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Dispute Settlement Body
28 January 2019

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 28 JANUARY 2019

Chairperson: Ms. Sunanta Kangvalkulkij (Thailand)

Prior to the adoption of Agenda, the item concerning the adoption of the Panel Report in the dispute on: "United States – Countervailing Measures on Certain Pipe and Tube Products from Turkey" (DS523) was removed from the proposed Agenda following the decision by the United States to appeal the Panel Report.

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1.1. The Chairperson noted that there were eight sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. She recalled that Article 21.6 requires that: "[u]nless 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, she invited 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: "[r]epresentatives 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". She then turned to the first status report under this Agenda item.

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.191)

1.2. The Chairperson drew attention to document WT/DS184/15/Add.191, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.3. The representative of the United States said that the United States had provided a status report in this dispute on 17 January 2019, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that his country wished to thank the United States for its 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's 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.166)

1.6. The Chairperson drew attention to document WT/DS160/24/Add.166, 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 17 January 2019, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

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

1.9. The representative of China said that his country noted that the United States had submitted its 167th status report for this dispute. This most recent status report, as was the case for the status reports submitted by the United States ahead of previous DSB meetings, was not different from the very first status report submitted in this dispute 14 years ago. Nearly two decades after the DSB had adopted the Panel Report in this dispute, and without further implementation, the United States had continuously failed to provide the minimum standard of protection as required by the WTO TRIPS Agreement. Article 21.1 of the DSU stated that: "[p]rompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members". Without concrete compliance actions, the effectiveness and confidence attached to dispute resolution would be severely undermined. China, therefore, urged the United States to faithfully honour its commitments under the DSU and the TRIPS Agreement by implementing the DSB's recommendations and rulings of this dispute without further delay.

1.10. The representative of the United States said that as the United States had noted at prior DSB meetings, by intervening under this item, China attempted to give the appearance of concern for intellectual property rights. Yet, China had been engaging in industrial policy which had resulted in the transfer and theft of intellectual property and technology to the detriment of the United States and its workers and businesses. China's stated intention was to achieve global dominance in advanced technology. This caused harmful trade-distortive policies and practices. As the companies and innovators of China and other Members knew well, the intellectual property protection that the United States provided within its own territory equalled or surpassed that of any other Member.

Indeed, as China also knew well, none of the damaging technology transfer practices of China that the Membership had discussed at recent DSB meetings were practices that Chinese companies or innovators faced in the United States.

1.11. The representative of China said that the United States had tried to derail the discussion to other irrelevant issues. However, distraction was not the solution. The issue under this Agenda item was whether the United States had fully implemented the DSB's recommendation and rulings in DS160. Obviously, the answer was negative. In its statement under this Agenda item, the United States appeared to suggest the primacy of its protection of intellectual property rights as compared with that of others. However, given the simple fact that the United States had deliberately delayed its compliance with the DSB's recommendations and rulings in this dispute for more than 14 years, and that the United States had become the only WTO Member who failed to implement the DSB's recommendations and rulings under the TRIPS Agreement, the US suggestion was clearly flawed in the absence of valid legal benchmarks. Regarding the US claims regarding China's intellectual property protection issues, China wished to refer to its statements delivered at various forums, including its statement made at the DSB meeting held on 28 May 2018. His country took its commitments under the TRIPS Agreement seriously. China welcomed and always stood ready to engage in good faith discussions with other Members concerning any intellectual property issue. Under this Agenda item, China, once again, urged the United States to faithfully honour its commitments under the DSU and the TRIPS Agreement by complying fully with the DSB's recommendations and rulings in this dispute without further delay. In addition, China invited the United States to consider including in its next status report the specific reasons as to why implementation of the DSB's recommendations and rulings in this dispute could not take place for so long in this dispute.

1.12. 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.129)

1.13. The Chairperson drew attention to document WT/DS291/37/Add.129, 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.

1.14. The representative of the European Union said that his delegation continued to progress with the authorizations where the European Food Safety Authority had finalized its scientific opinion and concluded that there were no safety concerns. On 19 December 2018, the European Commission had adopted 2 authorizations for GMOs for food and feed use: one for a new GM maize[1] and one for the renewal of a GM maize.[2] On 14 January 2019, four draft authorizations – one for the renewal of a GM oilseed rape[3], two for new GM maize[4] and one for new cotton[5] – were presented for a vote in the Appeal Committee with a "no opinion" result. Going forward, it was for the European Commission to decide on these authorizations. Also on 14 January 2019, three draft authorizations for new GM maize[6] had been presented for a vote in a member States Committee with a "no opinion" result. These measures would then be submitted for a vote in the Appeal Committee in February. The EU continued to be committed to act in line with its WTO obligations. As the EU had stated many times at previous DSB meetings, the EU wished to recall that the EU approval system was not covered by the DSB's recommendations and rulings in this dispute.

1.15. The representative of the United States said that the United States thanked the European Union (EU) for its status report and its statement at the present meeting. The United States continued to be concerned with the EU's measures affecting the approval of biotech products. Delays persisted and affected dozens of applications that had been awaiting approval for months or years, or that had already received approval. Further, even when the EU finally approved

[1] Maize MON 87427 x MON 89034 x 1507 x MON 88017 x 59122.
[2] Maize NK603 x MON 810.
[3] Renewal of oilseed rapes Ms8, Rf3, Ms8xRf3 (for feed).
[4] Maize 5307 and Maize MON 87403.
[5] Cotton GHB614xLLCotton25xMON15985.
[6] Maize 4114, Maize MON 87411 and Maize Bt11xMIR162x1507xGA21.

a biotech product, EU member States continued to impose bans on the supposedly approved product. As the United States had highlighted at prior DSB meetings, the EU maintained legislation that permitted EU member States to "opt out" of certain approvals, even where the European Food Safety Authority (EFSA) had concluded that the product was safe. The EU's opt out legislation permitted EU member States to restrict for non-scientific reasons certain uses of EU-authorized biotech products in their territories. At least 17 EU member States, as well as certain regions within EU member States, had submitted requests to opt out of EU approvals. The United States again highlighted a public statement issued by the EU's Group of Chief Scientific Advisors on 13 November 2018, in response to the 25 July 2018 European Court of Justice (ECJ) ruling that addressed the forms of mutagenesis that qualified for the exemption contained in EU Directive 2001/18/EC. The Directive had been a central issue in dispute in these WTO proceedings, and concerned the Deliberate Release into the Environment of Genetically Modified Organisms, or GMOs. The EU Group of Chief Scientific Advisor's statement recognized that, "in view of the Court's ruling, it becomes evident that new scientific knowledge and recent technical developments have made the GMO Directive no longer fit for purpose". In light of these statements, the United States urged the EU to act in a manner that would bring into compliance the measures at issue in this dispute. The United States further urged the EU to ensure that all of its measures affecting the approval of biotech products, including measures adopted by individual EU member States, were based on scientific principles, and that decisions were taken without undue delay.

1.16. The representative of the European Union said that the United States had referred to what they called the "opt-out legislation". His delegation wished to repeat that the "opt-out" Directive was not covered by the DSB's recommendations and rulings in this dispute. He also wished to repeat that no EU member State had imposed any ban thus far. Moreover, under the terms of Directive 2001/18, an EU member State could adopt measures restricting or prohibiting cultivation only if such measures were: in line with EU law; reasoned, proportional and non-discriminatory; and based on compelling grounds. In July 2018, the European Court of Justice (ECJ) had provided important clarification on the scope of application of the GMO legislation in relation to organisms obtained by mutagenesis techniques. The ECJ had ruled that organisms obtained by means of new techniques/methods of mutagenesis, which had appeared or had been mostly developed following the adoption of Directive 2001/18, fell within the scope of the Directive. The ruling had not extended the scope of the legislation but had clarified how it should be read. The European Commission was currently working to ensure proper implementation of the ruling together with EU member States. EU member States were responsible at the national level for the relevant control activities regarding placing both products produced in the EU and imported ones on the market. To this effect, the EU Joint Research Centre (JRC) was helping national laboratories to develop relevant detection methods. There had been many reactions to the outcome of the ECJ ruling, which had brought forward a wide range of different views. Amongst these, the Group of Chief Scientific Advisors of the Scientific Advice Mechanism (SAM) had issued a statement which provided a scientific perspective on the regulatory status of products derived from gene editing. This statement focused on the new mutagenesis techniques and did not question previously authorized GMOs. The Group of Chief Scientific Advisors provided independent scientific advice to the European Commission. Its work fed into ongoing discussions with all stakeholders.

