, and accurate data, aimed at transparently streamlining the permit approval process. That mechanism was integrated with the national database system to provide business certainty without generating restrictions on trade. Further, the system integration provided by that mechanism had been a major improvement in facilitating trade. To conclude, Indonesia looked forward to continuing working with New Zealand and the United States to solve these disputes.

1.25. The representative of the United States said that the United States continued to have concerns with Indonesia's compliance with the DSB's recommendations. As the United States had expressed before, it would still appreciate further clarity on: which regulations presently comprised Indonesia's import licensing regimes and on any forthcoming regulations that would affect the regimes; and how Indonesia expected the new commodity balance mechanism to, in its words, simplify and streamline the permit process and provide for greater business certainty. The United States would also appreciate further clarity on whether Indonesia was planning on making any adjustments to the operation of its import licensing process to ensure that the significant delays in issuing permits for the first half of 2023 are not repeated. The United States remained willing to confer and work with Indonesia to fully resolve this dispute.

1.26. The representative of New Zealand said that New Zealand thanked Indonesia for its status report, and acknowledged Indonesia's commitment to comply fully with the DSB's recommendations and rulings. Both compliance deadlines had long since expired, and New Zealand remained concerned about a number of measures. New Zealand thanked Indonesia for the additional information provided in recent meetings. New Zealand continued to assess that information and would revert with any additional questions on those and other matters. Like the United States, New Zealand would also appreciate understanding better the regulations that presently underpinned Indonesia's import licensing regimes, as well as any regulations that would be forthcoming. New Zealand looked forward to further constructive engagement with Indonesia on the outstanding issues.

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

2 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/715)

2.1. The Chairperson drew attention to document WT/DSB/W/715 which contained 10 new nominations proposed by Türkiye for inclusion on the Indicative List of Governmental and Non-Governmental Panelists, in accordance with Article 8.4 of the DSU. She proposed that the DSB approve the names contained in document WT/DSB/W/715.

2.2. The DSB so agreed.

3 DISCUSSIONS CONCERNING DS REFORM

3.1. The Chairperson said that under this Agenda item she wished to refer to informal discussions on DS reform, which she understood were currently ongoing amongst delegations at the technical level. She then invited the representative of Guatemala, who was convening those informal discussions on DS reform, to make a statement.

3.2. The representative of Guatemala, Mr. Marco Tulio Molina, made the following statement:

"At the outset, I would like to thank you, Madame Chairperson, for including this item on the Agenda of today's meeting. Secondly, I would like to note that I am making this statement in my personal capacity and under my own responsibility. Many colleagues in the room have known me for many years. For those that do not, allow me to introduce myself: my name is Marco Molina. I am the Deputy Permanent Representative of Guatemala to the WTO, where I am also responsible for dispute settlement. In the context of this agenda item, the views expressed are my own and do not necessarily reflect the positions of the Government of Guatemala, unless I explicitly indicate it. On 2 February 2023, a group of Members asked me to convene informal meetings with the objective of having a substance-based discussion to find practical solutions to the concerns identified by Members, aiming at contributing to the fulfilment of the mandate that we received from Ministers in June 2022 to – and I quote – "*conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024*". End of quote.⁴ After some reflection and considering my own personal experience, I agreed to convene the informal meetings on Dispute Settlement reform under the following two conditions: first, that a critical mass of Members would support the discussions; and second, that the discussions would be based on the principles of transparency and inclusiveness. Between 6 and 12 February, to assess Members' support for the informal process, I had over 40 bilateral meetings with delegates and regional coordinators representing more than 130 WTO Members. I invested a lot of time and energy in designing a process, and the purpose of these meetings was to seek the views of delegates about such a process as well as my role in leading the discussions. In those meetings, I proposed that the informal process would be governed by the principles of transparency and inclusiveness; presented a tentative work calendar; and explained the format and the modalities of a potential informal process on Dispute Settlement Reform. I am grateful for the positive comments and constructive observations, particularly from small delegations. Based on those comments and observations, I adjusted both, the format, and the modalities of the informal process. Let me be clear, even if the process that the delegation of the United States undertook last year was useful, this process is not a continuation of the US-led process. This process of informal discussions emerged, organically, and I am grateful and honoured by the support that crystalized around it. This process belongs to all WTO Members, and it is our responsibility, as representatives from our governments here in Geneva, to work constructively and to deliver results. We need to do things differently if we want different results. On 17 February, I convened the first informal open-ended meeting. I personally sent the invitation to all WTO Members both, through the Missions' general e-mail addresses and to the available e-mail addresses of dispute settlement delegates. Room E was full on the morning of 17 February, evidence of the high interest that delegations attribute to the Dispute Settlement reform process. During the first open-ended meeting, I explained that the informal discussions on Dispute Settlement

⁴ Paragraph 4 of the Outcome Document of the 12th Ministerial Conference (WT/MIN(22)/24 and WT/L/1135)

reform would be open to all WTO Members; and that they would be inclusive and transparent *vis-à-vis* all WTO Members. I also indicated that we would follow a bottom-up, solution-oriented, non-attributed, and focused approach and that all decisions would be taken in plenary sessions open to the participation of all WTO Members. And I proposed the work calendar. The informal discussion process is designed to ensure that all WTO Members receive all the information, including proposals and the reports that I prepare after the small-group meetings. Members also have ample opportunities to express their views and participate meaningfully in informal discussions. The process is also innovative: I created an online template for the submission of proposals, where Members can identify their concerns, propose the respective solutions, and explain the rationale. The template facilitates the identification of the substantive issues and provides a common format, which, in turn, fosters more focused conversations. So far, Members have submitted 70 proposals. I have catalogued all these initial proposals in a table, which using a traffic-light system, is attributed the colour red. All proposals are distributed to all Members. Another innovation is that we start the informal discussions on the proposals in small groups. Each cluster of small-group meetings offers four options to accommodate the availability of delegates. The four groups discuss all the proposals on the table. To ensure active participation and useful exchanges, we have used Room C with a capacity of 19 delegates around the table. I send the invitations to the small group meetings to all WTO Members, offering four different dates and times. Interested delegates need to sign-up for one of the four small group meetings, by completing an online form that asks delegates for their name, delegation, email address and their availabilities. Completing the online form takes less than one minute and allows me to compose the small groups on a first-come-first-served basis. To ensure fairness and allow everyone to participate, each delegation can only participate in one of the four small group meetings. This is particularly important for small delegations that cannot participate in more than one meeting, when compared with delegations that have the resources to attend two or more small meetings. So far, 45 delegates have expressed their interest and have participated in the small group meetings. I would like to highlight that the purpose of the small group meetings is to start the substantive discussions on the merits of the proposals on the table. Experience shows that during the small group discussions, delegates engage in useful exchanges and acquire a better understanding of the views of colleagues. In turn, this allows delegates to come better prepared for the informal open-ended meetings and offer innovative solutions and alternatives. In sum, this sequence of meetings and the focus on substance makes the meeting more fruitful and efficient. It is also important to note that nothing is agreed or will be decided in small group meetings. Agreements on any of the ideas discussed can only be reached at the open-ended meetings. After the first cluster of small group discussions, the informal open ended meeting serve as a platform to share alternatives and concerns. Based on the discussions at the open-ended meeting, I asked colleagues to coordinate follow-up sessions to further refine ideas and proposals that would be transferred to a "yellow" table. I would like to take this opportunity to sincerely thank my colleagues from Australia, Brazil, Canada, the United Kingdom, and Chinese Taipei, for volunteering to coordinate the follow-up sessions after the first cluster of open-ended informal meetings. The follow-up sessions started this week and are also open to all Members. Coming back to the yellow table, I would like to note that the proposals contained therein are the result of a collective exercise and remain work in progress. The ideas are not attributed to any Member because the discussions are very dynamic, and the proposals are in constant evolution. Non-attribution promotes a more collaborative environment, where we can advance towards the common objective of finding solutions. I would like to stress that the outcome of the follow-up sessions has the status of "proposals" and, by no means, are agreed or pre-agreed arrangements. Certainly, we need to start somewhere and everything needs and shall be discussed at the plenary sessions where delegates will have another opportunity to express their views and observations, before agreeing to any potential solution. Now, let me brief you about the calendar of meetings, timeframes, and expectations of this process. All WTO Members received a calendar of meetings that started on 8 March and will take place until the first week of July. The expectation is to include agreed solutions in a "green" table, before the summer break. All solutions to be included in the green table will serve as the basis to start a drafting exercise, when we come back after the Summer break. I will ask delegates to volunteer to contribute to the drafting process, that will take place

on the basis of the agreed solutions, terms, and conditions included in the green table. The drafting exercise should be concluded before the end-of-year closure of the WTO. Having agreed on the solutions, principles, terms and conditions, the elaboration of legal texts should not take long. All the draft texts would be discussed and agreed in plenary sessions, open to all WTO Members. I am aware that some delegations, particularly those with capacity constraints, find that the calendar is too dense. I agree. I also come from a small delegation with capacity constraints and convening the informal meetings on Dispute Settlement Reform is an additional duty to my responsibilities at the Permanent Mission. Furthermore, I hold many more bilateral meetings that are not visible in the calendar of meetings. I am making every human possible effort to keep small delegations briefed when they are not in a position to participate in a meeting; and I try to respond as soon as possible to requests from all Members. As a result, I have more than 20 meetings with delegations weekly, in addition to those reflected in the calendar. Having said that, it is important to note that the number of meetings proposed in the calendar is not my personal preference, but a response to an evident fact: we do not have much time, if we want to deliver a result and ensure that we have a fully and well-functioning dispute settlement system accessible to all Members by 2024. The Dispute Settlement Reform is unique in many ways. We all are pursuing the same objective, but we all have different views on how to achieve the reform. This is normal, this is an international organization. To reconcile our different interests and opinions, we need the collaboration, commitment, flexibility, and hard work of all delegations. The solution will not magically appear, nor will it be found at the last minute. And let me be absolutely clear: The plan, as delineated, is indeed very ambitious. If you consider the importance, complexity, and quantity of issues that we are discussing, I am not even sure whether the meetings that I have proposed will suffice to achieve the objective. The substantive progress that we make now, during the initial discussions, together with the flexibility that Members will need to show to reconcile different interests and concerns will mark the pace and influence our ability to deliver results. Rest assured, that whenever I find it feasible, I try to accommodate the requests of delegations or try to find alternatives to address the different concerns about process. But remember, form follows substance. This process, although very well structured, remains "informal". And we need to start the conversations somewhere and somehow, and sooner rather than later. Before concluding my report, I would like to take the opportunity to thank my dispute settlement colleagues for their engagement in the informal conversations; their commitment and hard work; and, above all, for their openness and constructive and creative thinking. There is too much at stake. The dispute settlement system is of utmost importance to this Organization and its Members. I can anticipate that this will be a bumpy ride, but I am confident that if we continue working in a cooperative and constructive manner, we will arrive safely and happily to our destination."

