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Dispute Settlement Body
24 June 2019

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 24 JUNE 2019

Chairman: H.E. Dr David Walker (New Zealand)

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1.1. The Chairman 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. He 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, he invited delegations to provide up-to-date information about their compliance efforts. He 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". He then turned to the first status report under this Agenda item.

A. United States – Anti-dumping measures on certain hot rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.196)

1.2. The Chairman drew attention to document WT/DS184/15/Add.196, 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 13 June 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 thanked the United States for its most recent status report and its statement made at the present meeting. Japan, once again, called on the United States to fully implement the DSB's recommendations and rulings in this dispute 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.171)

1.6. The Chairman drew attention to document WT/DS160/24/Add.171, 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 13 June 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 statements made at previous DSB meetings. The EU 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 172nd status report in this dispute. Regrettably, these reports were not different from previous reports. Nearly two decades after the DSB had adopted the Panel Report in this dispute, the matter remained unresolved. Section 110(5) of the US Copyright Act, which had been found inconsistent with the requirements of the Berne Convention and the TRIPS Agreement, was still in effect. Without implementation, the United States had continuously failed to accord the minimum standard of protection as required by the TRIPS Agreement and had become the only WTO Member who failed to implement the DSB's recommendations and rulings under the 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". 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 in 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 Agenda 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. In contrast, the intellectual property protection that the United States provided within its own territory equaled or surpassed that of any other Member. Indeed, none of the damaging technology transfer practices of China that had been 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, once again, the United States had tried to derail the discussions under this Agenda item by accusing his country in relation to its intellectual property protection. The issue under this Agenda item was clear and simple: the question was whether the United States fully implemented the DSB's recommendations and rulings in this dispute. Obviously, the answer was negative. The United States also indicated that its intellectual property protection "equals or surpasses" that of any other WTO Member. However, that assertion directly contradicted the mere fact that the United States had deliberately delayed compliance for decades, and that it had become the only WTO Member who failed to implement the DSB's recommendations and rulings under the TRIPS Agreement. This set a bad example of non-compliance for all other WTO Members. With respect to vague accusations against China's intellectual property protection, China wished to to refer to its previous statements made on many occasions, including at the 28 May 2018 DSB Meeting. China took its TRIPS commitments seriously and always stood ready to engage in good faith discussions with other WTO Members. The allegations regarding China's intellectual property protection came from a Section 301 Report issued by the USTR in 2018. However, as one US economist had noted, in its notorious Section 301, the US Government had acted simultaneously as police, prosecutor, jury and judge. This "aggressive unilateralism" had been opposed strongly by all other WTO Members. The findings of the US Section 301 investigation were a wilful distortion of facts and the report was full of selective assertions and allegations. Even the USTR actually admitted in the Section 301 report that there was no hard evidence to confirm the alleged implicit practices. In fact, the USTR relied mainly on dubious proxy surveys and the charges were based on flimsy evidence that would never be admissible anywhere in the world.

1.12. With regard to this Agenda item, the United States' long overdue implementation had been severely damaging the effectiveness and credibility of the dispute settlement system. This should be of grave concern to the whole Membership. China urged the United States to faithfully honour its implementation duty without further delay. In addition, China invited the United States to consider including in its next status report the specific reasons why implementation could not take place for such a long time in this dispute.

1.13. 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.134)

1.14. The Chairman drew attention to document WT/DS291/37/Add.134, 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.

1.15. 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. In general, the efforts to reduce delays in all stages of the authorization procedures were constantly maintained at a high level. This had already resulted in a clear improvement of the situation. It should be noted that delays in risk assessment on some applications were mainly due to the time that the applicants needed in order to respond to justified scientific questions. He recalled that on 5 June 2019, three draft authorizations – one for new GM maize[1] and two for renewing the authorization of a GM soybean[2] and a GM cotton[3] – had been presented for a vote in an Appeal Committee, with a "no opinion" result. It was now for the European

[1] Maize MZHG0JG.
[2] Renewal of soybean MON 89788.
[3] Renewal of LLCotton25.

Commission to decide on these authorizations. In addition, on 11 June 2019, two draft authorizations – one for renewing the authorization of a GM soybean[4] and one of a GM oilseed rape[5] – 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 July 2019. The EU was committed to acting in line with its WTO obligations. More generally, and as his delegation had stated many times at previous DSB meetings, the EU approval system was not covered by the DSB's recommendations and rulings in this dispute.