1.17. 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.13)

1.18. The Chairperson drew attention to document WT/DS464/17/Add.13, 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.

1.19. The representative of the United States said that the United States had provided a status report in this dispute on 17 January 2019, in accordance with Article 21.6 of the DSU. On 15 December 2017, the US Trade Representative had requested that the US Department of Commerce make a determination under section 129 of the Uruguay Round Agreements Act to address the DSB's recommendations relating to the Department's countervailing duty investigation of washers from Korea. On 18 December 2017, the Department of Commerce had initiated a proceeding to make such determination. Following initiation, Commerce had issued initial and

supplemental questionnaires seeking additional information. On 4 April 2018, Commerce had issued a preliminary determination revising certain aspects of its original determination. Following issuance of the preliminary determination, Commerce had provided interested parties with the opportunity to submit comments on the issues and analysis in the preliminary determination and rebuttal comments. Commerce had reviewed those comments and rebuttal comments and had taken them into account for purposes of preparing the final determination. On 4 June 2018, Commerce had issued a final determination, in which Commerce had revised certain aspects of its original determination. Specifically, Commerce had revised the analysis underlying the CVD determination, as it pertained to certain tax credit programmes, in response to the findings adopted by the DSB. The United States continued to consult with interested parties on options to address the DSB's recommendations relating to anti-dumping measures challenged in this dispute.

1.20. The representative of Korea said that his country wished to thank the United States for its status report and the statement made at the present meeting. Korea wished to refer to its statements made at previous DSB meetings. Korea urged the United States to faithfully implement the DSB's recommendations and rulings in this dispute.

1.21. The representative of Canada said that his country was concerned that the United States had not implemented the DSB's recommendations and rulings in this dispute. In particular, Canada was deeply disappointed that, despite the expiry of the reasonable period of time, the United States continued to collect cash deposits from Canadian exporters based on a methodology that had been found to be "as such" inconsistent with WTO obligations in this dispute.

1.22. 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.5)

1.23. The Chairperson drew attention to document WT/DS471/17/Add.5, 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.

1.24. The representative of the United States said that the United States had provided a status report in this dispute on 17 January 2019, in accordance with Article 21.6 of the DSU. As explained in that report, the United States continued to consult with interested parties on options to address the DSB's recommendations.

1.25. The representative of China said that the Appellate Body report in this dispute had been circulated to Members on 11 May 2017. On 22 May 2017, the DSB had adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report. The Arbitration pursuant to Article 21.3(c) of the DSU had determined the reasonable period of time (RPT) to be 15 months. The RPT had expired on 22 August 2018. On 9 September 2018, China had requested authorization from the DSB to suspend concessions or other obligations and the matter had been referred to arbitration in line with the Article 22.6 of the DSU. Thus far, the United States had submitted six status reports. None of the status reports indicated any substantive implementation progress by the United States to address the DSB's recommendations in this dispute other than "consulting with the interested parties". Due to its consistent incompliance, 20 months after the DSB had adopted the Appellate Body report and the panel report in this dispute, and 5 months after the expiry of the RPT, this dispute was still unresolved. Unfortunately, China was not the only victim. Based on the Agenda of the present meeting, five of the eight disputes within Agenda item 1 related to the failure by the United States to implement the DSB's rulings and recommendations. Not only did such behaviour violate the clear text of the DSU, it also cast doubts on the effectiveness and credibility of the WTO dispute settlement system. These doubts ran against the interests of the entire Membership. With regard to this dispute, China was very disappointed and deeply concerned with the US progress in implementing the DSB's adopted recommendations and rulings. The WTO-inconsistent measures taken by the United States had seriously infringed China's legitimate economic and trade interests, distorted the relevant international market as well as seriously damaged the rules-based multilateral trading system. This should alert all Members and the international community. China, once again,

urged the United States to take concrete actions, fully respect WTO rules, and faithfully implement the DSB's recommendations and rulings in this dispute.

1.26. The representative of the United States said that the United States took note of China's statement made at the present meeting and would convey it to capital. The United States was willing to discuss this matter with China on a bilateral basis. To be clear, however, it was incorrect to suggest that the United States had taken no action. As the United States had reported to the DSB at previous DSB meetings, the United States continued to consult with interested parties on options to address the DSB's recommendations in this dispute. That internal process was ongoing.

1.27. The representative of China said that his delegation noted that the United States had repeatedly expressed its willingness to discuss its implementation of the DSB's recommendations and rulings in this dispute bilaterally with China. However, the prompt resolution of this dispute required concrete deeds rather than mere good words. As Article 21.1 of the DSU stated: "[p]rompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members". China, therefore, urged the United States to faithfully bring its WTO-inconsistent measures into conformity with its obligations without further delay.

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

F. Indonesia – Measures concerning the importation of chicken meat and chicken products: Status report by Indonesia (WT/DS484/18/Add.4)

1.29. The Chairperson drew attention to document WT/DS484/18/Add.4, which contained the status report by Indonesia on progress in the implementation of the DSB's recommendations in the case on measures concerning the importation of chicken meat and chicken products.

1.30. The representative of Indonesia said that his country had submitted this report in accordance with Article 21.6 of DSU. On 22 November 2017, the DSB had adopted its recommendations and rulings in this dispute. At the 22 January 2018 DSB meeting, Indonesia had informed the DSB of its intention to implement the DSB's recommendations and rulings in this dispute. Indonesia and Brazil had also informed the DSB, on 15 March 2018, of their agreement on a reasonable period of time (RPT) for Indonesia to implement the DSB's recommendations and rulings in this dispute. The RPT had expired on 22 July 2018. His delegation wished to inform Members that Indonesia had undertaken the necessary steps to adjust the relevant measures by amending its regulations, namely: (i) Ministry of Agriculture Regulation No. 23/2018, which had entered into force on 24 May 2018; and (ii) Ministry of Trade Regulation No. 65/2018, which had entered into force on 31 May 2018. These regulations had also been notified to the Committee of Import Licensing on 15 August 2018 with document number G/LIC/N/2/IDN/39 and G/LIC/N/2/IDN/41. With those revisions, as Indonesia had stated at previous DSB meetings, products concerned by this dispute could be imported. Importers were allowed to modify the information contained in their import licenses without any sanctions. Regarding the distribution plan, Indonesia's domestic producers also had a plan for their products to be distributed. With respect to the submitted questionnaire, the process of internal examination had entered its final stage. Indonesia stood ready to continue to consult and would remain in constant communication with Brazil with respect to any matter relating thereto.

1.31. The representative of Brazil said that her country wished to thank Indonesia for its status report, which Brazil was currently reviewing. Brazil had concerns about Indonesia's implementation of the DSB's recommendations and rulings in this dispute. These concerns related, *inter alia*, to the "positive list requirement", which was still in force. Indonesia had chosen to maintain the list and include some of the HS codes of chicken meat and chicken products that had been the subject of Brazil's complaint. One HS code, however, still remained to be included in Indonesia's positive list. In addition, Brazil noted that Indonesia had eliminated the requirement of distribution reports with information regarding use or place of sale of imported chicken meat and chicken products. The requirement of distribution plans nonetheless still existed by force of Article 22(1)(l) of Ministry of Agriculture Regulation 34/2016. Brazil was aware of the possibility of making amendments to the terms of import licenses. However, it was Brazil's understanding that the amendments still subjected importers to several sanctions in the event that some requirements were not strictly observed. Brazil

wished to highlight, as a final point, the unsatisfactory status of the analysis of Brazil's veterinary health certificate for the importation of chicken meat and chicken products. Brazil believed that undue delay continued with Indonesia's approval of the certificate. The reasonable period of time (RPT) for Indonesia to comply with the DSB's recommendations and rulings in this dispute had expired on 22 July 2018. Full implementation, as Brazil had previously explained, remained to be seen. Brazil thus urged Indonesia to fully comply with the DSB's recommendations and rulings in this dispute. Brazil stood ready to work with Indonesia with respect to any aspect of this dispute.