3.3. The representative of India said that the current informal discussions had a context and a background. They were the continuation in the third phase of the US-initiated and US-led informal discussions on DSU reform. The discussions in this phase were based on the list of 12 issues that the United States had crystallized at the end of phase two. India had actively participated in the first two phases of that process and had expressed a strong preference to have the third phase of the process formalized and multilateralized under the leadership of the DSB Chair, with clear and transparent reporting to the Membership. However, in the interest of expediency and practicality, India had accepted the continuation of an informal process. It was understood that the informality of the process was at its core. It was that informality which enabled India to continue to participate in a process, which was not Member-driven or consensus-based in various aspects. It was in that context that India urged that reporting on this process, while welcome, should clearly maintain the informality that was present in the rest of the system. Formalized reporting, as Members had seen at the present meeting, had systemic implications for processes and functions of WTO bodies in other negotiating tracks. India requested that further reporting be done strictly in the informal mode and not be listed and minuted as a DSB Agenda item. India believed that there were several ways to ensure a balance of informality and transparency, such as through informal transparency meetings called by the volunteer convener. India noted that the various aspects of the process had been described by the volunteer convener. India believed that this was not the correct forum to discuss this and that that discussion should take place in an informal mode. However, India wished to place on record that a discussion around reporting was a lively subject of debate at the plenary meetings. There were several countries that expressed unease with this matter being placed as a separate

item on the Agenda of the present meeting. There had been suggestions that this matter may be placed in various other categories. There were also suggestions that reports on this matter should be done in an informal mode. India was made to understand by the volunteer convener that the timeline of the reporting was likely to be at least after two or three months, until the discussions had taken some sort of shape and form. The discussion on placing this matter as an item on the DSB Agenda was a crucial issue, which was discussed at a breakaway meeting and was not brought back to the plenary. India hoped that these issues would be taken into account in the informal process and would remain informal to be resolved at the delegate and technical level. India hoped that these considerations would be balanced as Members worked towards fulfilling the mandate of MC12. Members were all united in their desire to ensure that the mandate was fulfilled. However, in fulfilling that mandate, Members should have a system which was equitable and accessible, not just in theory, but in a meaningful way, when it came to the delegations on the ground.

3.4. The representative of Nigeria, speaking on behalf of the African Group, commended the Chair of the DSB for inclusion of this Agenda item as well as for the efforts of the entire Membership to find a consensual outcome on DSU reform. The African Group supported improving the proceedings of ongoing discussions and Members should, to the extent possible, ensure that they clarify how the informal discussions should feed into the deliberative functions of the DSB, on one hand, and ensure inclusiveness, transparency, and the participation of all delegations, on the other hand. It was crucial to emphasize the importance of formalizing and multilateralizing the DSU reform discussions to fulfil the mandate in paragraph 4 of the Outcome Document. Having this Agenda item would ensure that all relevant issues were brought to the table and discussed comprehensively. This would not only enhance the transparency and inclusiveness of the process, but also foster a more collaborative and constructive approach towards reforming the mechanism. It was also essential to ensure that any future proceedings of the informal process follow a clear mandate from the DSB. Additionally, the reporting mechanism, frequency of meetings, and configurations should be approved by the DSB to ensure that the process remained transparent and inclusive. Furthermore, the DSB had to set the parameters and frequency of the reporting mechanism. The DSB should also consider reporting on the outcome of the discussions under this Agenda item to the General Council in subsequent meetings. The African Group reiterated its support and constructive engagement in this process going forward. The African Group encouraged that the Member-driven nature of this process was safeguarded, as transparency in every aspect of this stage would encourage trust building, stimulate participation, and guarantee inclusiveness. This was key to any consensus building. The African Group, therefore, encouraged that the various meetings in small groups and plenary formats be opened for remote participation of Members so as to fulfil the requirement of transparency and inclusiveness in the WTO by enabling wider participation of small developing country members. Finally, the African Group reiterated its commitment to arriving at a multilaterally accepted outcome. It was therefore pertinent to have clarity on the format for the integration of this process into the DSB, having regard to Members' rights and obligations in both process and substance.

3.5. The representative of the Russian Federation said that the Russian Federation took note of Mr. Molina's report regarding ongoing informal discussions that touched upon certain aspects of dispute settlement reform. Certain points raised by India and Nigeria, on behalf of the African Group, resonated with the Russian Federation. The current discussions had not been formalized and therefore, being an informal process with a limited number of participants, was not in a position to produce consensus-based result. The Russian Federation had consistently supported the idea to start discussions on dispute settlement reform in a formal mode, as agreed by WTO Members at MC12. That was the only process that could bring Members to a meaningful result supported by every Member. Such formal process could serve as a guarantee of transparency and inclusivity. Russia called upon all Members to launch such a process, as agreed at MC12, in order to urgently restore a fully functioning dispute settlement system.

3.6. The representative of Indonesia said that during MC12, Ministers had already committed to achieving a fully operational, well-functioning and accessible WTO dispute settlement system by 2024. For Indonesia, this meant two things: first, solving the ongoing Appellate Body impasse through Appellate Body appointments, now supported by three quarters of WTO Members; and second, continuation of the discussion to address challenges and concerns regarding the dispute settlement system through the informal DS reform discussion. From the very beginning, since the early discussions, Indonesia, along with other interested Members, had participated and engaged in good faith. The discussion demonstrated what was important to Members and why it mattered. That included the importance of having a two-tier dispute settlement system, a view shared by many Members. Now that Members had entered another phase of the discussion, while Indonesia's

intention was to have the discussion formalized, Indonesia saw the value in having informal discussion led by a facilitator, and to have regular reporting to the DSB, in a format to be decided by Members. This would strike the right balance between an informal and formal setting. With that in mind, Indonesia believed that it was important that even though the current discussions were informal in nature, Members shall continue to uphold the Member-driven, transparent, and consensus-based nature of the discussions. Indonesia remained committed to participating actively in the ongoing discussions

3.7. The representative of Cambodia, speaking on behalf of the LDC Group, thanked Guatemala for the statement. Before turning to this Agenda item, the LDC Group wished to note that the LDC submission on reform, JOB/GC/223/Rev.1, was requesting that annotated agendas be provided for all meetings. The LDC Group hoped that for any meetings, where new items and proposals were before the DSB, annotated agendas be provided. That would help LDCs and other small delegations prepare and participate effectively in the meetings. The LDC Group understood that this Agenda item: "Discussions Concerning DS Reform", was related to the discussions mandated under paragraph 4 of the MC12 Outcome Document, as agreed by all Ministers. While the LDC Group appreciated that some delegations may have been holding consultations, which was permitted in the WTO and was common practice, it was important that such discussions were also properly covered in the DSB, to be in line with the mandate of paragraph 4 of the MC12 Outcome Document, and there was a deadline by next year for having a fully and well-functioning dispute settlement system accessible to all members in place.

3.8. In that regard, the LDC Group drew Member's attention to the LDC Group's submissions on reform submitted in 2019 (JOB/GC/223) and 2022 (JOB/GC/223/Rev.1) containing specific views on restoring the Appellate Body and the two-tier dispute settlement structure, which was a cardinal part of the WTO foundational pillars. The submission urged Members to: (i) resolve the impasse on the Appellate Body through the nomination of its members at the earliest possible time; (ii) in any further discussions on Appellate Body reform, avoid creating rules and procedures that impose administrative burdens and additional complexity that would affect potential LDC parties or third parties in disputes; and (iii) at the request of an LDC Member involved in a WTO dispute, and pursuant to Article 27.2 of the DSU, ensure that the Secretariat was able to provide legal advice and assistance to that LDC Member during each stage of a dispute settlement proceeding, including additional flexibilities and resources for LDCs. The LDC Group's contribution was with respect to their current status as LDCs, but they were looking to future graduation where they would participate in the development and maintenance of a two-tier system for dispute settlement, agreed under a multilateral consensus-based approach. The system had to be operationally accessible to all Members, with necessary support for LDCs and developing countries. The LDG Group also felt that the issue under the next Agenda item was important to include in the discussions contemplated under paragraph 4 of the MC 12 Outcome Document.

3.9. The representative of Panama said that Panama supported any efforts that would contribute to fulfilling the mandate in paragraph 4 of the Outcome Document. Panama supported the inclusion of this item on the Agenda of the present meeting. Speaking as Head of Delegation, and in his own personal capacity, the representative of Panama thanked Mr. Molina for his report and for his efforts for very skilfully coordinating the informal process. Panama had full confidence in his ability to lead these discussions among Members in a transparent and inclusive manner, with a view to formulating concrete proposals that the participants in this informal process could submit in the relevant multilateral processes when they were initiated. Members needed to be clear as to what this process was and was not. It was an effort undertaken by Members in their individual capacity, in which they had invited everyone to participate. It was not an informal process such as the one often seen in WTO bodies, where Members requested the Chair to hold consultations as part of their official duties. This distinction meant that this process was not the same as the processes in other WTO bodies and was not as formal as even official informal processes. It was independent from any body, the idea being for Members to jointly formulate proposals that could be used as input for eventual multilateral processes, which it was hoped would be initiated soon. The report under this Agenda item was appropriate, insofar as any Member would report on events outside the WTO that were relevant to Members' work at the WTO. Panama would continue to participate actively in this process.

3.10. The representative of Bangladesh said that his delegation wished to be associated with the statement made by Cambodia on behalf of the LDC Group. Bangladesh recalled that in paragraph 4 of the MC12 Outcome Document, Ministers recognized the importance and urgency of addressing challenges and concerns regarding the dispute settlement system, including the Appellate Body, and

committed to conducting discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024. The commitment in paragraph 4 of the MC12 outcome document was clearly to conduct discussions to have a fully and well-functioning dispute settlement system, and not precisely dispute settlement reform. Bangladesh did not see any document reference or the name of any requesting delegation requesting the inclusion of this item on the Agenda of the present meeting, which was titled: "Discussion Concerning DS Reform". Bangladesh wished to know how this item had been placed on the Agenda. The inclusive nature of conducting focused discussions was clearly articulated by the Ministers. Therefore, it was pertinent to ask who should guide the discussions: the DSB Chair or an appointed facilitator; or a volunteer in their private efforts, as described by Panama. Bangladesh respected Members' informal discussions and their inputs as well as the necessity of those inputs. However, Bangladesh was of the view that such discussions had to be conducted through multilateral processes. Suggestions and inputs from individual Members or groups of Members should be the basis for such discussions. Bangladesh therefore wished to understand how and when such discussions would be integrated in the multilateral process. Bangladesh strongly believed that process and substance were equally important in this context. It was also vital that LDCs' voices had to be heard and accommodated in the decision-making process. The LDC Group's submission (JOB/GC/223/Rev.1) provided specific views on restoring the Appellate Body and the two-tier dispute settlement structure. Bangladesh considered this to be a cardinal part of the WTO foundational pillars. Bangladesh also requested to resolve the Appellate Body impasse through the nomination of its members at the earliest possible time. In Bangladesh's understanding, this was a key step for a fully functional dispute settlement system. The delegation of Bangladesh stood ready to engage in constrictive discussions on this matter.