1.16. The representative of the United States said that the United States thanked the European Union (EU) for its status report and its statement made at the present meeting. The United States also thanked the EU for its participation in their biannual consultations on 12 June 2019. The consultations had been productive and the United States looked forward to continued engagement. Nonetheless, the United States remained concerned with the EU's approval of biotech products. While the United States welcomed the improvements in some areas, the United States continued to see on-going and persistent delays that affected dozens of applications that had been awaiting approval for months or years, or that had already received approval. The United States had further concerns that these extensive delays would become even worse as the EU prepared for political changes at the Commission in 2019. As the United States had highlighted at prior DSB meetings, even when the EU finally approved a biotech product, EU member States continued to impose bans on the supposedly approved product. The amendment of EU Directive 2001/18, through EU Directive 2015/413, permitted EU member States to, in effect, restrict or prohibit cultivation of genetically-modified organisms (GMOs), even where the European Food Safety Authority (EFSA) had concluded that the product was safe. This legislation permitted EU member States to restrict for non-scientific reasons certain uses of EU-authorized biotech products in their territories by demanding that EU cultivation authorizations be adjusted to exclude portions of an EU member State's territory from cultivation. At least seventeen EU member States, as well as certain regions within EU member States, had submitted such requests with respect to MON-810 maize. This fact could not be squared with the EU's representation at previous DSB meetings that no member State had taken action to ban the cultivation of such a product. The EU had not shown how the withholding of products for cultivation did not amount to a ban on those products. The United States again emphasized the 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. The Directive had been a central issue in dispute in these WTO proceedings, and concerned the deliberate release into the environment of GMOs. Contrary to the EU's statement at prior DSB meetings, this ECJ ruling related to previously authorized GMOs. The EU Group of Chief Scientific Advisors' statement spoke to the lack of scientific support for the regulatory framework under EU Directive 2001/18. The EU had repeatedly maintained at previous DSB meetings that these scientific advisors were just another group of stakeholders. The statement did not reflect a mere reaction from a group of stakeholders. Rather, the statement reflected scientific advice provided to the European Commission in response to its request for such information. The Chief Scientific Advisors' message provided in the statement was clear: "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*". The statement further advised that current scientific knowledge called into question the definition of "GMOs" under the Directive and noted that mutagenesis, as well as transgenesis, occurred naturally. The EU needed to take this guidance into account in its reconsideration of the GMO Directive, in light of the evident advancements in scientific knowledge and technology. 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.

1.17. The representative of the European Union said that his delegation wished to remind the DSB that the opt-out Directive was not covered by the DSB's recommendations and rulings in this dispute. The WTO Agreements did not require full international harmonization and left some regulatory space or autonomy to individual WTO Members. The European Union had different regulatory approaches to non-GMOs and GMOs but, in all cases, such regulations did not discriminate between imported and domestic like products. No EU member State had imposed any "ban". Under the terms of the Directive, an EU member State could adopt measures restricting or prohibiting cultivation only when

[4] Renewal of soybean A2704-12.
[5] Renewal of oilseed rape T45.

such measures were in line with EU law and were reasoned, proportional, non-discriminatory and based on compelling grounds. The free movement of seeds was embedded in Article 22 of Directive 2001/18/EC: member States could not prohibit, restrict or impede the placing on the market of GMOs which complied with the requirements of this Directive. His delegation also noted that according to the provisions of the opt-out Directive (Article 26b, point 8), the measures adopted under the Directive "shall not affect the free circulation of authorised GMOs" in the EU. Currently, the EU Common Catalogue of varieties of agricultural species included 150 varieties of maize MON 810, which were allowed to be marketed in the EU. Until now, the European Commission had never received any complaints from seed operators or other stakeholders concerning restrictions on the marketing of MON810 seeds in the EU. This confirmed the smooth functioning of the internal market of MON810 seeds. The EU invited the United States to provide any evidence they might have at their disposal that would substantiate the alleged disruption of the free movement of MON810 seeds in the EU. In relation to the statement of the Group of Chief Scientific Advisors, the EU wished to recall that the Group of Chief Scientific Advisors was an independent group of scientific experts providing scientific advice to the European Commission. First, the EU wished to reiterate that this statement focused on the future challenges for products obtained by new mutagenesis techniques, and not on the "conventional GMOs". The statement did not state or imply that Directive 2001/18/EC was not fit for purpose as regards "conventional GMOs". Second, there had been many reactions to the judgement of the Court of Justice of the European Union, bringing forward a wide range of different views. The statement to which the United States had referred fed into on-going discussions on new mutagenesis techniques with all stakeholders. Some stakeholders agreed with that statement. However, many others considered that the current legislation was adequate to address the risks from new biotechnology developments. The European Commission had a strong interest in this debate, which should go beyond the regulatory status of new technologies and focus on the way new products could help address societal challenges, such as climate change or reduction of use of pesticides, without negative consequences on health and environmental protection.

1.18. 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.18)

1.19. The Chairman drew attention to document WT/DS464/17/Add.18, 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.

1.20. The representative of the United States said that the United States had provided a status report in this dispute on 13 June 2019, in accordance with Article 21.6 of the DSU. On 6 May 2019, the US Department of Commerce had 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 this action, the United States had completed implementation of the DSB's recommendations concerning those anti-dumping and countervailing duty orders. The United States continued to consult with interested parties on options to address the DSB's recommendations relating to other measures challenged in this dispute.

1.21. The representative of Korea said that his country thanked the United States for its status report. Korea welcomed the revocation of the orders which had been part of the measures at issue in this dispute. Korea was currently evaluating if the revocation, in its effect, would achieve full compliance with the DSB's recommendations and rulings in terms of the "as applied" measures at issue in this dispute. At the same time, Korea again urged the United States to take prompt and appropriate steps to implement the DSB's recommendations for the "as such" measure in this dispute.

1.22. The representative of Canada said that the United States continued to fail to comply with the DSB's ruling, arising out of the Appellate Body Report in this dispute, that the "differential pricing methodology" was "as such" WTO-inconsistent. The United States had also ignored the DSB's recommendation that it bring itself into compliance with its obligations. Instead, the United States continued to apply the "as such" inconsistent differential pricing methodology in investigations with respect to foreign companies and continued to collect cash deposits from foreign exporters based on its inconsistent methodology. As a result, Canada had been forced to challenge the differential pricing methodology measure in the "US – Differential Pricing Methodology" dispute (DS534) and

Viet Nam was currently doing the same in the "US – Fish Fillets" dispute (DS536). Before these Panels, the United States had simply re-litigated the dispute concerning the WTO-consistency of the differential pricing methodology and had asked the Panels to ignore the Appellate Body's findings. Canada remained deeply concerned with the United States' continued failure to comply with the DSB's recommendations and rulings in this dispute. This failure seriously undermined the security and stability of the multilateral trading system.