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

G. United States – Anti-dumping measures on certain oil country tubular goods from Korea: Status report by the United States (WT/DS488/12/Add.4)

1.33. The Chairperson drew attention to document WT/DS488/12/Add.4, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning anti-dumping measures on certain oil country tubular goods from Korea.

1.34. The representative of the United States said that on 11 January 2019, the United States and Korea had informed the DSB that the parties had mutually agreed to modify the previously notified reasonable period of time for implementation of the DSB's recommendations and rulings in this dispute pursuant to Article 21.3(b) of the DSU. The reasonable period of time now expired on 12 July 2019. The United States had provided a status report in this dispute on 17 January 2019, in accordance with Article 21.6 of the DSU. On 23 November 2018, the US Department of Commerce had provided notice in the US Federal Register that it had commenced a proceeding to gather information, analyse record evidence, and consider the determinations which would be necessary to bring the anti-dumping investigation at issue in this dispute into conformity with the DSB's recommendations and rulings. The notice was available at 83 F.R. 59359. The United States would continue to consult with interested parties on options to address the DSB's recommendations.

1.35. The representative of Korea said that his country wished to thank the United States for its status report and the statement made at the present meeting, which reflected the modification of the reasonable period of time (RPT). Since the modification of the RPT had been made based on the mutual agreement between Korea and the United States, Korea strongly requested the United States to faithfully implement the DSB's recommendations and rulings and eventually to bring the measure into compliance within the RPT, which would expire on 12 July 2019. Korea would continue to closely monitor actions taken by the United States towards the implementation of the DSB's recommendations and rulings in this dispute.

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

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

1.37. The Chairperson drew attention to document WT/DS477/21 – WT/DS478/22, 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.

1.38. The representative of Indonesia said that his delegation had submitted this report pursuant to Article 21.6 of the DSU. On 22 November 2017, the DSB had adopted the recommendations and rulings in respect of the Panel and Appellate Body reports in this dispute. At the 28 February 2018 DSB meeting, Indonesia had informed the DSB that it intended to implement the DSB's recommendations and rulings in this dispute, but that it would need a reasonable period of time (RPT) to do so. Pursuant to Article 21.3 (b) of the DSU, Indonesia, the United States and New Zealand had mutually agreed on the RPT to implement the DSB's recommendations and rulings. That RPT had expired on 22 July 2018. Nevertheless, with regard to the DSB's recommendations and rulings concerning Measure 18, Indonesia, the United States and New Zealand also had mutually agreed that Indonesia would have more time to make statutory changes to comply with the DSB's recommendations and rulings in this dispute. Accordingly, the United States and New Zealand would not initiate further proceedings concerning Measure 18 until at least 22 June 2019. Indonesia wished

to inform the DSB that it had taken appropriate steps to implement the DSB's recommendations and rulings in this dispute within the RPT agreed by the parties. To this end, Indonesia had issued amended regulations that addressed measures found to be inconsistent with its WTO obligations in the following manner. For measures 1-9, i.e., the measures concerning the importation of horticultural products, Indonesia had issued two regulations, namely: Minister of Agriculture Regulation No. 24/2018; and Minister of Trade Regulation No. 64/2018. These regulations had come into force on 6 June 2018 and 31 May 2018 respectively. For measures 10 – 17, i.e., the measures concerning the importation of animals and animal products, Indonesia had also amended previous relevant regulations, namely: Minister of Agriculture Regulation No. 23/2018; and Minister of Trade Regulation No. 65/2018, which had come into force on 24 May 2018 and 31 May 2018 respectively. In addition, for transparency purposes, Indonesia had notified these regulations to the Committee of Import Licensing on 15 August 2018. These notifications were contained in the following documents: G/LIC/N/2/IDN/39, G/LIC/N/2/IDN/40, G/LIC/N/2/IDN/41, and G/LIC/N/2/IDN/42. Indonesia had provided the United States and New Zealand with copies of all relevant regulations. Indonesia stood ready to maintain constant communication with the United States and New Zealand with respect to any matter relating to the settlement of this dispute.

1.39. The representative of New Zealand said that his country wished to thank Indonesia for its status report and its statement made at the present meeting. New Zealand acknowledged the steps that Indonesia had taken to date to bring its regulations into compliance with the DSB's recommendations and rulings in this dispute. New Zealand welcomed Indonesia's commitment to comply fully with the DSB's recommendations and rulings in this dispute. New Zealand did not consider, however, that full compliance had been reached in respect of a number of measures addressed in this dispute. Of particular concern still were the continued enforcement by Indonesia of harvest period import bans and realization requirements, and the restrictions placed on import volumes based on storage capacity. New Zealand, therefore, wished to thank Indonesia for its continued engagement, including its status report. Beyond what was set out in this status report, New Zealand understood that further legislative change was under way in Indonesia. New Zealand looked forward to hearing progress in the coming months. New Zealand would continue to work with Indonesia to achieve long-term and commercially meaningful compliance with the DSB's recommendations and rulings in this dispute.

1.40. The representative of the United States said that in November 2017, the DSB had adopted reports finding that Indonesia's measures on horticultural products, animal, and animal products breached Article XI:1 of the GATT 1994. Accordingly, the DSB had recommended that Indonesia bring its measures into conformity with its obligations under the GATT 1994. The reasonable period of time for Indonesia to implement the DSB's recommendations and rulings had expired on 22 July 2018. The United States considered that Indonesia had failed to bring its measures restricting the importation of horticultural products, animals, and animal products into compliance with WTO rules. In August 2018, the United States had requested authorization from the DSB to suspend concessions or other obligations at an annual level based on a formula commensurate with the trade effects caused to the interests of the United States. Indonesia had objected to the US request, referring the matter to arbitration. The United States had paused the arbitration to give the parties more time to work towards a resolution to this dispute. Regrettably, contrary to the assertions in its status report, Indonesia had failed to bring its measures into compliance. For example, Indonesia continued to impose quantitative restrictions on imported products, and still maintained application window, validity period, and fixed term requirements for import licenses that effectively banned the importation of US horticultural products for weeks at a time. The DSB had already found these Indonesian restrictions to be inconsistent with Article XI:1 of the GATT 1994. The United States remained willing to work with Indonesia to fully and meaningfully resolve this dispute, permitting US farmers and ranchers to satisfy the demand from Indonesian importers for their high-quality products. The United States looked forward to hearing promptly from Indonesia what additional actions it would take to bring its measures into full compliance.

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

2 BRAZIL – CERTAIN MEASURES CONCERNING TAXATION AND CHARGES

A. Implementation of the recommendations of the DSB

2.1. The Chairperson recalled that in accordance with DSU provisions, the DSB was required to keep under surveillance the implementation of the DSB's recommendations and rulings in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned had to inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the DSB's recommendations and rulings. She further recalled that at its 11 January 2019 meeting, the DSB had adopted the Appellate Body reports and the Panel reports, as modified by the Appellate Body reports, pertaining to the disputes on: "Brazil – Certain Measures Concerning Taxation and Charges" (DS472; DS497). She then invited the representative of Brazil to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

2.2. The representative of Brazil said that on 11 January 2019, the DSB had adopted the Panel reports and Appellate Body reports in the disputes on: "Brazil – Certain Measures Concerning Taxation and Charges" (DS472; DS497). Pursuant to the first sentence of Article 21.3 of the DSU, Brazil wished to state its intention to fully implement the DSB's recommendations and rulings in these disputes in compliance with Brazil's WTO obligations. Brazil, however, deemed it impracticable to comply immediately with the DSB's recommendations and rulings in these disputes and would need a reasonable period of time for implementation. Brazil stood ready to discuss these matters with the EU and Japan.