3.11. The representative of Honduras said that, for Honduras, having a fully functioning dispute settlement system was of paramount importance. In this regard, Honduras welcomed the report submitted by the representative of Guatemala, Mr. Molina, who, in his personal capacity, had brought Members together and guided them in a process that was transparent, inclusive and, above all, open to all Members. Honduras also welcomed the commitment and availability shown by the Members that were participating constructively in the process. As a small delegation, it was a challenge to participate fully in that process, yet resolving this matter promptly was of interest to each and every Member of the WTO.

3.12. The representative of Argentina said that Argentina wished to thank the facilitator for his report, work, and dedication. Argentina was also grateful to all Members for their efforts in this regard. Argentina had participated constructively in the informal discussions on dispute settlement system reform, and had given its views and made comments on the topics proposed for discussion. Argentina was ready to continue this collective exercise. Argentina considered that the work and discussions should be focused, first and foremost, on what was necessary to resolve the existing problems, after which they should address the system's shortcomings and the improvements that might add value to it. Argentina would continue to constructively engage in these discussions with a view to ensuring a fully functioning system as soon as possible.

3.13. The representative of New Zealand said that New Zealand welcomed the report on the process on dispute settlement reform that was underway. Reform of the dispute settlement system to ensure a fully and well-functioning system accessible to all Members remained a priority for New Zealand. New Zealand also wished to join Members in thanking Mr. Molina for his efforts in shepherding Members in this process, all of which had been done in his personal capacity and had required a large amount of organizational work. New Zealand welcomed the inclusive and transparent spirit in which meetings had been organized, and looked forward to the continued constructive and pragmatic engagement of all Members in the work ahead.

3.14. The representative of Brazil said that Brazil wished to thank Mr. Molina for the information he had shared with Members at the present meeting. Overall, Brazil had been pleased with the level of engagement shown by delegations and with the depth of the debate that had taken place so far. The process had enabled substantive, frank, in-depth discussions, while at the same time ensuring that all Members could participate and safeguarding transparency. Members should not forget that, at MC12, as some delegations had mentioned at the present meeting, Ministers had recognized "the importance and urgency" of addressing challenges and concerns with respect to the dispute settlement system, and committed "to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024". This was Members' ultimate goal, and no small task. Brazil looked forward to continued engagement with all Members

as they prepared the ground for text-based negotiations that might take them to the goal established by their Ministers.

3.15. The representative of Singapore said that Singapore welcomed Mr. Molina's report on the ongoing informal discussions on DS reform. Those discussions were part of Members' collective efforts to work towards the MC12 mandate to have a fully and well-functioning dispute settlement system by 2024. Singapore sincerely thanked Mr. Molina for his tireless efforts to shepherd this process and ensure that it was inclusive and transparent by organizing meetings that were open to all Members and providing regular updates through a variety of means, which included keeping his door open for consultations at all times. Singapore looked forward to the continued constructive engagement of every Member in this important process.

3.16. The representative of Norway said that Norway wished to join other delegations in thanking Mr. Molina for his personal efforts in organizing and structuring the informal meetings on dispute settlement reform, which no doubt required great personal sacrifice on his part. Norway welcomed the inclusive and transparent spirit with which meetings had been organized, including the high degree of flexibility for delegations, and looked forward to the continued constructive and pragmatic engagement of all Members in the work ahead. Norway also welcomed the report at the present meeting on the progress of the ongoing informal process. To ensure a fully and well-functioning dispute settlement system accessible to all Members was a top priority for Norway and all Members had to do their utmost to deliver on the commitments made at MC12.

3.17. The representative of Switzerland said that Switzerland welcomed and supported the launch of a new phase of informal discussions on dispute settlement reform, led by the facilitator, Mr. Molina. Having a fully operational dispute settlement system by 2024, as set out in the Outcome Document of MC12 was of the highest priority. The discussions on dispute settlement reform had become more intensive over the previous months and weeks, and it was indeed a challenge for smaller delegations, including Switzerland. However, Members had many issues and proposals to discuss, and very little time left. Switzerland wished to thank Mr. Molina for his efforts and his time. He had set up an efficient, transparent, and solution-oriented process and had demonstrated great flexibility to enable Members' participation. The topics were numerous and the discussions were dense – Switzerland welcomed the work in small groups that were a prerequisite to any multilateral discussions. Switzerland hoped that the good and constructive discussions that had taken place so far would continue and lead Members closer to their shared goal.

3.18. The representative of the United Kingdom said that the United Kingdom thanked the representative of Guatemala for his update on discussions concerning dispute settlement reform and for his tremendous personal efforts in coordinating meetings to discuss that important work. The United Kingdom strongly supported those ongoing discussions. They were inclusive and transparent, with open discussions which Members had constructively and enthusiastically participated in. This work and the ambitious timetable was vital if Members were to deliver against the objective set by Ministers at MC12 to achieve a fully and well-functioning dispute settlement system accessible to all Members by 2024. The United Kingdom welcomed Members' continued engagement in this process and thanked Mr. Molina.

3.19. The representative of Türkiye said that Türkiye appreciated the opportunity to share its reflections over the ongoing discussions on dispute settlement reform, including those referred in the report by the facilitator. Türkiye thanked Mr. Molina for his much-appreciated efforts. Like others, Türkiye was of the view that the informal meetings had provided a platform where various proposals had been discussed with all of their possible implications on the overall functioning of the dispute settlement, to which Türkiye attached utmost importance as a common asset of the WTO Membership and a building block of the multilateral trading system. Türkiye believed that the third stage, which they had been living through, would be one where Members would be dealing with more concrete proposals in the DS reform efforts so that they could proceed swiftly to the next phase. As Members were aware, the DS reform was aimed to be finalized in the course of the WTO Ministerial Conference to be held in February 2024, and Türkiye evaluated that substantial progress was required to be made within a certain schedule. As one of the active participants of that process, the primary goal of Türkiye was to ensure that the two-tier multilateral dispute settlement system and the binding nature of the Appellate Body's decisions could be maintained. Otherwise, a fundamental problem on the fulfilment of the DS reform promises would be created and this negative effect would definitely have implications for the proper functioning of the rules-based multilateral dispute resolution system. Türkiye also noted that it anticipated that the impediments encountered

in the appointment of the Appellate Body members would soon be resolved and the Appellate Body would be able to conduct its substantive functions as a key component of the dispute settlement system. Türkiye also expected that the informal meetings would soon be formalized under the leadership of the DSB or any other standing body to be agreed upon mutually, and that this reporting process concerning DS reform would be on the agenda of upcoming meetings.

3.20. The representative of Canada said that Canada wished to sincerely thank Mr. Molina for his personal efforts to organize and structure the informal meetings on dispute settlement reform. Canada noted that all WTO Members were able to attend and participate in the meetings held as part of those discussions. The ambitious pace of the meetings was directly proportional to the urgency of the task at hand. Members had to do everything in their power to deliver the goods in terms of the goal that Ministers had set at the Twelfth Ministerial Conference. Canada considered that the process had been set up in a clear, transparent, and inclusive way. Canada appreciated the additional efforts made by Mr. Molina to provide WTO Members with regular updates through a variety of means. Canada welcomed the level of commitment shown by WTO Members in that process. Having a fully operational and well-functioning dispute settlement system that was accessible to all was of the utmost importance. Members had to make progress in that direction. This was truly in the interest of all Members.

3.21. The representative of Colombia thanked Mr. Molina for his report. Colombia wished to express its keen support for this informal discussion process and the reports delivered in this forum. Colombia also wished to express its keen support for the leadership provided by Mr. Molina, who had shown unwavering commitment to organizing and structuring informal meetings on WTO dispute settlement system reform. The process and work undertaken by Mr. Molina had been clear, transparent and inclusive for all WTO Members that had wanted to participate and that had taken the time to do so. It should be noted that when they had been unable to keep up with the packed meeting schedule, Mr. Molina had always been available, whatever the time of day, to explain what had happened at a meeting and to listen to what delegations were unable to say because they had not been present. From a substantive viewpoint, the technical progress made and shared ideas had also been very positive. Reports on progress made in this forum were valuable and enhanced transparency. The process should move ahead as much as it possibly could, and Members should maintain it, promote it and strengthen it in the run-up to the Ministerial. Having a functional dispute settlement system accessible to all was vital for the WTO, and for this reason Colombia fully supported the ongoing process. The alternative – i.e. maintaining the status quo – was worse: a state of limbo, uncertainty, and "might makes right". The process belonged to all Members, regardless of how it started, and it was in the interests of everyone to see it through to the end. Colombia was committed to working tirelessly with all Members to ensure that this objective was met in time and in an effective manner.

3.22. The representative of China said that, like others, China wished to express its sincere appreciation to Mr. Molina for his comprehensive report at the present meeting and, more importantly, the tremendous efforts he had made starting from the commencement of phase 3 discussions, including exploring ways to make the process transparent and inclusive. China understood the concerns raised by some Members, in particular the intense schedule which made it challenging for small developing Members to effectively follow the discussions, and China was willing to work with Members to finetune the already-good organization of the discussion, bearing in mind the urgency of the task ahead of them as well as the fast-approaching deadline. In spite of the various challenges and difficulties Members were encountering, China was glad to witness that all Members were seriously engaging with each other and conducting frank and solution-oriented discussions. It was China's sincere hope that that positive momentum and collaborative atmosphere could be maintained, and Members could continue focusing on core issues with open and pragmatic spirits, so that the options for addressing various concerns could be narrowed down before the summer break, as expected. China would work constructively with all Members with a view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024.

3.23. The representative of Hong Kong, China said that Hong Kong, China wished to express its appreciation towards constructive discussions undertaken under the informal process, as part of the efforts to meet Ministers' mandate set out in the MC12 Outcome Document, to have a well and fully functioning dispute settlement system accessible to all Members by 2024. While Hong Kong, China agreed that the informal process should be institutionalized at an appropriate juncture, and it would better be sooner than later, Hong Kong, China welcomed any form of constructive discussion prior to that and leading to that. Hong Kong, China noted that, while it remained an informal process, all the meetings and sessions convened thus far were open to all Members, and Hong Kong, China

appreciated the opportunities to have candid exchanges with other Members on the different issues. On a personal level, the representative of Hong, China wished to express her heartfelt appreciation for the tireless efforts, professionalism and devotion of Mr. Molina in the process.