1.23. 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.10)

1.24. The Chairman drew attention to document WT/DS471/17/Add.10, 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.

1.25. The representative of the United States said that the United States had provided a status report in this dispute on 13 June 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.

1.26. The representative of China said that on 22 May 2017, the DSB had adopted the Appellate Body Report and the modified Panel Report in this dispute. The arbitration pursuant to Article 21.3(c) of the DSU had determined the reasonable period of time to be 15 months, expiring on 22 August 2018. On 9 September 2018, in light of US non-compliance, China had requested the authorization from the DSB to suspend concessions or other obligations and the matter had been referred to arbitration, in accordance with Article 22.6 of the DSU. Regrettably, more than two years after the DSB's adoption of recommendations and rulings in this dispute, and 10 months after the expiry of the reasonable period of time, China had yet to see any concrete action from the United States. Besides "consulting with the interested parties", none of its status reports provided thus far could indicate any meaningful implementation progress. China was certainly very disappointed and had grave concerns over this lack of implementation. China noted that the United States had repeated several times its willingness to discuss implementation with China through bilateral channels. However, the prompt resolution of this dispute needed concrete actions rather than just good words. So far, China have yet to hear anything from the United States with respect to its implementation progress in this dispute. Without implementation, the WTO-inconsistent measures taken by the United States continued to infringe China's legitimate economic and trade interests, distorted the relevant international market, and seriously undermined the rules-based multilateral trading system. The non-compliance of the United States in dispute settlement cases had also undermined its own credibility in urging other WTO Members to implement rulings in other dispute settlement cases raised by the United States. Unfortunately, China was not the only victim of US disrespect of WTO dispute settlement. Under the first Agenda item at the present meeting, five out of eight surveillance cases related to US non-compliance with the DSB's recommendations and rulings. Such behaviour had seriously undermined the effectiveness and credibility of the WTO dispute settlement system, which ran against the interests of the whole Membership. As provided in Article 21.1 of the DSU: "[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". Once again, China urged the United States to fully respect WTO rules, take concrete actions to faithfully bring its inconsistent measures into conformity with WTO rules, and expeditiously implement the DSB's recommendations and rulings in this dispute.

1.27. 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.9)

1.28. The Chairman drew attention to document WT/DS484/18/Add.9, 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.

1.29. The representative of Indonesia said that his country submitted this report in accordance with Article 21.6 of the DSU. Indonesia wished to inform the DSB that Indonesia continued its effort to implement the DSB's recommendations and rulings in this dispute. Indonesia was undertaking further adjustments of relevant regulations that would be concluded in the near future. Indonesia stood ready to continue communicating and holding consultations pertaining to this matter with Brazil as and when necessary.

1.30. The representative of Brazil said that his country thanked Indonesia for its status report. As stated at previous DSB meetings, Brazil's concerns about Indonesia's implementation of the DSB's recommendations and rulings in this dispute remained unchanged, as there had not been any change in Indonesia's status report on this dispute. Brazil had therefore decided to initiate compliance proceedings and would elaborate further on the matter under that Agenda item.

1.31. 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.9)

1.32. The Chairman drew attention to document WT/DS488/12/Add.9, 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.

1.33. The representative of the United States said that 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, analyze 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 Fed. Reg. 59359. The United States had provided a status report in this dispute on 13 June 2019, in accordance with Article 21.6 of the DSU. The report noted that the US Department of Commerce had recently published a preliminary memorandum and was soliciting comments on the agency's preliminary analysis. The United States would continue to consult with interested parties on options to address the DSB's recommendations.

1.34. The representative of Korea said that his country recognized the recent steps taken by the United States to implement the DSB's recommendations and rulings in this dispute. In particular, Korea noted that on 24 May 2019, the US Department of Commerce (USDOC) had published a preliminary determination to bring the measures at issue into conformity with the DSB's recommendations and rulings. Korea also acknowledged the procedure in which the USDOC had requested and received comments from interested parties on its preliminary determination. Korea expected that the USDOC would issue its final determination before 12 July 2019, which was the date of expiry of the reasonable period of time. However, while Korea was continuing to review the preliminary determination, Korea did not believe that the determination, in its current state, achieved compliance with the DSB's recommendations and rulings in this dispute. In particular, Korea considered that the preliminary determination did not achieve compliance in every key issue in this dispute, namely: (i) the use of the respondents' actual sales data under the "preferred method" of the chapeau of Article 2.2.2 of the Anti-Dumping Agreement; (ii) the definition of the "same general category of products" under the "alternative methods" of the sub-paragraphs of Article 2.2.2 of the Anti-Dumping Agreement; and (iii) the calculation of the profit cap under Article 2.2.2(iii) of the Anti-Dumping Agreement. Korea encouraged the United States to carefully reassess the comments submitted by the interested parties and hoped that the United States would address these issues in its forthcoming final determination in order to bring its measures fully into compliance by the expiry of the reasonable period of time.

1.35. 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/Add.5 – WT/DS478/22/Add.5)

1.36. The Chairman drew attention to document WT/DS477/21/Add.5 – WT/DS478/22/Add.5, 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.

1.37. The representative of Indonesia said that his country submits its report pursuant to Article 21.6 of the DSU. Indonesia was committed to improving its importation system through adjusting the relevant regulations in order to attain full compliance with the DSB's recommendations and rulings in these disputes. As of now, Indonesia wished to inform the DSB that a further adjustment, which aimed at addressing Measures 1 to 17, was under intensive discussion and was almost concluded. With regard to Measure 18, the Government of Indonesia had prepared the documents required for the statutory changes, including the draft amendments and their respective academic drafts. These documents had been intensively discussed in consultations with all related Ministries and agencies. Indonesia thanked New Zealand and the United States for their bilateral engagement. Indonesia would continue its efforts and engagement to resolve these disputes.