2.3. The representative of the European Union said that his delegation stood ready to engage in dialogue with Brazil in a constructive manner in the weeks following the present meeting, with a view to achieving prompt and full compliance and the positive resolution of this dispute. If immediate compliance was impracticable, the EU would be happy to discuss what the removal of the prohibited subsidies "without delay" entailed, as well as the reasonable period of time to bring all other WTO-inconsistent measures into compliance.

2.4. The representative of Japan said that his country wished to express its appreciation of Brazil's intention to implement the DSB's recommendations and rulings as Brazil had expressed in its statement made at the present meeting. In order to ensure clear and prompt settlement of this dispute, Japan expected Brazil to take necessary actions for prompt implementation of the DSB's recommendations and rulings. Japan was willing to discuss this matter, including an appropriate reasonable period of time, in good faith with Brazil and the EU.

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

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

A. Statement by the European Union

3.1. The Chairperson said that this item was on the Agenda of the present meeting at the request of the European Union. She then invited the representative of the European Union to speak.

3.2. The representative of the European Union said that his delegation had requested, once again, that the United States stop transferring anti-dumping and countervailing duties to the US industry. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations and rulings in this dispute. The EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit implementation reports in this dispute. The EU would continue to place this item on the Agenda as long as the United States had not implemented the DSB's recommendations and rulings in this dispute.

3.3. The representative of the United States said that as the United States had noted at previous DSB meetings, the Deficit Reduction Act – which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 – had been enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and

rulings in these disputes. The United States recalled, furthermore, that the EU had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, more than 10 years ago. With respect to the EU's request for status reports in this matter, as the United States had already explained at previous DSB meetings, there was no obligation under the DSU to provide further status reports once a Member announced that it had implemented the DSB's recommendations and rulings, regardless of whether the complaining party disagreed about compliance. The practice of Members confirmed this widespread understanding of Article 21.6 of the DSU. Responding party Members did not continue submitting status reports where the responding Member had claimed compliance and the complaining Member disagreed, as Members would see under the next Agenda item concerning the "EC – Large Civil Aircraft" dispute (DS316). As the EU was aware, the United States had announced in this dispute that it had implemented the DSB's recommendations and rulings. If the EU disagreed, there would simply appear to be a disagreement between the parties to the dispute about the situation of compliance.

3.4. The representative of Canada said that his country wished to thank the European Union for placing this item on the Agenda of the present meeting. Canada shared the EU's view that this dispute had to remain under surveillance of the DSB until the United States ceased to apply the measures at issue in this dispute.

3.5. The representative of Brazil said that as an original party to this dispute, his country wished to thank the EU, once again, for placing this item on the DSB Agenda. The main aspect of this item on the Agenda – beyond the discussion about the obligation or not for the concerned Member to continue to submit status reports – was that after more than 15 years of the DSB's recommendations and rulings in this dispute, and more than 12 years after the date of the Deficit Reduction Act that had repealed the Byrd Amendment, millions of dollars in anti-dumping and countervailing duties charged on Brazilian and other Members' exports were still being illegally disbursed to US domestic petitioners. Brazil called on the United States to fully comply with the DSB's recommendations and rulings in this dispute.

3.6. The DSB took note of the statements.

4 EUROPEAN COMMUNITIES AND CERTAIN MEMBER STATES – MEASURES AFFECTING TRADE IN LARGE CIVIL AIRCRAFT: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

A. Statement by the United States

4.1. The Chairperson said that this item was on the Agenda of the present meeting at the request of the United States. She then invited the representative of the United States to speak.

4.2. The representative of the United States said that the United States noted that, once again, the EU had not provided Members with a status report concerning the "EC – Large Civil Aircraft" dispute (DS316). The United States had raised this same issue at recent past DSB meetings, where the EU had similarly chosen not to provide a status report. As the United States had noted at several recent DSB meetings, the EU had argued that Article 21.6 of the DSU required that: "the issue of implementation … shall remain on the DSB's agenda until the issue is resolved". And the EU had argued that where the EU itself did not agree with another Member's "assertion that it has implemented the DSB recommendations and rulings", "the issue remains unresolved for the purposes of Article 21.6 DSU". Yet for this dispute, the EU had conceded at the 18 December 2018 DSB meeting that "compliance proceedings in this dispute are still ongoing and whether or not the matter is resolved is the very subject matter of th[e] ongoing litigation". This stated EU position simply contradicted the EU's actions in this dispute. Given the EU's failure to provide a status report in this dispute again ahead of the present meeting, the United States failed to see how the EU's behaviour was consistent with the alleged systemic view it had been espousing for more than 10 years. Under the EU's own view, the EU should have been providing status reports. Yet it had failed to do so. The only difference that the United States could see was that, now that the EU was a *responding* party, the EU was choosing to contradict the reading of Article 21.6 of the DSU it had long erroneously promoted. The EU's purported rationale was that it did not need to provide a status report because it was pursuing a second compliance panel under Article 21.5 of the DSU. But as the United States had explained at previous DSB meetings, there was nothing in Article 21.6 of the DSU to support this position. By way of contrast, under Article 21.6 of the DSU, a responding party

Member provided the DSB with a status report "of its progress in the implementation" of the DSB's recommendations. But once the Member had announced compliance there was no further "progress" on which it could report. And the conduct of every Member when acting as a responding party, including the EU, showed that WTO Members understood that a responding party had no obligation under Article 21.6 of the DSU to continue supplying status reports once that Member announced that it had implemented the DSB's recommendations. As the EU allegedly disagreed with this position, it should for future DSB meetings provide status reports in this dispute. At the 18 December 2018 DSB meeting, the EU had also argued that since "the DSB exercised its function through the establishment of a compliance panel… [t]he matter is currently with the adjudicators and therefore temporarily taken out of the DSB's surveillance". Once again, however, the EU was inventing legal standards without grounds in the agreed text of the DSU. There was no reference in Article 21.6 of the DSU to pausing or terminating surveillance in light of a compliance panel proceeding. However, Article 21.6 of the DSU *did* refer to a Member submitting a report on its "progress in the implementation" of the DSB's recommendations. As explained, it followed that if a Member considered it had completed its "progress in the implementation" *by implementing*, then there would be no further obligation to provide a report.

4.3. The representative of the European Union said that the United States had avoided using the words "Byrd Amendment" in its statement and had kept referring to "the view that the EU has long promoted" or to "the view that the EU has espoused for more than a decade". This had actually been a reference to the "US — Offset Act (Byrd Amendment)" disputes (DS217; DS234) and the Agenda item that Members had discussed prior to this Agenda item. His delegation wished to state that the United States kept on trying to cover and justify its failure to provide status reports in the "US — Offset Act (Byrd Amendment)" disputes (DS217; DS234) by referring to the "EC – Large Civil Aircraft" dispute (DS316). As his delegation had stated at previous DSB meetings, there was a difference between the "EC – Large Civil Aircraft" dispute (DS316) and the "US — Offset Act (Byrd Amendment)" disputes (DS217; DS234). In the "US — Offset Act (Byrd Amendment)" disputes (DS217; DS234), the disputes had been adjudicated and there were no further compliance proceedings pending. Under Article 21.6 of the DSU, the issue of implementation shall remain on the DSB's Agenda until the issue was resolved. In the "US — Offset Act (Byrd Amendment)" (DS217; DS234) disputes, the EU did not agree with the US assertion that the United States had implemented the DSB's recommendations and rulings. As a result, the issue remained unresolved for purposes of Article 21.6 DSU. In the "EC – Large Civil Aircraft" dispute (DS316), once the Appellate Body report on compliance had been issued, the EU had notified to the WTO a new set of measures in a compliance communication, submitted at the 28 May 2018 DSB meeting. With respect to the measures included in that communication, the United States had expressed the view that the EU had not yet fully complied with the DSB's recommendations. In response to the US view, on 29 May 2018, the EU had requested consultations with the United States pursuant to Articles 4 and 21.5 of the DSU. After the failure of the consultations, the EU had asked for the establishment of a compliance panel. The compliance panel had been established by the DSB on 27 August 2018. Hence, compliance proceedings in this dispute were still ongoing and whether or not the matter was resolved was the very subject matter of this ongoing litigation. With regard to the US comment on Article 21.6 of the DSU, the EU would be very concerned with a reading of this provision which would require the implementing Member to notify the status of implementation *while litigation on this issue was ongoing*. This view was further supported by Article 2 of the DSU on the administration of the dispute settlement rules and procedures. In the "EC – Large Civil Aircraft" dispute (DS316), and further to disagreement between the parties regarding compliance, the DSB had exercised its function through the establishment of a compliance panel. The matter was currently with the adjudicators and had therefore been temporarily taken out of the DSB's surveillance.