3.24. The representative of Peru said that Peru appreciated the factual report made by the representative of Guatemala, Mr. Molina, and wished to place on record its support and appreciation for his tremendous efforts in coordinating and conducting the informal discussions which were being carried out with the sole objective of advancing towards the fulfilment of the mandate that Members had given themselves to have a fully operational dispute settlement system that functioned properly and was accessible to all by 2024. If Members really wanted to fulfil the mandate, then they needed to sit down and talk in a transparent, inclusive, constructive, and solution-oriented manner, which was how Peru believed the informal discussions were being conducted. Peru participated in good faith in those efforts because the issue at hand was not just any issue, it was a matter of the highest priority for many Members, including Peru. Along those lines, Peru reiterated its support and confidence in this informal process and its willingness to continue participating in those meetings.

3.25. The representative of Australia said that Australia welcomed the ongoing informal dispute settlement reform discussions. Australia joined other Members in thanking Mr. Molina for agreeing to take forward this important work, and for his report at the present meeting. Australia had found the current phase to be open, inclusive, transparent and Member-driven, noting that these discussions were open to all Members. Australia acknowledged the concerns raised about the timetable and agreed that it was ambitious, but Members had to remember that they had a clear mandate to deliver a fully functioning dispute settlement system by 2024. Their priority should be to work together to narrow the issues for discussion and get ready for text-based negotiations later in 2023. Australia believed that the current process would help them achieve those aims.

3.26. The representative of Japan said that Japan appreciated Mr. Molina's comprehensive report, his tireless efforts and tremendous contribution to the process. Japan absolutely shared a sense of urgency for reform of the dispute settlement system, and for that purpose Japan strongly welcomed and supported the process, which enabled Members to make frank, deep, and comprehensive discussions on reform. Japan was prepared to contribute constructively to the discussion with the view to moving the process forward. In that transparent, inclusive, and well-designed process, Japan wished to work actively and constructively with all WTO Members.

3.27. The representative of the European Union said that the European Union appreciated the opportunity to address, in the DSB, the ongoing discussions on dispute settlement reform. For the European Union a well and fully functioning dispute settlement system in the WTO was a key priority. The European Union agreed that a meaningful reform was needed in order to achieve that objective. The European Union supported a reform that would preserve the core features of the dispute settlement system. The European Union treated very seriously the commitment made at MC12 "to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024". It was with that objective in mind, and in a constructive spirit, that the European Union had been engaging in the discussions on dispute settlement reform for almost a year. The European Union welcomed the recent change of gear in those discussions, which currently related to specific reform topics, and thanked Mr. Molina for the explanation provided at the present meeting and all his tireless work on this matter. The European Union was keen to see discussions continue in a focused and result-oriented manner, with a view to having a well and fully functioning dispute settlement system by 2024. Members had an ambitious schedule in place, but they had to be ambitious if they were to deliver on the MC12 commitment. Indeed, those discussions had to pave the way for agreement on dispute settlement reform at MC13. Finally, the European Union wished to underscore that those discussions, pursuant to the MC12 outcome document, were open to all Members and the European Union indeed appreciated the efforts to ensure that the process was transparent and inclusive. The European Union valued the broad participation in meetings which contributed to the quality of the exchanges and enhanced the understanding of the positions of Members on particular issues. The European Union also welcomed the reporting to the DSB, as was the case at the present meeting, which enhanced the transparency and accountability of the process.

3.28. The representative of Moldova said that her delegation wished to join others who thanked Mr. Molina for the report made in his personal capacity and transparency as well as his open-minded, constructive and trustful approach towards resolving the DS issue during the ongoing meetings. Moldova had been closely following this issue since the initiation of the informal discussions in 2022

led by the United States. Moldova supported the new phase of the discussions and the process led by Mr. Molina on DS reform, which was currently ongoing. Moldova was ready to engage and supported constructive, inclusive and open discussions in various formats, having in mind the urgency for a multilateral, formal outcome for a fully functioning DSB before or during MC13, which was fast approaching.

3.29. The representative of Thailand said that Thailand welcomed the facilitator's report at the present meeting. Thailand believed that reporting to the DSB or other appropriate WTO bodies would help foster a better understanding and enhance transparency of the process. Thailand remained committed to participating in the ongoing reform discussions which, in Thailand's view, were being conducted in a transparent, inclusive, constructive, and very friendly manner. Thailand wished to sincerely thank Mr. Molina, the facilitator, for his tireless efforts and all the hours that he had been sacrificing for making all of that possible. Mr. Molina had Thailand's full trust and support. Thailand looked forward to continuing these efforts to fulfil the MC12 mandate together with all Members.

3.30. The representative of Korea said that Korea echoed others in welcoming the report by Mr. Molina of Guatemala, and expressed its sincere appreciation for his personal efforts and the additional burden he had taken on in organizing the informal meetings in his personal capacity. Korea noted that the process was open and transparent to all Members and thanked all Members for their participation and proactive engagement. Korea recognized that due to the swift pace of meetings, there would be capacity constraints for Members, including Korea. However, considering the full calendar of WTO meetings, this was a somewhat common feature among Members where they had to make a choice in where to participate. Members had also benefited from Mr. Molina's immaculate and accurate reports from small group meetings and conducting of bilateral meetings when they found it difficult to participate in person. Korea believed that it was imperative to deliver on the mandate of paragraph 4 of the MC12 Outcome Document, with MC13 swiftly approaching. Korea fully appreciated the inclusive and transparent spirit of the meetings and looked forward to continued engagement of all parties. Korea would also contribute constructively to the process.

3.31. The representative of the United States thanked the delegate from Guatemala, speaking in his personal capacity, for his report at the present meeting. The United States intended to lead in all areas where it could contribute, including on dispute settlement reform, but achieving fundamental reform could only happen through a collective, Member-driven process. Here Members were fortunate to have a capable facilitator who had volunteered his time and energy to coordinate an inclusive Member-driven process. As the US Minister had said the previous week, the United States was not here to dictate. But the United States was determined to pursue an interest-based, inclusive process that brought in all WTO Members as they worked towards fundamental reform. The United States welcomed the Member-driven nature of the current approach. The United States had been clear from the beginning that the success of dispute settlement reform efforts depended on understanding each other's interests in dispute settlement. The discussions had been guided by the interests of Members, with all Members invited to share their interests. Members were truly driving these discussions with the assistance of a facilitator. The United States welcomed the inclusive and transparent nature of the current approach. Each Member was invited to every meeting, with steps taken to keep all Members apprised of developments, even if they could not attend each meeting. The United States appreciated the efforts taken.

3.32. When the United States heard Members raise concerns like those heard from some delegations at the present meeting, the United States wanted to understand better. The United States understood that the concern was not a complaint about openness, because everyone was invited; the United States understood it was not a complaint about participation, because a majority had participated, including Members of all development levels; and the United States understood it was not a complaint about inclusiveness because the process included all Members. On the other hand, the United States understood the complaint that constraints on time made it difficult for any delegate to attend all the meetings; the complaint that difficult and complex substantive issues were being discussed; and that constraints on resources continued to pose a high hurdle for certain Members across a range of WTO areas. The United States' request was that Members continue to help all Members understand what needed to be done to meet their interests in meaningful participation. The constructive participation of developing country Members, including India, and LDCs, had been critical to the success of the process over the previous year. To the extent that Members had presented options for a different kind of process, Members could have that conversation in the appropriate setting. But the United States' priority remained to continue the current process, and the United States looked forward to further work with all delegations. In closing,

the United States wanted to be clear: it was committed to working with Members on achieving fundamental reform, so that the WTO dispute settlement system served the interests of all Members, and the United States recognized the engagement of all willing Members to date.

3.33. The representative of Chile said that Chile also welcomed the report on the informal discussions concerning DS reform and was particularly grateful to Mr. Molina from Guatemala for all the work and effort he had invested. It was in Chile's interest to have a fully functioning dispute settlement mechanism, and it was Chile's understanding that the vast majority of Members believed that this should be a priority in the short term, especially considering the mandate given at the most recent Ministerial Conference. For that reason, Chile believed that Members' efforts should be focused on these objectives.

3.34. The representative of Chinese Taipei said that Chinese Taipei wished to join other Members in sincerely thanking Mr. Molina for his hard work and comprehensive report. Chinese Taipei wished to express its solid support for the ongoing informal discussions with regard to DS reform. Chinese Taipei was impressed by the remarkable commitment and constructive approaches, demonstrated by all participants, throughout these discussions. Chinese Taipei looked forward to continuing to work closely with Members on this critical topic to have a fully and well-functioning dispute settlement system accessible to all Members. Notably, Chinese Taipei appreciated the transparent and inclusive discussion process, which aimed to strike a balance between efficiency and due process in such critical yet urgent discussions.

3.35. The representative of the Dominican Republic said that, as stated by Panama, all efforts which enabled Members to meet the MC12 mandate were welcome. The Dominican Republic therefore wished to thank Mr. Molina for his report and his enormous efforts and professional work. The Dominican Republic understood that although this was an informal process, it was constructive and open to everyone. The Dominican Republic hoped that this could lead to a fully functioning DSB, as mandated by Ministers at MC12. Members could count on the Dominican Republic's support.

3.36. The representative of Ukraine said that Ukraine wished to thank Mr. Molina for his work, personal contribution, organization, availability, and openness throughout the process and discussions. Ukraine was also thankful to the Members for the work done related to reform and sincerely hoped that Members would continue that work as their highest priority. Ukraine continued to be a strong supporter of the multilateral trading system and would put forward every effort to maintain that position and be engaged in the process. That work should be based on agreed and mutual solutions. The outcome could only be fruitful under circumstances of direct, joint work of Members, reflecting their common desire and shared aim.

3.37. The DSB took note of the statements.

4 APPELLATE BODY APPOINTMENTS: PROPOSAL BY AFGHANISTAN; ANGOLA; ANTIGUA AND BARBUDA; ARGENTINA; AUSTRALIA; BANGLADESH; BENIN; PLURINATIONAL STATE OF BOLIVIA; BOTSWANA; BRAZIL; BURKINA FASO; BURUNDI; CABO VERDE; CAMBODIA; CAMEROON; CANADA; CENTRAL AFRICAN REPUBLIC; CHAD; CHILE; CHINA; COLOMBIA; CONGO; COSTA RICA; CÔTE D'IVOIRE; CUBA; DEMOCRATIC REPUBLIC OF CONGO; DJIBOUTI; DOMINICA; DOMINICAN REPUBLIC; ECUADOR; EGYPT; EL SALVADOR; ESWATINI; THE EUROPEAN UNION; GABON; THE GAMBIA; GHANA; GUATEMALA; GUINEA; GUINEA BISSAU; HONDURAS; HONG KONG, CHINA; ICELAND; INDIA; INDONESIA; ISRAEL; KAZAKHSTAN; KENYA; REPUBLIC OF KOREA; LESOTHO; LIECHTENSTEIN; MADAGASCAR; MALAWI; MALAYSIA; MALDIVES; MALI; MAURITANIA; MAURITIUS; MEXICO; REPUBLIC OF MOLDOVA; MOROCCO; MOZAMBIQUE; NAMIBIA; NEPAL; NEW ZEALAND; NICARAGUA; NIGER; NIGERIA; NORTH MACEDONIA; NORWAY; PAKISTAN; PANAMA; PARAGUAY; PERU; THE PHILIPPINES; QATAR; RUSSIAN FEDERATION; RWANDA; SAINT KITTS AND NEVIS; SAINT LUCIA; SENEGAL; SEYCHELLES; SIERRA LEONE; SINGAPORE; SOUTH AFRICA; SWITZERLAND; THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU; TANZANIA; THAILAND; TOGO; TUNISIA; TÜRKIYE; UGANDA; UKRAINE; UNITED KINGDOM; URUGUAY; THE BOLIVARIAN REPUBLIC OF VENEZUELA; VIET NAM; ZAMBIA AND ZIMBABWE (WT/DSB/W/609/REV.23)

4.1. The Chairperson said that this item was on the Agenda of the present meeting at the request of Guatemala, on behalf of a number of delegations. She drew attention to the proposal contained in document WT/DSB/W/609/Rev.23 and invited the representative of Guatemala to speak.