1.38. The representative of New Zealand said that his country acknowledged the steps that had been taken by Indonesia to date to bring its regulations into compliance with the DSB's recommendations and rulings in these disputes and welcomed Indonesia's commitment of full compliance. New Zealand was disappointed, however, that full compliance had still not been reached in respect of a number of measures addressed in the case. New Zealand was particularly concerned about the failure to meet the 22 June 2019 deadline for the removal of Measure 18. Measure 18 limited imports based on the sufficiency of domestic supply contrary to Indonesia's WTO obligations. New Zealand exporters continued to be adversely impacted by Measure 18, along with other measures that had not yet been removed as required. New Zealand would continue to encourage Indonesia to achieve long-term, commercially meaningful compliance with the DSB's recommendations and rulings in these disputes.

1.39. The representative of the United States said that Indonesia continued to fail to bring its measures into compliance with WTO rules. The United States and New Zealand agreed that significant concerns remained with the measures at issue, including the continued imposition of: harvest period restrictions, import realization requirements, warehouse capacity requirements, limited application windows, limited validity periods, and fixed licensed terms. The United States remained willing to work with Indonesia to fully and meaningfully resolve this dispute. The United States was still waiting to hear from Indonesia the concrete actions it would take to bring its measures into full compliance. Indonesia's statement that "further adjustment" to Measures 1-17 was "under intensive discussion" did not provide clarity in this regard, nor did Indonesia's claim that it will make "statutory changes" with regard to Measure 18. The United States looked forward to receiving further detail from Indonesia regarding the planned changes to its regulations and laws.

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

2 CHINA – TARIFF RATE QUOTAS FOR CERTAIN AGRICULTURAL PRODUCTS

A. Implementation of the recommendations of the DSB

2.1. The Chairman recalled that in accordance with the 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 shall 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. Members would recall that at its meeting on 28 May 2019, the DSB had adopted the Panel Report pertaining to the dispute: "China – Tariff Rate Quotas for Certain Agricultural Products" (DS517). He then invited the representative of China to make a statement.

2.2. The representative of China said that at its meeting on 28 May 2019, the DSB had adopted the Panel Report in the dispute: "China – Tariff Rate Quotas for Certain Agricultural Products" (DS517). In accordance with Article 21.3 of the DSU, China hereby informed the DSB of its intentions in respect of implementation of the DSB's recommendations and rulings in this dispute in a manner consistent with its WTO obligations. China said that it would need a reasonable period of time for implementation. His delegation stood ready to discuss this matter with the United States in due course, in accordance with Article 21.3(b) of the DSU.

2.3. The representative of the United States thanked China for its statement made at the present meeting, indicating that it intended to implement the DSB's recommendations and rulings in this dispute, and that it would need a reasonable period of time for implementation. China's WTO-inconsistent administration of tariff-rate quotas for wheat, corn, and rice impacted market access for the United States and other WTO Members. The United States looked forward to China promptly bringing its TRQ administration in line with its obligations. The United States stood ready to agree with China, under Article 21.3(b) of the DSU, on the reasonable period of time to implement the DSB's recommendations.

2.4. The DSB took note of the statements, and of the information provided by China 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 Chairman said that this item was on the Agenda of the present meeting at the request of the European Union. He then invited the representative of the European Union to speak.

3.2. The representative by the European Union said that his delegation 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 of DSB meetings as long as the United States had not fully implemented the DSB's recommendations and rulings in this dispute and until the disbursements ceased completely.

3.3. The representative of Brazil said that as an original party to the Byrd Amendment dispute, his country wished to thank once again the EU for placing this item on the DSB's Agenda. After more than 16 years following the DSB's recommendations in this dispute and more than 13 years after the enactment of the Deficit Reduction Act that had repealed the Byrd Amendment, millions of dollars in anti-dumping and countervailing duties were still being disbursed to US domestic petitioners. Brazil therefore called on the United States to comply fully with the DSB's recommendations and rulings in this dispute.

3.4. The representative of Canada said that his country wished to thank the EU for placing this item on the DSB's agenda. Canada agreed with the EU that this matter should remain subject to the surveillance of the DSB until the United States ceased to apply the measures at issue in this dispute.

3.5. The representative of the United States said that as the United States had noted at previous DSB meetings, the "Deficit Reduction Act" – which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 – had been enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that the EU had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, more than 11 years ago. As mentioned at the 28 May 2019 DSB meeting, the EU had notified the DSB that the current level of countermeasures under the Arbitrator's formula in relation to goods entered before 2007 was US$3,355.82. Accordingly, effective 1 May 2019, the EU had announced it would be applying an additional duty of 0.001% on certain imports of the United States. These values were no doubt outweighed by the costs from preparing the DSB minutes on just this Agenda item. 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, regardless of whether the complaining party disagreed about compliance. The practice of Members confirmed this widespread understanding of Article 21.6. 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). Accordingly, since the United States had informed the DSB that it had taken all steps necessary for compliance, there was nothing more for the United States to provide in a status report.