4.4. The DSB took note of the statements.

5 UNITED STATES – TARIFF MEASURES ON CERTAIN GOODS FROM CHINA

A. Request for the establishment of a panel by China (WT/DS543/7)

5.1. The Chairperson recalled that the DSB had considered this matter at its meeting on 18 December 2018 and had agreed to revert to it. She then drew attention to the communication from China contained in document WT/DS543/7 and invited the representative of China to speak.

5.2. The representative of China said that despite his country's strong opposition, the United States had begun to collect 25% additional duties on approximately US$34 billion of Chinese imports on

6 July 2018 and had imposed 10% additional duties on approximately US$200 billion of Chinese imports from 24 September 2018, based on a unilateral US determination under "Section 301" of its Trade Act of 1974. This was a blatant breach of US obligations under the WTO Agreements and was posing a severe systemic challenge to the multilateral trading system. China had requested consultations with the United States on 4 April 2018 and had filed supplements to its request for consultations on 6 July, 16 July, and 18 September 2018. Consultations had been held on 28 August and 22 October 2018. However, these consultations had failed to resolve this dispute. At the 18 December 2018 DSB meeting, China had made its first request for the establishment of a panel in this dispute. Due to the urgency of this dispute, which continued to damage China's legitimate economic and trade interests as well as the rules-based multilateral trading system, China had decided to make a second request for the establishment of a panel at the present meeting in accordance with WTO rules. The subject of this request was the US imposition of a 25% additional duty on US$34 billion of imports from China, and, subsequently, a 10% additional duty on US$200 billion of imports from China. When it had made its first request for the establishment of a panel at the 18 December 2018 DSB meeting, China had already explained in great detail the US measures at issue. China had made it clear: these unilateral actions taken by the United States had not only infringed China's rights and interests under the covered agreements, but they had also flagrantly violated various WTO rules and the fundamental principles of this Organization, such as non-discrimination, bound tariffs and the strengthening of the multilateral system, as set forth in Article I and Article II of the GATT 1994, as well as Article 23 of the DSU respectively. If the United States were free to continue infringing these principles without consequences, the future viability of this Organization was in dire peril. China believed it was important to all Members that unilateral actions, such as the one employed by the United States under Section 301, should have no room in this Organization. At the 18 December 2018 DSB meeting, the United States had attempted to justify its unilateral imposition of additional tariffs by citing grievances regarding certain Chinese acts, policies and practices identified in its Section 301 report. However, despite the validity of such assertions, the unilateral nature of the US measures blatantly ran against the very clear rules and principles agreed by the whole Membership, including itself. Contrary to US critiques, China's action of referring this dispute to the WTO dispute settlement system at the present meeting reaffirmed its strong support and commitment to the rules-based multilateral trading system and was helping to strengthen the viability of the system. To conclude his China's intervention, he reiterated his country's position taken at the 18 December 2018 DSB meeting: the US measures appeared to violate the provisions of Article I and Article II of the GATT 1994, as well as the Article 23 of the DSU. At the present meeting, China formally made its second request that the DSB establish a panel to examine this matter. China firmly believed that the DSB would deal with this matter in an objective and fair manner.

5.3. The representative of the United States said that at the 18 December 2018 DSB meeting, the United States had noted that China intended to do, and was doing, great damage to the international trading system. China damaged this system, which had brought China tremendous economic gains, both through its grossly unfair and trade-distorting forced technology transfer policies and practices and through this unfounded dispute. First, in bringing this dispute, China sought to use the WTO dispute settlement system as a shield for a broad range of trade-distorting policies and practices not covered by WTO rules. In doing so, it was China, and certainly not the United States, that was threatening the overall viability of the WTO system. Second, China's request was entirely hypocritical. China was currently damaging the United States not only through its forced technology transfer practices but additionally by imposing discriminatory duties on over US$100 billion in US exports. So, while China with one hand pointed an accusing finger at US tariff measures for being "unilateral" and WTO-inconsistent, with the other hand China pointed a finger squarely at itself by adopting its own "unilateral" tariff measures in connection with the very same issue. Third, in these circumstances, the outcome of any dispute settlement proceeding would be pointless. As the United States had noted, China had already taken the unilateral decision that the US measures could not be justified, and China had already imposed tariff measures on US goods. Accordingly, the United States regretted that China had chosen for a second time to request the establishment of a panel with regard to this matter. This action suggested China was not serious about addressing the legitimate concerns of its trading partners over Chinese technology transfer practices that no one could describe or defend as fair.

5.4. The representative of China said that his country simply wished to provide a brief response to the US statement. With respect to US claims against China's economic policy, his country wished to point out that the findings of the Section 301 investigations were a wilful distortion of facts and were full of selective assertions and allegations. China wished to refer to its statements made at previous

General Council meetings, CTG meetings as well as DSB meetings in 2018. His delegation was certain that in those statements, China had fully rebutted the arguments repeated by the United States at the present meeting. With respect to the US measures under Section 301 of the United States Trade Act of 1974, it was well settled among various stakeholders that these measures were unilateral in nature and were *per se* inconsistent with US WTO obligations. China saw no reason how attacking China or blaming China's policy could provide any legitimacy to the notorious and unilateral Section 301 US measures.

5.5. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU, with standard terms of reference.

5.6. The representatives of Brazil, Canada, the European Union, India, Indonesia, Japan, Kazakhstan, Korea, New Zealand, Norway, the Russian Federation, Singapore, Chinese Taipei and Ukraine reserved their third-party rights to participate in the Panel's proceedings.

6 TURKEY – ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES

A. Request for the establishment of a panel by the United States (WT/DS561/2)

6.1. The Chairperson recalled that the DSB had considered this matter at its meeting on 11 January 2019 and had agreed to revert to it. She then drew attention to the communication from the United States contained in document WT/DS561/2 and invited the representative of the United States to speak.

6.2. The representative of the United States said that the United States had explained that the US actions taken on imports of steel and aluminium pursuant to Section 232 were to address a threat to its national security. Every sovereign had the right to take action it considered necessary for the protection of its essential security. This inherent right had not been forfeited in 1947 with the GATT or in 1994 with the creation of the WTO. Instead, this right had been enshrined in Article XXI of the GATT 1994. The actions of the United States were completely justified under this Article. What remained inconsistent with the WTO Agreement, however, was the unilateral retaliation against the United States by various WTO Members including Turkey. These Members pretended that the US actions under Section 232 were so-called "safeguards", and claimed that their unilateral, retaliatory duties constituted suspension of substantially equivalent concessions under the WTO Agreement on Safeguards. Just as these Members appeared to be ready to undermine the dispute settlement system by ignoring the plain meaning of Article XXI and 70 years of practice, so too were they ready to undermine the WTO by pretending to follow its rules while imposing measures that blatantly disregarded them. The additional, retaliatory duties were nothing other than duties in excess of Turkey's WTO commitments and were applied only to the United States, contrary to Turkey's most-favoured-nation obligation. The United States would not permit its businesses, farmers, and workers to be targeted in this WTO-inconsistent way. For these reasons, the United States requested that the DSB establish a panel to examine this matter with standard terms of reference.