4.2. The representative of Guatemala, speaking on behalf of the co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.23, said that the delegations in question had agreed to submit the joint proposal, dated 12 September 2022, to launch the selection processes for the vacancies of the Appellate Body members. On behalf of those 127 Members, Guatemala wished to state the following. The extensive number of Members submitting the joint proposal reflected a common interest in the functioning of the Appellate Body and, more generally, in the functioning of dispute settlement system. The joint proposal sought to: (i) start seven selection processes; (ii) to establish a Selection Committee; (iii) to set a deadline of 30 days for the submission of candidacies; and (iv) to request that the Selection Committee issue its recommendation within 60 days after the deadline for nominations of candidates. The proponents invited and urged all Members to support this proposal in the interest of the dispute settlement and multilateral trading systems.

4.3. The representative of the United States said that, before beginning, the United States would like to recall that the United States and other Members had jointly issued document WT/GC/244, "The Joint Statement on Aggression by the Russian Federation against Ukraine with the Support of Belarus", which condemned Russia's actions as a violation of international law, the UN Charter, and fundamental principles of international peace and security. The United States reiterated its support for Ukraine during this unimaginably difficult time. The United States paid tribute to the heroism of the Ukrainian people, their armed forces, and Leaders. Turning to the intervention under this statement, Members were aware of the longstanding US concerns with WTO dispute settlement. Those concerns remained unaddressed, and the United States did not support the proposed decision. The United States believed that fundamental reform was needed to ensure a well-functioning WTO dispute settlement system. A well-functioning dispute settlement system supported WTO Members in the resolution of their disputes in an efficient and transparent manner, and in doing so limited the needless complexity and interpretive overreach that had characterized dispute settlement in recent years. The first step towards reform was to better understand the interests of all Members in WTO dispute settlement. The United States had been engaging with Members to advance that goal and looked forward to continued engagement. The United States appreciated the deeply substantive and informative discussions over the previous several months. Those informal discussions, which were guided by an interest-based approach, reflected a significant departure from the stale conversations of previous years. The United States was pleased that delegations trusted in the merits of interest-based problem solving and took those opportunities to speak with one another, rather than at one another. Those dialogues enabled delegations to gain a better understanding of each other's perspectives on the value of dispute settlement and how that value might be maximized across the WTO Membership. The United States acknowledged that considerable work remained and that achieving dispute settlement reform – that is, fundamental reform to meet the needs of all WTO Members to the greatest extent possible – would not be easy. But the United States continued to believe that working collectively towards that goal provided the greatest chance of achieving durable,

lasting reform. The United States was committed to working towards an improved system and looked forward to engaging further with those Members who also saw value in an improved and reformed dispute settlement system that was accessible to all.

4.4. The representative of Cambodia, speaking on behalf of the LDC Group, thanked Guatemala and the co-sponsors for their commitment. With respect to this submission on Appellate Body appointments, the LDC Group was pleased to inform delegations that although the LDC Group was not a co-sponsor of proposal WT/DSB/W/609/Rev.23, a number of LDCs were co-sponsors. The elements in the submission were structurally consistent with the LDC Group views found in its submissions on reform to the General Council, regarding the Appellate Body crisis. Therefore, the LDC Group urged Members to consider this proposal in the context of all proposals put forward to address the impasse. The LDC Group also took note of the constructive sentiments expressed under the Agenda item at the 27 February 2023 DSB meeting.

4.5. The representative of Cambodia said that Cambodia, as one of the co-sponsors of the AB proposal, wished to thank the delegation of Guatemala for its statement on behalf of the document WT/DSB/W/609/Rev.23 co-sponsors. Cambodia remained a steadfast supporter of the multilateral trading system and firmly believed that a WTO with an effective and fully functioning dispute settlement system was indispensable for ensuring predictable, open, and fair trade. Cambodia wished to urge all Members to work together in good faith and in a constructive manner, as mandated by Ministers at MC12, including on the appointment of Appellate Body members towards achieving a true multilateral solution.

4.6. The representative of Nigeria, speaking on behalf of the African Group, wished to thank the delegation of Guatemala for their statement regarding the proposal on Appellate Body member appointments, of which the African Group were co-sponsors. The African Group reiterated its support for a fully functioning dispute settlement system that was accessible to all Members, in accordance with the mandate from their Ministers at MC12. The fact that the Appellate Body could not hear new appeals remained a concern. The African Group urged the DSB to urgently fulfil its obligation under the DSU, which was to fill vacancies as they arose, so as to maintain the two-tier dispute settlement system. This would maintain the security, credibility, and predictability of the multilateral trading system. The critical mass of Members asking for the launch of the selection process indicated the importance Members attached to having a fully functioning dispute settlement system for the multilateral trading system. Finally, the African Group stood ready to engage constructively in the ongoing discussions on dispute settlement reform in order to restore a fully functioning dispute settlement system by 2024, as agreed at MC12. The African Group called on all Members to approach those discussions with an open mind so as to find a lasting solution.

4.7. The representative of Bangladesh said that Bangladesh thanked the delegation of Guatemala for presentation of the AB proposal contained in document WT/DSB/W/609/Rev.23 and wished to be associated with the statement made by Cambodia on behalf of the LDC Group. Bangladesh had emphasized under the previous Agenda item the importance of the immediate restoration of the Appellate Body. Bangladesh, along with the listed Members, was a co-sponsor of the AB proposal, which was requesting the DSB to take a decision to launch the selection processes to fill the vacancies in the Appellate Body. Without the Appellate Body, the dispute settlement system was not fully functional. If Members were truly respectful of the commitment by their Ministers, as provided in paragraph 4 of the MC12 Outcome Document, they had to engage in discussions for Appellate Body appointments as a top priority. Bangladesh stood ready to continue constructive discussions in that regard.

4.8. The representative of China said that China supported the statement made by Guatemala on behalf of the 127 co-sponsors. China referred to its previous statements made on this urgent matter, and called upon more Members to join this proposal. Like others, China reiterated its firm commitment to an independent, impartial two-tier dispute settlement system, which had proven to not only facilitate prompt and fair resolution of disputes between Members regardless of their size and power, but also provided security and predictability to the multilateral trading system. To fulfil such objectives, China believed that the most urgent task was to immediately launch the selection processes and fill the vacancies for the Appellate Body. This was a treaty obligation of all WTO Members. No prerequisite should be attached to it. China would continue working constructively with all Members in the ongoing discussions on DS reform with a view to having a fully and well-functioning dispute settlement system at the earliest possible date, as mandated by Ministers at MC12. China called upon all Members to engage in that exercise in good faith and with pragmatic,

outcome-oriented spirits. Before concluding, China also wished to take this opportunity to encourage more Members to join the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) as a contingent measure to safeguard Members' right to appeal until the Appellate Body was restored.

4.9. The representative of Indonesia said that Indonesia thanked Guatemala for its statement and for presenting the proposal on behalf of the 127 co-sponsors. The fact that the appointment proposal was supported by the majority of WTO Members demonstrated the importance of the functioning of the Appellate Body, through the selection process, that should be undertaken without delay. On that note, Indonesia also encouraged others to become co-sponsors of the AB proposal. Indonesia wished to refer to its statement made at previous DSB meetings on this matter. With that in mind, Indonesia remained of the view that solving the Appellate Body impasse should be the utmost priority for all Members. It was part and parcel of their common effort to have a fully functioning and accessible dispute settlement system by 2024. Indeed, all Members shared the view that a well-functioning dispute settlement system was crucial in order to maintain predictability, certainty, and effectiveness of the multilateral trading system.

4.10. The representative of Ukraine said that Ukraine thanked all the Members that had co-sponsored the AB proposal. Ukraine wished to stress again that a fully functioning WTO dispute settlement system was core for a rules-based multilateral trading system. Ukraine also wished to make a short statement with regard to the current circumstances in Ukraine. The Russian war against Ukraine was not only an existential threat for Ukraine but also for world trade and Ukraine would raise this issue until the complete de-occupation of its sovereign territory within its internationally recognized borders. This issue was important for all Members of the WTO because the Russian war against Ukraine had significantly affected not only Ukraine, but many other countries, through its impact on the global economy, food chains, energy crisis, commodity prices, and climate. Ukraine was very grateful for all support in these terrifying times and urged Members to continue to stand by Ukraine with their steadfast support, in unity and strength, for as long as it took.

4.11. The representative of South Africa said that South Africa wished to be associated with the statement made by Guatemala regarding the proposal for Appellate Body appointments and thanked Guatemala for delivering the statement on behalf of the co-sponsors. South Africa also supported the statement made by Nigeria, on behalf of the African Group. South Africa reiterated its previous statements regarding the urgency of this matter. When Members agreed to bind themselves to a predictable, binding, rules-based order underpinned by a two-tiered dispute settlement system. The assurance that their trade relations would be subject to rules rather than soft power was a fundamental element of the bargain struck in Montevideo and the continued dysfunctionality of the Appellate Body undermined the consensus reached in the Uruguay Round and imperilled the multilateral trading system. A fully functioning Appellate Body was a top priority for reform of the WTO and it was crucial to the effective operation of the multilateral trading system. South Africa welcomed the commitment by Members undertaken during MC12 for a fully and well-functioning dispute settlement system accessible to all Members by 2024. That commitment was reiterated during recent informal discussions on WTO reform. South Africa would work actively and constructively with all Members to find a lasting solution to the present impasse that would ensure an effective dispute settlement system.

4.12. The representative of Brazil said that Brazil thanked Guatemala for presenting the proposal on behalf of the co-sponsors and referred to its previous statements made under this Agenda item. To fill the Appellate Body vacancies was Members' collective and unequivocal obligation under the DSU. Brazil thus invited Members who had a similar view and were not yet among the co-sponsors, to join and support this important proposal. As previously indicated, Brazil had a keen sense of urgency and priority, as set out in the MC12 Outcome Document. Brazil also felt the need to enable resolution of disputes as long as the present impasse with the appointment of Appellate Body members persisted. In that regard, Brazil welcomed Japan's recent decision to join the MPIA, an initiative that had now gathered 53 WTO Members. The Arrangement had delivered as envisaged in a solid, efficient and reliable fashion. Brazil was ready to discuss the MPIA with any delegation that wished to learn more about the Arrangement and its functioning.