3.6. The representative of the European Union said that indeed, the amount of the current level of authorized retaliation was US$3,355.82 and this was the level that had been established through arbitration between the parties that had taken place under Article 22.6 of the DSU. This amount represented about 72% of the US$4,660.86 that the United States had collected from exports coming from the EU and that US authorities had disbursed to various US companies under the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA). As the United States had repeatedly accepted, the United States continued to collect and distribute money for the period before 1 October 2007. The EU recalled that this particular provision of the CDSOA and this practice of the United States had been found to be in breach of WTO rules. As long as the redistribution of collected duties continued, the United States would remain in breach of Article 18.1 of the Anti-Dumping Agreement and Article 32.1 of the SCM Agreement and full implementation would still have to be delivered. Once the transfers of anti-dumping and countervailing duties ceased, so would the EU measures. The European Union noted that this dispute had been adjudicated and there were currently no further proceedings pending. This was a statement of fact and did not – as the United States implied – suggest that the issue of compliance had been adjudicated. Under Article 21.6 DSU, the issue of implementation shall remain on the DSB's Agenda until the issue was resolved. In the "US — Offset Act (Byrd Amendment)" dispute (DS217, DS234), referred to as the "Byrd Amendment" case, the EU did not agree with the US assertion that it had implemented the DSB's recommendations and rulings. This meant that the issue remained unresolved for the purposes of Article 21.6 of the DSU. If the United States did not agree that this issue remained unresolved, nothing prevented it from seeking a multilateral determination through a compliance procedure, just like the EU was doing in the "EC – Large Civil Aircraft" dispute (DS316).

3.7. 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 Chairman said that this item was on the Agenda of the present meeting at the request of the United States. He then invited the representative of the United States to speak.

4.2. The representative of the United States noted that once again the European Union had not provided Members with a status report concerning the dispute: "EC – Large Civil Aircraft" (DS316). 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 as a complaining party did not agree with another responding party Member's "assertion that it has implemented the DSB ruling", "the issue remains unresolved for the purposes of Article 21.6 DSU". The EU now appeared to argue that its submitting a compliance communication meant that the EU no longer needed to file a status report, even though the United States as the complaining party disagreed that the EU had complied. But that directly contradicted the EU's long-standing position for when it was a complaining party. The EU's only attempt to reconcile its stated position with its lack of a status report in this dispute was to argue that there was some exception to providing a status report if there were on-going proceedings. But there was no such exception anywhere in the DSU. The EU did not point to any textual basis for its position because it could not. It was simply an invention by the EU to try to justify its acting in this dispute in a manner that was inconsistent with the legal position it had taken for other disputes. Similarly, the EU's reliance on Article 2 of the DSU was also in error – nothing in that Article said anything about taking a matter out of the DSB's surveillance during a compliance proceeding. This was simply another invention by the EU. Under the EU's own view, the EU should

be providing a status report. Yet it had failed to do so. Under Article 21.6 of the DSU, once a responding Member provided the DSB with a status report that announced compliance, there was no further "progress" on which it could report, and therefore no further obligation to provide a report. But as the EU allegedly disagreed with this position, it should for future meetings provide status reports in the "EC – Large Civil Aircraft" (DS316) dispute.

4.3. The representative of the European Union said that as in previous DSB meetings, the United States had again implied that the EU was taking inconsistent positions under Article 21.6 of the DSU, depending on whether the EU was a complaining party or a defending party in a dispute. The US assertion remained without merit. As the EU had repeatedly explained in past meetings of the DSB, the crucial point for the defending party's obligation to provide status reports to the DSB was the stage of the dispute. In the "EC – Large Civil Aircraft" (DS316) dispute, the dispute was at a stage where the defending party did not have an obligation to submit status reports to the DSB. The EU wished to remind the DSB that in the "EC – Large Civil Aircraft" (DS316) dispute, the EU had notified to the WTO a new set of measures in a compliance communication which had been tabled at the 28 May 2018 DSB meeting. The United States had responded that the measures included in that communication did not bring the EU in full compliance with the DSB's recommendations and rulings in this dispute. In light of the US position, on 29 May 2018 the EU had requested consultations with the United States, under Articles 4 and 21.5 of the DSU. These consultations had failed to resolve the dispute. Consequently, the EU had asked for the establishment of a compliance panel. The compliance panel had been established by the DSB on 27 August 2018. That compliance panel was currently reviewing "the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB. As part of that review, the compliance panel had held a meeting with the parties and third parties, and was assessing the parties' replies to its questions on compliance of the EU. He stressed that there was a compliance proceeding still on-going in this dispute. Whether or not the matter was "resolved" in the sense of Article 21.6 of the DSU was the very subject matter of this on-going litigation. He questioned how it could be said that the defending party should submit "status reports" to the DSB in these circumstances. The EU would be very concerned with a reading of Article 21.6 of the DSU that would require the defending party to notify the purported "status of its implementation efforts" through the submission of status reports to the DSB, while dispute settlement proceedings on that precise issue were on-going. The view of the EU was further supported by Article 2 of the DSU on the administration of the dispute settlement rules and procedures: where, further to the disagreement between the parties on compliance, a matter was with the adjudicators, it was temporarily taken out of the DSB's surveillance.

4.4. The representative of the United States said that the European Union had argued that the situation in the "US — Offset Act (Byrd Amendment)" dispute (DS217, DS234) differed from the "EC – Large Civil Aircraft" (DS316) dispute because, in the "US — Offset Act (Byrd Amendment)" dispute, "the dispute has been adjudicated and there are no further proceedings pending". With this statement, the EU suggested that the issue of compliance in the "US — Offset Act (Byrd Amendment)" dispute (DS217, DS234) had been adjudicated; in fact, it had not. The United States had repealed the CDSOA measure after all of the proceedings in that dispute. By way of contrast, in the "EC – Large Civil Aircraft" (DS316) dispute, the EU's claim of compliance had already been rejected by the DSB through its adoption of compliance panel and appellate reports.