6.3. The representative of Turkey said that his country regretted that the United States was requesting, for the second time, the establishment of a panel in this dispute. As Turkey had previously stated many times, the root of this dispute was not the Turkish measures that were formally challenged by the United States. Rather, the real reason was the US decision taken in 2018 to impose unwarranted and unjustified unilateral measures on imports of steel and aluminium. At the 11 January 2019 DSB meeting and at the present meeting, the United States had stated that Turkey and certain other WTO Members were pretending that the US measures were safeguards and were pretending that the tariff action taken in response was the suspension of concessions. Turkey did not pretend anything. Turkey firmly believed – and would demonstrate – that the US measures were safeguards within the meaning of Article XIX of the GATT 1994 and the Agreement on Safeguards, and that Turkey's response was a suspension of concessions under the Agreement on Safeguards. It was instead the United States that was pretending that its measures were national security measures under Article XXI of the GATT 1994. They were not. They were by their very nature, their purpose and their design, economically-motivated safeguard measures. Turkey was confident that it would prevail in this dispute and looked forward to the establishment of the panel and to the opportunity to provide a detailed explanation of its measures and of its legal analysis. Turkey stood ready to engage in discussions with the United States as a long-standing WTO Member that was deeply committed to its WTO obligations and to the multilateral trading system at large.

6.4. The representative of the European Union said that at the 11 January 2019 DSB meeting, the DSB had considered this panel request for the first time. As Members knew, it related to Turkey's suspension of GATT obligations in response to the undeclared safeguard measures which the United States had taken to protect its steel and aluminium industries against imports. At the present meeting, the DSB would establish a panel, which could mark the end of a long series of DSB meetings in each of which the DSB had considered panel requests in relation to either the safeguard measures which the United States had taken starting in March 2018 or to the suspension of GATT obligations in response. This series, in and of itself, was testimony to the strength of the opposition which the US measures on steel and aluminium had generated across the world. Likewise, the number of cases of suspension of GATT obligations was testimony to the strength of this opposition. Time and again, the United States made at the DSB hardly changing statements that were intended to make all Members believe that the United States, in good faith, had taken the necessary measures to protect its essential security interests, and that the other WTO Members, in bad faith, had resorted to action that was not allowed. The EU was confident that these disputes would above all demonstrate that the rules-based multilateral trading system was good enough and strong enough to not allow the form of abuse of Article XXI of the GATT 1994 present in this case. This case did not fit under the requirements of that Article but merely served to protect two US industries against competition from imports. The EU was likewise confident that these disputes would confirm the right of WTO Members to resort to their right of suspension under the WTO Agreement on Safeguards, when a safeguard measure had actually been taken, irrespective of how the Member in question had called its measure.

6.5. The representative of the United States said that Turkey's approach for the retaliatory action at issue made clear that, like the United States, it did not consider the Safeguards Agreement to be applicable in this dispute. For example, Turkey had not addressed whether its action was in response to an alleged "safeguard" taken as a result of an absolute increase in imports. If there had been an absolute increase, the right to suspend substantially equivalent concessions under the Safeguards Agreement could not be exercised for the first three years of the safeguard measure. The United States did not understand how Turkey could claim to be following the Safeguards Agreement without actually following what the Safeguards Agreement said. There was no doubt that Article XIX of the GATT 1994 could be invoked by a Member to depart temporarily from its commitments in order to take emergency action with respect to increased imports. The United States, however, was not invoking Article XIX as a basis for its Section 232 actions and had not utilized its domestic law on safeguards. Thus, Article XIX and the Safeguards Agreement were not relevant to the US actions under Section 232. Because the United States was not invoking Article XIX, there was no basis for another Member to pretend that Article XIX should have been invoked and to use safeguards rules that were simply inapplicable.

6.6. The representative of Turkey said that Members were not bound by the US characterization of the measures, since the US measures were merely guided by economic purposes and consisted of all substantive elements of a safeguard measure. As Turkey had underlined several times, the import restrictions on steel and aluminium had been taken by the United States in order to protect the US industry from the economic effects of competing imports. They were "emergency measures" to protect its domestic industry, within the meaning of Article XIX of the GATT 1994 and the Agreement on Safeguards, that had suspended US concessions and other obligations. In this regard, Turkey had requested, on 20 April 2018 and under Article 12.3 of the Agreement on Safeguards, to engage in consultations to achieve precisely the goals set out in Article 8.1 of the Agreement on Safeguards. Equally important, when imposing its measures on steel and aluminium, the United States had made no attempt, under Article 8.1 of the Agreement on Safeguards, to maintain a balance of equivalent concessions and WTO obligations. Turkey had been fully entitled, under Article 8 of the Agreement on Safeguards, to withdraw equivalent concessions and Turkey had acted fully in accordance with its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards.

6.7. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU, with standard terms of reference.

6.8. The representatives of Brazil, Canada, China, the European Union, Guatemala, India, Indonesia, Japan, Kazakhstan, Mexico, New Zealand, Norway, the Russian Federation, Singapore, Switzerland, Chinese Taipei, Thailand, Ukraine and the Bolivarian Republic of Venezuela reserved their third-party rights to participate in the Panel's proceedings.

7 APPELLATE BODY APPOINTMENTS: PROPOSAL BY ARGENTINA; AUSTRALIA; THE PLURINATIONAL STATE OF BOLIVIA; BRAZIL; CANADA; CHILE; CHINA; COLOMBIA; COSTA RICA; CUBA; DOMINICAN REPUBLIC; ECUADOR; EGYPT; EL SALVADOR; THE EUROPEAN UNION; GUATEMALA; HONDURAS; HONG KONG, CHINA; ICELAND; INDIA; INDONESIA; ISRAEL; KAZAKHSTAN; KOREA; LIECHTENSTEIN; MEXICO; NEW ZEALAND; NICARAGUA; NORWAY; PAKISTAN; PANAMA; PARAGUAY; PERU; THE RUSSIAN FEDERATION; SINGAPORE; SWITZERLAND; THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU; THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA; TURKEY; UKRAINE; URUGUAY; THE BOLIVARIAN REPUBLIC OF VENEZUELA AND VIET NAM (WT/DSB/W/609/REV.7)

7.1. The Chairperson said this item was on the Agenda of the present meeting at the request of Mexico, on behalf of several delegations. She then drew attention to the proposal contained in document WT/DSB/W/609/Rev.7 and invited the representative of Mexico to speak.

7.2. The representative of Mexico, speaking on behalf of co-sponsors of the proposal contained document WT/DSB/W/609/Rev.7, said that the delegations in question had agreed to submit the joint proposal dated 6 December 2018 to launch the AB selection processes. His delegation, on behalf of these 71 Members, wished to state the following. The considerable number of Members submitting this joint proposal reflected a common concern with the current situation in the Appellate Body that was seriously affecting its workings and the overall dispute settlement system against the best interest of its Members. WTO Members had a responsibility to safeguard and preserve the Appellate Body, the dispute settlement system and the multilateral trading system. Thus, it was the Members' duty to launch the AB selection processes, as set out at the present meeting. This proposal sought to: (i) start four selection processes: one process to replace Mr. Ricardo Ramírez-Hernández, whose second term expired on 30 June 2017; a second process to fill the vacancy that resulted from the resignation of Mr. Hyun Chong Kim with effect from 1 August 2017; a third process to replace Mr. Peter Van den Bossche, whose second term expired on 11 December 2017; and a fourth process to replace Mr. Shree Baboo Chekitan Servansing, whose four-year term of office expired on 30 September 2018; (ii) to establish a Selection Committee; (iii) to set a deadline of 30 days for the submission of candidates; and (iv) to request that the Selection Committee issue its recommendations within 60 days after the deadline for nominations of candidates. The proponents were flexible with regard to the deadlines for the selection processes, but believed that Members should consider the urgency of the situation. Mexico continued to urge all Members to support this proposal in the interest of the multilateral trading system and the dispute settlement system.