4.13. The representative of Hong Kong, China said that Hong Kong, China recalled its previous statements made under this Agenda item, and wished to continue to join other Members to reiterate its concerns about the Appellate Body impasse, as well as its commitment to work constructively with all WTO Members to restore a fully and well-functioning dispute settlement system by 2024 as

set out in the MC12 Outcome Document. Hong Kong, China reiterated the importance of having a two-tiered, binding dispute settlement system within the WTO. Hong Kong, China also wished to add that any discussion of, or any outcome from, any dispute settlement reform should seek to present improvements to the system, and not seek to fundamentally undermine it or essentially dismantle it.

4.14. The representative of Malaysia said that Malaysia continued to express its support for the joint proposal to launch the selection processes to appoint new Appellate Body members, as set out in WT/DSB/W/609/Rev.23. Malaysia thanked Guatemala for presenting the proposal on behalf of the 127 Members and supported the statement made by Guatemala. Malaysia wished to refer to its statements made at previous DSB meetings under this Agenda item. Malaysia wished to reiterate its strong view that the dispute settlement system, including the Appellate Body, was most critical and required the urgent attention of all Members. WTO Members had the responsibility to safeguard and preserve the dispute settlement system and Members should not further delay the commencement of the selection processes for the AB vacancies. Malaysia wished to urge all Members to work together towards having a fully and well-functioning dispute settlement system accessible to all by 2024 as mandated by Ministers at MC12. Malaysia invited Members to support this proposal and to proceed with the appointment of the Appellate Body members.

4.15. The representative of Singapore said that Singapore thanked Guatemala for its statement which Singapore strongly supported. Singapore reiterated its previous statements regarding the urgency and importance of this matter. Singapore was committed to participating constructively and with an open mind in ongoing discussions on dispute settlement reform. While the regrettable impasse in the appointment of Appellate Body members persisted, Singapore encouraged Members to join the MPIA as an interim solution that preserved Members' right to appeal, until they collectively found a durable and lasting solution. In that regard, Singapore warmly welcomed Japan's recent decision to join the Arrangement. Singapore, together with other MPIA participants, stood ready to engage with any delegation that wished to learn more about the Arrangement.

4.16. The representative of the United Kingdom said that the United Kingdom continued to support the launch of the process for appointments to the Appellate Body, and referred to its previous statements on this issue. The United Kingdom continued to be seized of the urgency of reaching a resolution to the current impasse: achieving a fully and well-functioning dispute settlement system was in the interests of all Members that valued an effective multilateral trading system. The United Kingdom was actively participating in the ongoing Member-led discussions on dispute settlement reform. The United Kingdom welcomed the intensity of phase 3 of those discussions. To resolve the current impasse, Members would need to take a pragmatic and dedicated approach to finding solutions that could command the support of all WTO Members. The United Kingdom called on Members to continue to prioritise that work. As Members discussed those issues concerning how they ensured that rules were respected, the United Kingdom could not sit by and ignore the egregious violations of international law and the UN Charter committed by one WTO Member against another. The United Kingdom unreservedly condemned Putin's outrageous and illegal war of aggression. What happened in Ukraine mattered to the work of the WTO and mattered to all Members. As well as the direct consequences of Russia's actions here – impeding the ability of Ukraine to fully participate in the work of the WTO and the global trading system – over the previous year the United Kingdom and other Members had set out, in Committees across the WTO, the enormous global impact of Putin's chosen war. The United Kingdom and the international community had made it clear to President Putin that his attack on the Ukrainian people had to stop, and that he had to withdraw from Ukraine and restore regional and global stability. As the people in Ukraine continued to face relentless Russian bombardment, the United Kingdom stood with Ukraine - and would do so for as long as it took.

4.17. The representative of Peru said that Peru thanked Guatemala for the statement made on behalf of the 127 co-sponsors of the proposal, including Peru. The situation of paralysis in which Members had found themselves for more than three years undermined day by day the confidence and predictability in the international trade system, based on the unrestricted respect of the rules. This was because every time Members left cases without a definitive solution they sent, unintentionally and for some, the message that they could break the rules and that there would be no consequences. They detracted from the strength of the rules that they had worked so hard to adopt and turned them, for some, into mere guidelines. Under this scenario, Members were all losers, but perhaps those who lost the most were the developing countries, because they were deprived of the possibility of addressing their differences on an equal footing with Members with

whom they had asymmetrical economic-trade relations. Members no longer had a guarantee of the preservation of rights and obligations assumed through those rules. For the duration of the impasse and in order to preserve the security and predictability of the system, Peru had joined the MPIA, which allowed them, under the text of the DSU, to safeguard their right to binding dispute settlement involving two levels of adjudication. Peru also took the opportunity to welcome Japan's recent accession to this arrangement and invited other Members to consider joining the MPIA as well.

4.18. The representative of Canada said that, first of all, Canada strongly condemned the unjustified and unprovoked invasion of Ukraine by President Putin. Canada wished to express its solidarity with the Ukrainian people. President Putin's plans to "annex" Ukrainian territory were devoid of legitimacy and would never be recognized. Those hostile acts had now continued for more than a year. Those acts were a flagrant violation of international law and of the rules-based international system. Ukraine's sovereignty and territorial integrity had to be respected and the Ukrainian people had to be free to determine their own future. Canada urged Russia to immediately cease all acts of hostility and provocation against Ukraine and to withdraw from the country its military and intermediary forces. Concerning the appointment of Appellate Body members, for over three years the Appellate Body had no longer had a quorum and had been unable to hear new appeals. Canada supported the statement made by Guatemala at the present meeting on behalf of the sponsors and thanked Guatemala for taking the floor. Canada invited WTO Members that had not yet sponsored the proposal to consider joining the 127 Members requesting the launch of the selection process. The critical mass of WTO Members that supported the proposal was a clear testimony to the importance they all accorded to a fully functioning Appellate Body as an integral part of the dispute settlement system. Canada recalled the Membership's objective, which was to have a fully and well-functioning dispute settlement system that was accessible to all by 2024. Canada would continue to actively participate in solution-oriented discussions on the current situation. In short, Canada's priority remained to find a multilateral and lasting solution for all Members, including the United States. Meanwhile, the MPIA was the best way to safeguard their rights to binding dispute settlement that included the possibility to appeal in disputes among Members. Canada wished to take this opportunity to congratulate Japan on its decision to join the MPIA. That additional support sent a positive signal about rules-based trade and a functioning dispute settlement system. Fifty-three WTO Members had now joined the MPIA. Canada invited all WTO Members to consider joining the MPIA. Canada was available to discuss the details of the MPIA with interested Members.

4.19. The representative of Australia said that before making its intervention under this Agenda item, Australia wished to note that it continued to condemn in the strongest terms Russia's illegal, unjustified and unprovoked invasion of Ukraine. As Australia had said before, it continued to raise this issue in this forum because Russia's actions were a violation of international law, and the fundamental international norms on which organizations such as the WTO were based. Australia continued to stand in solidarity with the people of Ukraine and called on Russia to withdraw its troops. Turning to Agenda item 4, Australia wished to reiterate that its number one WTO reform priority was delivering a fully and well-functioning dispute settlement system accessible to all Members by 2024, as agreed by Ministers at MC12. A fully functioning WTO dispute settlement system was critical to the ongoing vitality of the rules-based multilateral trading system. It helped ensure that WTO rights and obligations could be enforced, regardless of individual Members' size or power. Australia welcomed ongoing discussions to develop meaningful reforms to improve the dispute settlement system in a way that addressed Members' concerns. Australia looked forward to continuing to work constructively with all Members, and called on all Members to remain flexible and pragmatic in their approach as they sought to deliver on the MC12 mandate. As Members worked to restore a fully functional dispute settlement system, Australia encouraged all Members to join the MPIA as the best interim mechanism for ensuring Members' rights under WTO Agreements could be enforced and protected. Australia welcomed Japan joining the MPIA, and was ready to engage with any delegation interested in joining.

4.20. The representative of Moldova said that Moldova thanked Guatemala for presenting the joint AB proposal and for including this item on the Agenda of the present meeting. Moldova joined other Members and reiterated the urgent necessity of unblocking the Appellate Body selection processes in order to have a viable, two-tiered dispute settlement mechanism serving all Members of the WTO. Moldova also expressed its support for the ongoing discussions on dispute settlement reform, which would be taking place over the coming months. Referring to Russia's war against Ukraine, Moldova wished to be associated with other Members who had condemned the war and reiterated its full support for and solidarity with the Ukrainian people who had been bravely opposing that brutal aggression for more than one year. Unfortunately, Moldova was the second most affected country

by the war from the social, economic, commercial and energy security-related perspectives. Like other Members, Moldova would continue to raise this issue in this committee as well as in other committees of the WTO since Russia's actions were a blatant violation of international law and of the fundamental principles of the multilateral trading system created under the WTO. Moldova strongly condemned Russia's war and called for an immediate and unconditional stop of the aggression and withdrawal of Russia's troops from Ukrainian territory immediately.

4.21. The representative of Korea said that, like other Members, Korea reaffirmed its consistent position on the Ukrainian war that the sovereignty, territorial integrity, and independence of Ukraine should be respected. Korea, as a responsible member of the international community, supported various diplomatic and economic efforts of the international community to contribute to the end of the Ukrainian war and the restoration of peace, and would actively participate in those efforts. With regard to the item at hand, Korea thanked Guatemala for its statement and reiterated its support for the joint proposal. Korea also referred to its previous statements on this matter. The WTO dispute settlement system had been a central element in providing security and predictability to the multilateral trading system. In that regard, Korea very much welcomed, and was fully prepared to engage in constructive participation, during the pertinent discussions on reform for a durable solution to enhance the functioning of the WTO dispute settlement system, with the objective of accommodating the needs of WTO Members.