4.5. The DSB took note of the statements.

5 UNITED STATES – ANTI-DUMPING AND COUNTERVAILING DUTIES ON RIPE OLIVES FROM SPAIN

A. Request for the establishment of a panel by the European Union (WT/DS577/3)

5.1. The Chairman recalled that the DSB had considered this matter at its meeting on 28 May 2019 and had agreed to revert to it. He drew attention to the communication from the European Union contained in document WT/DS577/3 and invited the representative of the European Union to speak.

5.2. The representative of the European Union said that his delegation wished to reiterate its concerns and urged the United States to bring its duties, as well as the underlying US legislation, in line with its WTO obligations. The EU trusted that the panel that would be established at the present meeting could be swiftly composed in order to start its work.

5.3. The representative of the United States said that the United States was disappointed that the EU had chosen to move forward with a request for panel establishment. As the United States had explained to the EU, the measures identified in the request were fully consistent with US obligations under the WTO Agreement. Duties had been imposed on ripe olives from Spain following thorough anti-dumping and countervailing duty investigations by the US Department of Commerce, and equally thorough injury investigations by the US International Trade Commission, fully consistent with WTO rules. Furthermore, as noted at the 28 May 2019 DSB meeting, the United States had serious concerns with this panel request. Aside from the flawed substance of the request, the panel request included claims that had not been identified in the EU's request for consultations, and thus had not been the subject of consultations. Accordingly, the United States regretted that the European Union had chosen for a second time to request establishment of a panel with regard to this matter. The United States was prepared to engage in these proceedings and to explain to the panel that the EU had no legal basis for its claims.

5.4. 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.

5.5. The representatives of Australia, Brazil, Canada, China, India, Japan, the Russian Federation, the Kingdom of Saudi Arabia and Switzerland reserved their third-party rights to participate in the Panel's proceedings.

6 INDONESIA – MEASURES CONCERNING THE IMPORTATION OF CHICKEN MEAT AND CHICKEN PRODUCTS

A. Recourse to Article 21.5 of the DSU by Brazil: Request for the establishment of a panel (WT/DS484/19)

6.1. The Chairman drew attention to the communication from Brazil contained in document WT/DS484/19 and invited the representative of Brazil to speak.

6.2. The representative of Brazil said that at the present meeting, his country was requesting a compliance panel in this dispute because the appropriate measures to implement the DSB's recommendations and rulings had not been taken. Indonesia's domestic market remained closed to Brazilian chicken meat and chicken products. While the panel report in this dispute had been adopted in November 2017 and the reasonable period of time (RPT) had ended in July 2018, Brazil had been trying to access the Indonesian market for ten years as of the date of the present meeting. Brazil was the world's largest exporter of chicken meat and chicken products, exporting to 155 countries. The Brazilian chicken industry was one of the most technologically advanced in the world and Brazilian production was internationally recognized for its high quality and sanitary standards. Yet, Brazil had been trying to export chicken meat and chicken products to Indonesia since 2009, when it had first submitted its request for an international health certificate. After ten years, Indonesia had stated, in its most recent status report on this dispute, that it was still in the first phase of analysis (desk review). Therefore, Brazil believed that Indonesia continued to unduly delay the approval of the international health certificate for chicken meat and chicken products. Furthermore, Brazil also understood that Indonesia had not fully implemented the DSB's recommendations and rulings with regard to: (i) the "positive list requirement", which was still in force; (ii) obligations of distribution plans, found to be inconsistent in the reports; and (iii) restrictions on amendments of import licenses. In light of the lack of implementation of the recommendations of the original Panel, Brazil unfortunately had to request the establishment of a compliance panel, as provided for in Article 21.5 of the DSU, if possible, through recourse to the original Panel. Brazil wished to recall that, as provided for under paragraph 3 of its sequencing agreement of 27 July 2018 with Indonesia, Indonesia had agreed not to object to the establishment of a panel when such a panel request were to be placed on the DSB's Agenda for the first time. Thus, Brazil expected the panel to be established at the present DSB meeting.

6.3. The representative of Indonesia said that his country regretted Brazil's decision to request the establishment of a compliance panel under Article 21.5 of the DSU. However, pursuant to paragraph 3 of the understanding between Brazil and Indonesia on sequencing, Indonesia would have to accept the establishment of a panel at the present meeting. Indonesia accordingly did not object to the request made by Brazil. Indonesia wished to reiterate its willingness and commitment to continue discussions with Brazil on possible solutions to this matter.

6.4. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by Brazil in document WT/DS484/19. It was agreed that the Panel would have standard terms of reference.

6.5. The representatives of Australia, Canada, China, the European Union, India, Japan, the Republic of Korea, the Russian Federation, the Kingdom of Saudi Arabia and the United States reserved their third-party rights to participate in the Panel's proceedings.

7 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/645)

7.1. The Chairman drew attention to document WT/DSB/W/645 which contained three new names proposed by Indonesia for inclusion on the Indicative List of Governmental and Non-Governmental Panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/645.

7.2. The DSB so agreed.

8 APPELLATE BODY APPOINTMENTS: PROPOSAL BY ARGENTINA; AUSTRALIA; BENIN; THE PLURINATIONAL STATE OF BOLIVIA; BRAZIL; CANADA; CENTRAL AFRICAN REPUBLIC; 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; MOROCCO; NEW ZEALAND; NICARAGUA; NORTH MACEDONIA; NORWAY; PAKISTAN; PANAMA; PARAGUAY; PERU; THE RUSSIAN FEDERATION; RWANDA; SINGAPORE; SWITZERLAND; THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU; TURKEY; UKRAINE; URUGUAY; THE BOLIVARIAN REPUBLIC OF VENEZUELA AND VIET NAM (WT/DSB/W/609/REV.11)

8.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Mexico, on behalf of several delegations. He drew attention to the revised proposal contained in document WT/DSB/W/609/Rev.11 and invited the representative of Mexico to speak.