7.3. The representative of Mexico, speaking on behalf of Mexico only, said that as had been stated on several occasions, the Appellate Body was a key element of the WTO dispute settlement system. This was why it should be a priority for all Members to ensure its proper functioning. It was fundamental for the Appellate Body to have a full contingent. According to the DSU, the WTO dispute settlement system was "a central element in providing security and predictability to the multilateral trading system", and it had benefitted all Members. However, despite many attempts made by various delegations, the Appellate Body consisted of only three out of the seven members that it should comprise. Mexico had grave concerns, which were becoming increasingly pressing. Mexico, once again, called on Members to address, in a responsible manner, the current situation whereby, for over a year and a half, Members had been unable to launch the AB selection processes. In failing to do this, Members were clearly disregarding their obligation set out in Article 17.2 of the DSU, to fill such vacancies as soon as they arose. This situation was unacceptable and would have a serious systemic impact for the Organization. Members had to stop the practice of raising concerns without proposing solutions, especially given the current crisis faced by the multilateral dispute settlement system. Mexico wished to reiterate its call for Members to ensure that the AB selection processes were initiated as a matter of urgency, and for the Member that had raised concerns to take into consideration the willingness demonstrated by other Members to engage in discussions and seek a solution to these concerns. Nevertheless, Mexico wished to emphasize that the achievement of such a solution could not prevent compliance with the legal obligations of Members. There were currently proposals before the General Council that sought to address the concerns that had been raised, and that alone should be sufficient for the AB selection processes to be agreed by Members at the present meeting in compliance with the DSU, and for these processes to be delinked from any other concern.

7.4. The representative of the European Union said that his delegation wished to refer to its statements made on this issue at previous DSB meetings, starting in February 2017. WTO Members had a shared responsibility to resolve this issue as soon as possible and to fill the outstanding

vacancies as required by Article 17.2 of the DSU. The EU wished to thank all Members that co-sponsored the proposal contained in document WT/DSB/W/609/Rev.7 to launch the AB selection processes. The EU invited all other Members to endorse this proposal, so that the appointments could be made as soon as possible. The EU also wished to recall that concrete proposals had been submitted to the General Council (WT/GC/W/752/Rev.2 and WT/GC/W/753/Rev.1) with a view to unblocking the AB selection processes. These proposals constituted a serious effort to address the concerns that had been voiced in connection with the AB appointments. They were currently being discussed under the auspices of the General Council. The EU invited all Members to engage constructively in these discussions so that the AB vacancies could be filled as soon as possible.

7.5. The representative of the United States said that the United States thanked the Chairperson for the continued work on these issues. As the United States had explained at prior DSB meetings, the United States was not in a position to support the proposed decision contained in document WT/DSB/W/609/Rev.7. The systemic concerns that the United States had identified remained unaddressed. As the United States had explained at recent DSB meetings, for more than 15 years and across multiple US Administrations, the United States had been raising serious concerns with the Appellate Body's disregard for the rules set by WTO Members. Through persistent overreaching, the WTO Appellate Body had been adding obligations that had never been agreed by the United States and other WTO Members. The 2018 US Trade Policy Agenda had outlined several long-standing US concerns.[7] The United States had raised repeated concerns that appellate reports had gone far beyond the text setting out WTO rules in varied areas, such as subsidies, anti-dumping duties, anti-subsidy duties, standards and technical barriers to trade, and safeguards, restricting the ability of the United States to regulate in the public interest or protect US workers and businesses against unfair trading practices. And as the United States had explained at recent DSB meetings, the Appellate Body had issued advisory opinions on issues not necessary to resolve a dispute and had reviewed panel fact-finding despite appeals being limited to legal issues. Furthermore, the Appellate Body had asserted that panels must follow its reports although Members had not agreed to a system of precedent in the WTO, and had continuously disregarded the 90-day mandatory deadline for appeals – all contrary to the WTO's agreed dispute settlement rules. And for more than a year, the United States had been calling for WTO Members to correct the situation where the Appellate Body acted as if it had the power to permit ex-Appellate Body members to continue to decide appeals even after their term of office – as set by the WTO Members – had expired. This so-called "Rule 15" was, on its face, another example of the Appellate Body's disregard for the WTO's rules. US concerns had not been addressed. When the Appellate Body abused the authority it had been given within the dispute settlement system, it undermined the legitimacy of the system and damaged the interests of all WTO Members who cared about having the agreements respected as they had been negotiated and agreed. The United States would continue to insist that WTO rules be followed by the WTO dispute settlement system, and would continue its efforts and its discussions with Members and with the Chairperson to seek a solution on these important issues.

7.6. The representative of Canada said that his country supported the statement made at the present meeting by Mexico. It had been twenty months since the launch of the AB selection processes had been first proposed. Canada deeply regretted that the DSB had not been able to comply with its legal obligation under Article 17.2 of the DSU to appoint Appellate Body members to fill the vacancies. The text of the DSU was clear: "[v]acancies shall be filled as they arise". This requirement did not provide for exceptions or justifications not to replenish the Appellate Body. The inability to select and appoint new Appellate Body members could only increase the necessity to rely on Rule 15 of the Working Procedures for Appellate Review. This situation was at odds with the concerns that the United States had expressed regarding that practice. Canada shared the disappointment expressed by several other Members regarding the US decision not to join the consensus to move forward with the proposal contained in document WT/DSB/W/609/Rev.7. Canada called on the United States to engage in solution-focused discussions with interested Members regarding the concerns that it had raised. Canada remained committed to working with other interested Members, including the United States, with a view to addressing those concerns and undertaking the AB selection processes expeditiously. Canada invited the Members who had not yet sponsored the proposal to give it the attention it deserved, and to support it.

7.7. The representative of Cuba, speaking on behalf of the GRULAC, said that Cuba wished to reiterate their deep concern with the prolonged impasse in the AB selection processes as a result of the blockage to which these processes had been subjected. This situation affected the functioning

[7] Office of the US Trade Representative, 2018 President's Trade Policy Agenda, at 22-28.

of one of the central organs of the WTO and entailed a blatant violation of an obligation that emanated from an agreement adopted by WTO Members. Cuba was aware of the concerns that had been raised with respect to the functioning of the Appellate Body, which prevented Members from launching of the AB selection processes. However, the search for solutions to these concerns should not be an obstacle to the continued functioning of the system. Cuba wished to reiterate that reading of Article 17 of the DSU in conjunction with Article 2 of the DSU did not indicate that positive consensus was required to launch the AB selection processes. Cuba reiterated its call on the Chairperson to continue with her efforts to find a solution to this problem.

7.8. The representative of India said that her country wished to refer to its statements made at previous DSB meetings on this matter and reiterated its serious concerns about the current impasse in filling vacancies in the Appellate Body and its effect on the credibility of the WTO. India wished to thank the General Council Chair for launching an informal process for focussed discussions on Appellate Body issues on 17 January 2019. India welcomed the appointment of Ambassador David Walker as Facilitator to assist the GC Chair in this process and assured him of India's full support. India, along with the European Union and some other Members, had put forward concrete textual proposals with a view to addressing the concerns raised. India was encouraged to note that a significant number of WTO Members had acknowledged these proposals as being a good basis for initiating an open, inclusive and expeditious process for unblocking the AB appointments. If any Member felt that these proposals did not sufficiently address their concerns, then India urged such Member to table concrete proposals of its own, with a view to finding a solution and not merely reiterating the problem. India strongly believed that instead of engaging in general critiques of the Appellate Body, the focus should be on solution-oriented approaches that would explor ways in which the concerns with the functioning of the Appellate Body could be addressed in a manner that accommodated the interests of the entire Membership and preserved the essential features of the dispute settlement system. India called on all Members to participate constructively in the informal process with a view to reaching an expeditious resolution to the existential crisis facing the Appellate Body.

7.9. The representative of Brazil said that in 2019, the terms of two of the remaining three Appellate Body members would expire. If nothing was done, in December 2019, the Membership would witness the shutdown of an organ that was quintessential to the WTO dispute settlement system. Time was of the essence. Members had heard the issues raised. Although his country did not necessarily share these concerns, Brazil was open and ready to engage in pragmatic discussions regarding these issues. Over the past two years, Members had been very clear in DSB meetings: the urgent priority was to fill the vacancies in the Appellate Body. That was a gateway issue. Otherwise, Members might not have a functioning Appellate Body after December 2019. Members were at a crossroads. The pathway to the AB's normalization was not yet clear. Brazil believed that Members should have a clear understanding of all objectives, so that the Membership could properly address the concerns raised. Not having a functioning Appellate Body would not only be regrettable, but would mean a departure from the DSU text, which stated that the DSB had to establish a "standing Appellate Body". Therefore, Brazil believed that Members' main goal should be to find a clear path to filling those vacancies. To this end, Members had to understand what solution was possible. Brazil also wished to thank Mexico for its statement made at the present meeting on behalf of the co-sponsors.