4.22. The representative of the European Union said that the European Union reiterated its resolute condemnation of the Russian Federation's war of aggression against Ukraine, which deliberately violated the UN Charter and disregarded the rules-based international order. It undermined international security and stability and should have no place in the 21st century. The European Union's support for Ukraine's independence, sovereignty, territorial integrity and right of self-defence was unwavering. The European Union called on the Russian Federation to stop its acts of aggression and withdraw its troops from Ukraine. Russia had to cease actions endangering civilians and respect international humanitarian law. The European Union was firmly committed to ensuring full accountability for war crimes and other crimes committed against Ukraine and its people. The European Union referred to its previous statements on this issue and thanked all Members who had co-sponsored the proposal to launch the appointment processes. Since 11 December 2019, the WTO no longer guaranteed access to a binding, two-tier, independent, and impartial resolution of trade disputes. A fully functioning WTO dispute settlement system was crucial. That was evidenced by the large number of Members co-sponsoring the present proposal. The European Union believed that restoring a fully functioning dispute settlement system and appointing members of the Appellate Body was a priority. That task was a shared responsibility of WTO Members. In order to achieve that objective, the European Union agreed that a meaningful reform was needed. The European Union supported a reform that preserved the core features of the dispute settlement system, including the right to appeal review before a standing adjudicative body. As mentioned under the previous Agenda item, the European Union treated very seriously the commitment, made at MC12, of having a fully functioning system by 2024 and the European Union was committed to continuing to work towards meeting that goal. In the meantime, the European Union was concerned with the impact that the absence of a fully functioning dispute settlement system was having on the international trading order. In that context, the MPIA had been put in place as an interim arrangement to preserve a fully functioning dispute settlement system among its participants and to support rules-based trade. The MPIA was open to any WTO Member and the European Union invited any WTO Member to join the MPIA as long as a solution to this impasse had not been found.

4.23. The representative of Thailand said that Thailand thanked Guatemala for the statement made on behalf of the co-sponsors which Thailand fully supported. Thailand referred to its previous statements made on this Agenda item. Restoring a fully functioning two-tiered binding dispute settlement system remained Thailand's top priority. While welcoming the reform discussion, Thailand did not see the ongoing discussions standing in the way of initiating the selection process to fill the Appellate Body vacancies immediately. Thailand reiterated its commitment to working constructively with other Members to find a meaningful solution and fulfil the MC12 mandate in a timely manner.

4.24. The representative of the Russian Federation said that the Russian Federation wished to refer to its previous statements made on this matter and thanked Guatemala and the co-sponsors for their continuous and faithful commitment to the appointment processes of the Appellate Body members. Russia reiterated its strong support for launching the appointment processes immediately. He also said that he had to address certain political declarations made by some WTO Members at this meeting. First, Members should keep to the Agenda of the meeting, circulated on 29 March 2023

in document WT/DSB/W/716 and adopted, as amended, at the present meeting. The political discussions suggested by some WTO Members did not concern any of the issues listed in the agenda. Second, the DSB had its own tasks and mandate expressed in different provisions of the DSU. None of the political issues raised by some WTO Members was within the competence of the DSB. Third, and ultimately, the WTO was not a political organization and Members shall refrain from trying to address the issues in the DSB that were not in the competence of the organization. Russia considered that some of the root causes of the crisis of the multilateral trading system that Members were facing were the actions that blocked the Appellate Body appointments as well as the attempts to politicize the WTO that Members had heard at the present meeting. Russia encouraged WTO Members to focus on resolving the problems they already had and not create new ones, unless any WTO Member had an intention to continue to destroy the multilateral trading system further.

4.25. The representative of Norway said that Norway thanked Guatemala for presenting this joint AB proposal, which Norway fully supported. A fully functioning dispute settlement system was critical to maintain the rules-based multilateral trading system and for the credibility of the WTO as a rules-based organization. Norway referred to its previous statements under this Agenda item. Norway did, however, wish to welcome Japan's decision to join the MPIA. The Arrangement was open to WTO Members to join for as long as the Appellate Body remained unable to function fully. As the work of the DSB directly concerned the upholding of the rules-based international order, Norway also found it pertinent to address the situation in Ukraine. Norway continued to strongly condemn Russia's egregious military attack on Ukraine. Russia's war of aggression against Ukraine constituted a gross violation of international law, the rules-based system which also underpinned the WTO, and the work of the DSB.

4.26. The representative of Switzerland said that Switzerland joined other delegations in condemning Russia's military aggression against Ukraine in the strongest possible terms. Such aggression blatantly violated international law, most notably the prohibition on the use of force and the principle of the territorial integrity of States. Switzerland called upon Russia to take military de-escalation measures, end hostilities, and immediately withdraw its troops from Ukrainian territory. Switzerland called on all actors to respect international law, in particular international humanitarian law. Regarding Agenda item 4, Switzerland wished to refer to its statements made on this matter at previous DSB meetings. Switzerland urged all Members to commit to ensuring a fully functioning dispute settlement system by 2024, as set out in the MC12 Outcome Document. Switzerland would continue to participate constructively in the newly initiated phase of informal discussions and hoped that concrete solutions could be discussed in the coming weeks and months. Switzerland also wished to welcome Japan to the MPIA. The MPIA was a pragmatic and effective way to preserve Members' rights until the current Appellate Body impasse was resolved. Switzerland encouraged all Members to join the MPIA. Switzerland's priority remained, of course, to find a multilateral solution that would ensure that the dispute settlement system was fully operational.

4.27. The representative of New Zealand said that New Zealand joined other Members in condemning, unequivocally, the unprovoked and unjustified attack by Russia on Ukraine. Those actions were egregious and unlawful – the act of aggression was strictly prohibited under international law, as was the targeting of civilians. In relation to Agenda item 4, New Zealand reiterated its support for the proposal co-sponsored alongside 126 other WTO Members and referred to its previous statements. New Zealand urged all Members to engage in discussions constructively and pragmatically in order to address this situation as a priority in line with the direction of their Ministers. New Zealand also took this opportunity to congratulate Japan for its recent notification to join the MPIA, and invited those Members who had not yet joined the MPIA to consider doing so. The MPIA provided an avenue to safeguard access to an appeal level of review, while Members worked collectively towards reform in order to restore a fully functioning dispute settlement system.

4.28. The representative of Iceland said that a fully functional dispute settlement system was directly connected to the upholding of the rules-based international order which had been seriously undermined by the unprovoked attack of the Russian Federation on Ukraine. Iceland condemned in the strongest possible terms Russia's actions, which violated international law and the UN Charter, and undermined international order and laws that the WTO was based on. Turning to item 4 of the Agenda, as one of the many co-sponsors of the AB proposal, Iceland was concerned with the longstanding lack of progress in filling the vacancies of the Appellate Body. Iceland welcomed Members' efforts to address discussions on dispute settlement reform and hoped that they would be resolved with a lasting solution ending the current impasse. Until then, Iceland encouraged Members to join the MPIA and welcomed Japan's decision to do so. The MPIA could ensure Members' access

to a binding, two-tier and independent dispute settlement system while they worked to restore a fully functional dispute settlement system.

4.29. The representative of Japan said that Japan would first touch upon the situation in Ukraine. Japan strongly condemned Russia's aggression against Ukraine and missile attacks against civilian infrastructure and cities across Ukraine. Japan strongly urged Russia once again to stop its aggression and withdraw its forces from the territory of Ukraine, within its internationally recognized borders, immediately. Japan would also continue to work firmly on the two pillars of imposing strong sanctions on Russia and supporting Ukraine within the international community. Turning to Agenda item 4, Japan referred to its statements made at previous DSB meetings and supported the AB proposal. Japan had set as the utmost priority to achieve a reform that would contribute to a long-lasting solution to the structural and functional problems of the dispute settlement system. In relation to this, Japan welcomed the new step in the informal DS reform discussions currently led by Members. With a view to having a fully and well-functioning DS system by 2024, as agreed at MC12, Japan wished to work actively and constructively with all WTO Members. Japan noted MPIA members welcoming Japan to the MPIA and appreciated their warm words. As Members were aware, Japan had notified its participation in the MPIA in document JOB/DSB/1/ADD.12/Suppl.9, and had become a member of the MPIA as of 10 March 2023. Japan's position remained unchanged, namely, to achieve a long-lasting solution to the DS system. However, Japan hoped that the MPIA, as an interim response until such solution was achieved, would enhance the predictability of the WTO DS system and contribute to the maintenance of the rules-based multilateral trading system.

4.30. The representative of Panama said that Panama wished to echo the statements made concerning the importance of having fully functional DS system with binding decisions, and to echo the concerns expressed about the current state of dispute settlement, including the lack of the Appellate Body. This matter required an urgent solution. Finally, Panama thanked Guatemala for delivering the statement on behalf of the co-sponsors, and, as a co-sponsor, it supported the AB proposal.

4.31. The representative of Guatemala, speaking on behalf of the 127 co-sponsors, regretted that for the sixty-fourth occasion, Members had not been able to launch the selection processes for the vacancies of the Appellate Body. Thus, they continued to fail fulfilling their duties as Members of the WTO. As Article 17.2 of the DSU clearly stated, "vacancies shall be filled as they arise". Ongoing conversations about reform of the dispute settlement system should not prevent the Appellate Body from continuing to operate fully, and Members shall comply with their obligation under the DSU to fill the vacancies as they arose. The co-sponsors noted with deep concern that by failing to launch the selection processes at this meeting, the Appellate Body would continue to be unable to perform its functions, against the best interest of all WTO Members.

4.32. The Chairperson thanked all delegations for their statements. As in the past, the DSB would take note of the statements expressing the respective positions, which would be reflected in the minutes of the meeting. Once again, she took the opportunity to recall Members' commitment at MC12 to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024. With those words, she proposed that the DSB take note of the statements made under this Agenda item.

4.33. The DSB took note of the statements.

5 STATEMENT BY THE UNITED STATES CONCERNING THE PANEL REPORT IN THE DISPUTE: "UNITED STATES – ORIGIN MARKING REQUIREMENT" (HONG KONG, CHINA) (DS597)

5.1. The representative of the United States, speaking under "Other Business", said that the United States had previously described the serious consequences of the flawed interpretation of Article XXI of the GATT 1994 in the *US – Origin Marking Requirement* panel report. As the United States had previously explained to the DSB, and as it demonstrated throughout the course of the dispute, the challenged actions with respect to Hong Kong, China, were based on well-grounded determinations implicating US essential security interests relating to democracy and human rights. At the January DSB meeting, Hong Kong, China, dismissed the circumstances that gave rise to the challenged actions as "political issues or domestic affairs" that should not be brought into the WTO. It was not the United States that brought these circumstances to the WTO – it was Hong Kong, China, by

bringing this dispute on a US security measure. And, to be clear, the United States did not agree that the circumstances in Hong Kong, China, merely involved "political issues or domestic affairs." The US actions at issue, and its presentation of those actions, were grounded in facts and were taken to protect US essential security interests. More recent developments confirmed the basis for the deep concerns the United States had raised regarding actions to erode rights and freedoms in Hong Kong, China, in direct contravention of obligations under the Hong Kong Basic Law and the Sino-British Joint Declaration. Unfortunately, those developments further demonstrated the serious errors in the panel's approach. For example, Hong Kong, China, authorities had continued to arrest and prosecute people for peaceful political expression critical of the local and central governments. As recently as March 2023, three former members of a group that had organized annual candlelight vigils to mark the 1989 crackdown were found guilty of not complying with a request for information under the National Security Law and sentenced to four and a half months in jail.⁵ In the prior year, in 2022, no organization applied to hold a public event to commemorate the June 4 anniversary of the 1989 crackdown. Indeed, in May 2022, the Catholic Diocese of Hong Kong announced that no Catholic Churches in the city would hold memorial masses for the victims, citing concerns that those religious services could violate the National Security Law.⁶ Hong Kong authorities had arrested and prosecuted religious leaders for their activities and nonviolent political expression related to the prodemocracy movement. For example, in October 2022, Protestant pastor Garry Pang was found guilty of sedition for clapping and criticizing a judge during a hearing related to the banned vigil, and of acting with seditious intent for uploading videos to YouTube in which he commented on proceedings in Hong Kong's courts. Pastor Pang was sentenced to one year in jail for the two offenses.⁷ Hong Kong, China, authorities had also arrested and prosecuted individuals for publishing books that they claimed included "seditious content," and in March 2023 reportedly arrested individuals for possessing one of the books.⁸ Those events – among others – reflected the ongoing damage to democracy and human rights in Hong Kong, China, by the People's Republic of China. And they further demonstrated the error in the panel's finding that the pattern of human rights abuses and the erosion of autonomy in Hong Kong, China, did not "meet the requisite level of gravity to constitute an emergency in international relations under Article XXI(b)(iii)."⁹ The WTO did not have the competence or the authority to assess the foreign affairs relationships of a Member. Nor did it have the competence or authority to pass judgment on the value that the United States – and some other Members – placed on freedom and human rights, or the actions they took in seeking to secure those essential interests. The United States reiterated that Members needed to clarify and adopt a shared understanding of the essential security exception, and that the United States intended to raise this critical issue as part of Members' discussions on fundamental WTO reform.