8.2. The representative of Mexico, speaking on behalf of the co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.11, said that the delegations in question had agreed to submit the joint proposal, dated 13 June 2019, to launch the AB selection processes. At the present meeting, Mexico, speaking on behalf of the 75 Members, wished to make the following statement. The considerable number of Members submitting this joint proposal expressed a common concern with the current situation in the Appellate Body, which was seriously affecting its functioning and the overall functioning of the dispute settlement system against the best interest of its Members. The 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 in the joint proposal before the DSB at the present meeting. This proposal sought to: "(i) start six 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 occurred with 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; a fourth process to replace Mr. Shree Baboo Chekitan Servansing, whose four-year term of office expired on 30 September 2018; a fifth process to replace Mr. Ujal Singh Bhatia, whose second term will expire on 10 December 2019; and a sixth process to replace Mr. Thomas R. Graham whose second term will expire on 10 December 2019; (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 issues its recommendation within 60 days after the deadline for nominations of candidates". The proponents were flexible with regard to the deadlines for the AB 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.

8.3. The representative of the European Union said that his delegation wished to refer to its statements made on this matter at previous DSB meetings, starting in February 2017. The gravity and urgency of the situation was increasing as months went by. WTO Members had a shared

responsibility to resolve this issue as soon as possible. The EU wished to thank all Members that had co-sponsored the proposal to launch the AB selection processes. The EU invited all other Members to endorse this proposal so that new AB members could be appointed as soon as possible. The EU also wished to recall that concrete proposals had been submitted to the General Council with a view to unblocking the AB selection processes. These proposals amounted to serious attempts at responding to the concerns related to AB appointments. These proposals 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.

8.4. The representative of the United States thanked the DSB Chairman 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. 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 overreaching and 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.[6] 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 in 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 had to 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. 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 WTO rules. Our concerns had not been addressed. In fact, the Appellate Body continued to engage in these practices that contravened the clear rules that WTO Members had set out in the DSU. The US view was and had been clear: when the Appellate Body overreached and 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 DSB Chairman to seek a solution on these important issues.

8.5. The representative of Canada said that his country supported the statement made by Mexico. It had been over two years since the initiation of the AB selection processes was first proposed. Canada invited the Members that did not yet sponsor this proposal to give it the attention it deserved and support it. The revised proposal sought to launch the AB selection processes for four current vacancies, and for two additional upcoming vacancies at the AB. 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. Canada supported the informal process facilitated by the DSB Chairman under the auspices of the General Council to discuss the various proposals to address US concerns. Canada called on the United States to meaningfully engage in constructive discussions that were aimed at fixing the problems it perceived with the system. Canada remained committed to working with other interested Members, including the United States, with a view to address those concerns and undertake the AB selection processes expeditiously.

8.6. The representative of Cuba, speaking on behalf of the members of the Latin American and Caribbean Group (GRULAC) that were also WTO Members, wished to underline, once again, their serious concerns at the ongoing and prolonged situation regarding the impasse in the AB selection processes. It was neither positive nor constructive that the search for a solution to this very important question for the WTO continued to drag on, as this undermined the foundations of the

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

multilateral trading system. WTO Members part of the GRULAC welcomed the informal process on Appellate Body matters under the auspices of the General Council established to maintain a dialogue aimed at unblocking the AB selection processes. This showed the urgency and importance of this issue. A number of proposals had been submitted, which were aimed at achieving this objective. Some of these proposals had been submitted by WTO Members part of the GRULAC. Regrettably, no concrete progress had been made. WTO Members part of the GRULAC were therefore paying close attention to the concerns raised with regard to the functioning of the Appellate Body. These concerns were being used to justify the blockage of the AB selection processes. Once again, it was worth noting that under Article 17.2 of the DSU, vacancies shall be filled as they arise. This mandatory provision continued to be violated. Similarly, WTO Members part of the GRULAC looked forward to any concrete proposals that could address specific concerns raised. However, the search for a solution to systemic concerns should not be an obstacle to the functioning of the dispute settlement system. All Members should demonstrate a willingness to find solutions. Otherwise, as of 10 December 2019, the Appellate Body would cease to function. WTO Members part of the GRULAC wished to continue to contribute to finding a definitive solution to this urgent problem and supported the efforts of the DSB Chairman in this regard.

8.7. The representative of Norway said that his country, again, wished to refer to its statements made on this matter at previous DSB meetings. Norway wished to underline its serious concerns about this matter and said that it was becoming more and more urgent to resolve this situation. In its statement made at the present meeting, the United States had stated that all Members had to follow the rules. Similarly, Norway wished to underline that Members should follow the rules and fill the AB vacancies, as prescribed in the DSU.

8.8. 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 commence the AB selection processes. As other Members had stated, this matter had become even more pressing with the need to commence a fifth and sixth selection process to replace two of the three remaining members currently serving on the Appellate Body. To this end, Australia welcomed the leadership provided by the DSB Chairman, as Facilitator of the General Council's informal process on Appellate Body matters. Australia was mindful of the work required to address key concerns, as outlined in the Facilitator's progress report, and was strongly committed to this work ahead of the summer break. Australia acknowledged the valuable contributions of Members to this process and encouraged further constructive contributions in developing a pragmatic solution in the interests of all Members.