7.10. The representative of Japan said that his country supported the proposal contained in document WT/DSB/W/609/Rev.7 to launch the AB selection processes for four vacancies in the Appellate Body. Japan noted that an informal process has been initiated under the auspices of the General Council to have focused discussions on Appellate Body matters. WTO Members had to fully engage in the informal process with a solution-oriented spirit so as to restore and improve the proper functioning of the WTO dispute settlement mechanism. Japan looked forward to actively participating in this informal process with other WTO Members.

7.11. The representative of China said that his country wished to echo the statement made by Mexico on behalf of 71 Members under this Agenda item. Ensuring the integrity and functioning of the Appellate Body was not only a collective obligation of Members, but it also served the common interests of the whole Membership. China regretted that the collective efforts by these Members was, once again, frustrated by a particular Member’s persistent blockage of the AB selection processes without any legitimacy. Article 17.2 of the DSU clearly stated that: "[v]acancies shall be filled as they arise". The choice of using "shall" in this provision was more than adequate to suggest the Members' duty to launch the AB selection processes. There could be no legitimate reason for any Member to block it, and it could not be subject to any other precondition than a vacancy. Even

so, China noted that Members had made earnest efforts to address the concerns of the Member and to safeguard the dispute settlement system. Various proposals had been tabled to break the current impasses, including the joint proposals co-sponsored by the EU, China and other Members which had been discussed at the 12 December 2018 General Council meeting and at the informal open-ended meeting held on 17 January 2019. Such efforts had already formed a solid basis for future consultations. It was time for the Member concerned, the United States, to table its constructive proposals so as to substantiate the discussions. China believed when Members had different views on any specific concern, constructive and solution-orientated discussion was the only way to move forward. China called on all Members to have meaningful and substantive participation in the relevant process and to strive to solve the current AB selection impasse without further delay.

7.12. The representative of Australia said that her country wished to refer to its statements made at previous DSB meetings on this matter and to reiterate its serious concerns regarding the DSB's inability to launch the AB selection processes. In this respect, Australia welcomed the recently initiated informal process under the auspices of the General Council as a positive step forward. Australia hoped that through the pragmatic and solution-focused work, Members would be able to find mutually agreeable outcomes and allow Members to fill the vacancies on the Appellate Body soon as possible. Australia was committed to actively engage in this process and hoped that all Members would, in good faith, join Australia in this endeavour.

7.13. The representative of New Zealand said that his delegation wished to reiterate its support for the co-sponsored proposal contained in document WT/DSB/W/609/Rev.7 and to refer to its statements made at previous DSB meetings on this matter. New Zealand emphasized the importance of launching the AB selection processes as soon as possible. New Zealand was a staunch supporter of the multilateral dispute settlement system and had repeatedly emphasized the importance of looking to find solutions to the current impasse through discussions among Members. New Zealand, therefore, was pleased that an informal process under the auspices of the General Council has begun, with a focus on a solution-oriented discussion.

7.14. The representative of Chinese Taipei said that his delegation wished to refer to its statements made at previous DSB meetings. Chinese Taipei would, and it encouraged all Members to, constructively engage in the discussions under the auspices of the General Council. Chinese Taipei hoped those discussions could lead Members to a solution to the present impasse.

7.15. The representative of Singapore said that his country wished to refer to its statements made at previous DSB meetings and reiterated its serious systemic concerns on the failure to launch the AB selection processes. More appeals continued to be filed even as the number of Appellate Body members decreased by attrition. Given the strain that the Appellate Body was facing, Singapore called on Members to bear this in mind when considering the filing of appeals Systemic issues which had been raised could be discussed in a separate process. In this regard, while Singapore welcomed and supported the informal process for focused discussions led by the Facilitator under the auspices of the General Council, Singapore wished to emphasize that that AB selection processes should still be allowed to proceed unconditionally. Singapore stood ready to engage constructively and collaboratively to help resolve this impasse.

7.16. The representative of Thailand said that her country wished to refer to its statements made at previous DSB meetings on this matter. Thailand wished to reiterate its serious systemic concern over the current impasses. To ensure the proper functioning of the WTO's rules-based trading system, Thailand supported the launching of the AB selection processes as soon as possible. The discussion of any systemic concern which had been raised, including as part of the informal process under the auspices of the General Council, could be addressed separately and should not prevent the launch of the AB selection processes. Thailand remained committed to working constructively with all Members to resolve the Appellate Body impasse as a priority.

7.17. The representative of Mexico said that his delegation, speaking on behalf of the 71 co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.7, wished to express its regret that for the twentieth occasion, Members had still not been able to start the AB selection processes, and that they had thus continuously failed to fulfil their duty as Members of this Organization. The fact that a Member might have concerns about certain aspects of the functioning of the Appellate Body could not serve as pretext to impair and disrupt its work. There was no legal justification for the current blocking of the AB selection processes, which resulted in nullification and impairment for many Members. As Article 17.2 of the DSU clearly stated: "[v]acancies shall be filled

as they arise". By failing to act at the present meeting, Members would maintain the current situation, which was seriously affecting the work of the Appellate Body against the best interest of all WTO Members.

7.18. The representative of Switzerland said that her country wished to refer to its statements made on this matter at previous DSB meetings. She said that Switzerland regretted that the DSB continued to be unable to launch the AB selection processes towards filling the Appellate Body vacancies. Switzerland noted with satisfaction the constructive discussion that had taken place under the auspices of the General Council on 17 January 2019. This discussion showed that Members were willing to engage constructively in order to find a way forward. Switzerland believed that the different communications regarding dispute settlement matters that were currently on the table formed a comprehensive basis to address the concerns that had been raised concerning the functioning of the dispute settlement system. Switzerland looked forward to deepening the discussion in that process and to devising concrete solutions.

7.19. The representative of Korea said that his country shared the deep concerns and the sense of urgency regarding the need to fill the vacancies in the Appellate Body. Korea supported the statement made by Mexico at the present meeting based on the joint proposal contained in document WT/DSB/W/609/Rev.7, which Korea co-sponsored. Korea also looked forward to making good progress in the discussions under the auspices of the General Council.

7.20. The representative of Norway said that her country wished to refer to its statements made at previous DSB meetings under this Agenda item. Norway wished to reiterate its serious concerns about the current impasse in the Appellate Body. Norway deeply regretted that the United States still could not join consensus and did not support the proposal to launch the AB selection processes. Norway continued to urge the United States to join consensus without any further delay. Nevertheless, Norway was encouraged by the fact that discussions had begun in the informal process under the auspices of the General Council. Norway looked forward to the continuation of those discussions and would engage constructively with Members.

7.21. The representative of Turkey said that his country also wished to refer to its statements made at previous DSB meetings and to reiterate its concerns with the current deadlock. As a co-sponsor of the proposal contained in document WT/DSB/W/609/Rev.7, Turkey underlined that Members had to launch the AB selection processes for the vacancies of the Appellate Body without further delay, as required by Article 17.2 of the DSU. It was the responsibility of all Members to do so. Currently, causing significant delay to the processes, this issue adversely affected all Members, including Turkey, which had two cases under appeal. Turkey was pleased that there were currently tabled proposals that addressed several topics on which to improve, including procedural and systemic issues which had been discussed thoroughly in recent weeks. However, Turkey believed that these discussions should not be linked to the launching of the AB selection processes and should be dealt with separately. Turkey stood ready to engage constructively to help overcome this impasse and would invite all Members to engage in the discussions in these matters.

7.22. The Chairperson thanked all delegations for their statements. She said that as in the past, the DSB would take note of the statements expressing the respective positions, which would be duly reflected in the minutes of this meeting. As Members were aware, this matter required a political engagement on the part of all WTO Members. To this effect, under the auspices of the General Council, Ambassador David Walker of New Zealand had agreed to assist the Chairperson of the General Council, as Facilitator, in an informal process of focused discussions on Appellate Body matters. The first informal meeting chaired by Ambassador Walker had been held on 17 January 2019. Ambassador Walker would continue his efforts with a view to reporting back to the General Council at its 28 February 2019 meeting.

7.23. The DSB took note of the statements.