5.2. The representative of Hong Kong, China thanked the United States for its statement on DS597, but this was not an expected occurrence, because at the previous DSB meeting on 27 February 2023, the United States had expressed its views on the procedural impropriety for a Member to bring substantive issues under "Other Business". The representative of Hong Kong, China recalled verbatim what the US had said at previous meeting: "[u]nder the rules of procedure for this meeting, Rule 25 provides that "[d]iscussions on substantive issues under 'Other Business' shall be avoided, and the [DSB] shall limit itself to taking note of the announcement by the sponsoring delegation" and any reaction by another delegation "directly concerned". Therefore, toeing the US line at the previous meeting, the US comments at this meeting would appear to constitute, but a belated response to Hong Kong, China's arguments presented at prior meetings. On the points raised by the

⁵ Hong Kong court sentences 3 Tiananmen vigil organisers to jail (**11 March** 2023), available at <https://www.aljazeera.com/news/2023/3/11/hong-kong-court-sentences-3-tiananmen-vigil-organisers-to-jail>; Hong Kong activists behind Tiananmen vigil jailed for months (**11 March** 2023), available at <https://apnews.com/article/1989-crackdown-tiananmen-activist-hong-kong-court-6d8b471d28fb6a8bb45c01b93adc0730>.

⁶ Police in Hong Kong warn over vigil as Tiananmen 'erased' (**3 June** 2022), available at <https://www.aljazeera.com/news/2022/6/3/police-hong-kong-warn-over-vigil-as-tiananmen-erased>; Hong Kong Catholic church cancels Tiananmen memorial Mass (**24 May** 2022), available at <https://www.washingtonpost.com/world/2022/05/24/hong-kong-catholic-church-tiananmen>.

⁷ Hong Kongers who clapped in court jailed on sedition charges (**27 October** 2022), available at <https://apnews.com/article/hong-kong-government-and-politics-5268cf581cd78da5bd8d766d5c249c05>.

⁸ Five in Hong Kong found guilty of sedition for 'anti-government' children's books (**7 September** 2022), available at <https://www.reuters.com/world/asia-pacific/five-hong-kong-found-guilty-sedition-anti-government-childrens-books-2022-09-07>; Hong Kong: two arrested for possessing 'seditious' children's book (**17 March** 2023), available at <https://www.theguardian.com/world/2023/mar/17/hong-kong-two-arrested-for-possessing-seditious-childrens-book>.

⁹ **Panel Report, US – Origin Marking Requirement**, para. 7.353.

United States in its statement just now, Hong Kong, China wished to refer to the statement made under Agenda item 12 at the DSB meeting on 27 January 2023.¹⁰ Having said that, since the US had just put forth their arguments, political considerations, and version of what Hong Kong was like, at length, Hong Kong, China wished to point out that after having heard the US points, including their arguments regarding their version of Hong Kong's circumstances, the panel in DS597 had found that the origin marking requirement arbitrarily imposed on Hong Kong products by the United States was inconsistent with the WTO rules – specifically the most-favoured-nation treatment obligation. The panel had also examined in detail and ruled on the US claims on the "self-judging" nature of the security exceptions clauses under Article XXI of the GATT 1994. The panel had ruled in the negative. Without going further into the panel's rulings in DS597, which were clear to all Members, Hong Kong, China wished to point out that full and due process had been observed before the issuance of the panel report, and, despite the US insistence on its view on the entirely self-judging nature of Article XXI of the GATT 1994, in DS597, among the 13 third parties to the case, none of the Members had expressed agreement with the US on this point. Hong Kong, China would go no further on this case at this time and would reserve its position in giving further response to or following up on the US statement.

5.3. The representative of China said that China wished to remind Members that "Other Business" was not an appropriate venue for substantive discussions, as stated by Hong Kong, China. Second, China wished to refer to its previous statements made under several Agenda items of the DSB meeting in January 2023. Considering the systemic importance of this issue, China wished to raise two points. First, China wished to reiterate that, as panels had ruled in several cases, the security exception was not entirely self-judging and should not serve as the basis or a safe harbour for protectionism and unilateralism. Second, China rejected in the strongest terms the US allegations, unilateral judgement, and interference with other Members' internal affairs. China wished to remind the United States that the WTO dispute settlement mechanism was a forum to resolve trade disputes based on the WTO rules, rather than a place to discuss political issues. China referred to its previous statements on this matter and had provided a detailed explanation on its positions.

5.4. The DSB took note of the statements.

6 ELECTION OF CHAIRPERSON

6.1. The outgoing Chairperson said that before proceeding with the election of the next Chairperson of the DSB, she wished to make a short statement. She said that since she had taken over from Ambassador Chambovey, as Chair of the DSB, in February 2022, she had presided over the proceedings of 16 DSB meetings: both regular and special. She said that it had been both a privilege and a pleasure to oversee, on a monthly basis, the operations of one of the regular Bodies of the WTO. She wished to sincerely thank all DSB delegations for their cooperation over the past 12 months. There had been some difficult issues to resolve in the course of the proceedings, but fortunately, together with delegations, it was possible to find solutions to the issues at hand. It had been a pleasure to work with all DSB participants on various matters within a spirit of collective cooperation among Members. She thanked all delegations for the support that they had given her over the previous year. She wished to take this opportunity to note that it was regrettable that, thus far, no consensus had been reached to launch new selection processes to appoint new Appellate Body members, and as a result this matter continued to remain on the DSB Agenda. She sincerely hoped that going forward, Members would be able to find a solution to this matter. However, it was encouraging that informal discussions on DS reform were ongoing and, at the present meeting, delegations had heard the first report on progress on this matter. Finally, she thanked the Secretariat for its assistance over the previous year – she had been struck by their professionalism and dedication to duty, which she had observed characterized the work of the WTO Secretariat staff with whom she had worked. Turning to the election of the next Chairperson of the DSB, she recalled that, at its meeting on 6 and 7 March 2023, the General Council had taken note of a consensus on a slate of names for Chairpersons to a number of WTO bodies including the DSB. On the basis of the understanding reached by the General Council, she proposed that the DSB elect, by acclamation, Ambassador Petter Ølberg of Norway as Chairperson of the DSB.

6.2. The DSB took note of the statement and so agreed.

¹⁰ See item 7 in document WT/DSB/M/475.

6.3. The incoming Chairperson thanked the outgoing Chair, on behalf of all Members, for her able leadership of the DSB over the past year. Her extensive experience and distinguished career in law and diplomacy had certainly contributed to leading this body in a professional and constructive manner, not least in the run up to MC12. He wished her every success in her new role as Chair of the General Council and looked very much forward to working closely with her in that capacity. He thanked all Members for the trust they had bestowed on him. He intended to engage with all Members and work in an open and constructive spirit to ensure the proper functioning of the DSB, which included Members' common goal and efforts to restore a fully functioning dispute settlement system and also how Members would take further the discussion on dispute settlement reform in the DSB.

6.4. The representative of Bangladesh said that Bangladesh thanked the outgoing Chair and wished her all the best in her GC role, and welcomed the incoming Chair. Bangladesh said that the new Chair of the DSB could count on Bangladesh's full support and wished him all the best.

6.5. The representative of the European Union said that the European Union wished to thank the outgoing Chair for her work and warmly welcome the new Chair. The European Union wished him well in this important and challenging role. Given the current challenges facing the dispute settlement system, it was all the more important that the DSB continued to properly exercise its functions as envisaged by the DSU. The European Union trusted in the new Chair's commitment to ensure that he could count on the full support of the European Union.

6.6. The representative of Australia said that Australia thanked the outgoing Chair for her leadership in the DSB over the previous year and welcomed the new Chair of the DSB.

6.7. The representative of Cambodia said that Cambodia wished to thank the outgoing Chair for her leadership, dedication, and enthusiasm in these challenging times as Chair of the DSB, and sincerely wished her every success in her next role as Chair of the General Council. Cambodia also warmly welcomed the new Chair.

6.8. The representative of Japan said that Japan thanked the outgoing Chair for her leadership and contributions to the DSB and her smooth conduct of the DSB meetings. Japan also welcomed the new Chair of the DSB, and said that Japan would closely work with him towards MC13.

6.9. The representative of China said that China wished to thank the outgoing Chair for her capable leadership and tireless efforts made during her term as the Chair of the DSB. China would continue to support her in her new role as the Chair of the General Council and hopefully Members could provide positive news to her before MC13. China also welcomed the new Chair of the DSB. China said that it would constructively work with him on dispute settlement-related issues and that he could count on China's full support and collaboration.

6.10. The representative of Korea said that Korea thanked the outgoing Chair for the dedication and serenity she had shown in these challenging times as Chair of the DSB. Korea sincerely wished her every success in her next role as Chair of the General Council, especially in the road up to MC13. Korea also warmly welcomed the new Chair. With his extensive experience in multilateral fora, Korea expected him to guide the DSB in a professional and constructive manner. Korea looked forward to working closely with him and said that he could count on Korea's full support during his tenure as Chair.

6.11. The representative of the Russian Federation said that the Russian Federation wished to thank the outgoing Chair for her work as the DSB Chair through challenging times. Russia congratulated her on her new role as the Chair of the General Council and wished her the very best of luck in her new capacity. Russia also welcomed the incoming Chair of the DSB and said that it stood ready to work together in 2023.

6.12. The DSB took note of the statements.