8.9. The representative of Japan said that his country wished to refer to its statements made at previous DSB meetings on this matter. Japan supported the informal process under the auspices of the General Council on matters related to the functioning of the Appellate Body. The active engagement of all WTO Members was essential to the prompt and successful conclusion of that process.

8.10. The representative of Chinese Taipei said that his delegation wished to refer to its statements made on this matter at previous DSB meetings. His delegation would continue to work with the DSB Chairman and all Members and looked forward to finding a solution to this impasse as soon as possible.

8.11. The representative of Switzerland said that her country wished to refer to its statements made at previous DSB meetings on this matter. Switzerland deeply regretted that the DSB was still unable to launch the AB selection processes. The eventuality of the Appellate Body losing its minimum quorum was looming. The situation was alarming. Once again, Switzerland urged all Members to engage constructively in order to find concrete solutions without further delay. For its part, Switzerland stood ready to continue the discussions in the context of the informal process on Appellate Body matters under the auspices of the General Council.

8.12. The representative of Singapore said that his country wished to refer to its statements made on this matter at past DSB meetings and reiterated its serious systemic concerns over the failure to launch the AB selection processes. The joint proposal made at the present meeting marked a new milestone as it included the launch of AB selection processes to fill the imminent vacancies of Mr. Ujal Singh Bhatia and Mr. Thomas R. Graham. This meant that there was now a total of six pending AB vacancies. More importantly, there were less than six months before the Appellate Body would be down to just one member, if vacancies remained unfilled. Even as Members continued to engage

in the informal process for focused discussions led by the DSB Chairman, in his capacity as Facilitator, Singapore wished to emphasize that the AB selection processes should be allowed to proceed unconditionally. Singapore would continue to engage constructively and collaboratively towards resolving this impasse.

8.13. The representative of China said that his country wished to echo the statement made by Mexico on behalf of 75 Members. China regretted that the DSB, once again, had failed to initiate the AB selection processes which took Members one step further to pushing the Appellate Body "off the cliff". China recalled that Members had a shared obligation to promptly fill the vacancies of the Appellate Body, as required by Article 17.2 of the DSU. The clear text of that provision indicated that such responsibility shall be fulfilled unconditionally. Nevertheless, with a view to breaking the deadlock in the AB selection processes, Members had undertaken various efforts to accommodate the US concerns. Various proposals, including the joint proposals co-sponsored by the EU, China and other Members, had been tabled and discussed in informal meetings under the auspices of the General Council. Regrettably, Members had yet to see the same seriousness and sincerity from the United States. Without constructive engagement from the United States, the paralysis of the Appellate Body seemed inevitable. This would bring a full scale of uncertainties to the whole Membership. From implementation to negotiations, the potential damages were far larger than simply the loss of appellate review. To avoid unintended consequences, China called on all Members to act responsively and cooperatively in order to break the impasse in the AB selection processes without further delay. China noted that the United States had recently opposed amending the DSU and had stated that the current text was clear enough and needed no further adjustment. However, that assertion contradicted its own position. For instance, Article 17.12 of the DSU required that the Appellate Body address each of the issues raised in an appeal. Therefore, it seemed that the Appellate Body had done nothing wrong and had simply fulfilled its duty by examining all the issues raised in an appeal. If Members truly wished to limit appellate review to what was necessary to solve a dispute, certain clarifications or changes to this Article were needed. For more than 70 years, the United States had been the primary architect and beneficiary of the rules-based multilateral trading system. According to the 2018 Economic Report of the US President, the United States obtained better outcomes through formal WTO adjudication rather than negotiations, increasing the probability that the complaints would be resolved and decreasing the time it took to remove the trade barriers at issue. China noted that the United States had won 85.7% of the cases it had initiated before the WTO since 1995, compared with a global average of 84.4%. When the United States was the respondent, it still had won 25% of the time, a rate that was better than the global average rate of 16.6%. At the same time, even regarding disputes between other WTO Members not relating to the United States, such as a dispute between the European Union and China, a positive solution would also contribute to a viable international business environment, which would eventually benefit American businesses. Accordingly, if the WTO Appellate Body were to become paralyzed, not only the interests of the entire Membership, but also those of the United States would be diminished. It would be extraordinarily naive to believe that a Member could enforce its laws unilaterally around the world and that a country could remain great and prosperous in isolation from the international community and without a stable and predictable international trading system. It should also be emphasized that a collapse of the adjudication function of the WTO would be extremely harmful to the interests of developing-country Members, since they would have less negotiating power when facing protectionism in an era of the law of the jungle. It seemed that the likely scenario would be that those most likely to be hurt would be those least able to protect themselves. It would be easy to destroy a successful system, but it would not be easy to rebuild such a system. The Appellate Body procedures might need improvement, and as a frequent user of the system, China was ready to work with all other WTO Members, and with the DSB Chairman, to find a proper solution. However, blocking the AB selection processes was not the right way to go about it. On the one hand, history would remember those who contributed to the enhancement of the multilateral trading system and the rule of law. On the other hand, as one Appellate Body member had recently stated in his farewell speech, history would not judge kindly those responsible for the collapse of the WTO dispute settlement system.

8.14. The representative of Uruguay said that his country supported the statements made by Mexico on behalf of the 75 co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.11, as well as Cuba's statement made on behalf of members of the GRULAC that were also WTO Members. Uruguay highlighted that WTO Members were engaged in constructive and positive discussions under the auspices of the General Council thanks to the leadership of the DSB Chairman as Facilitator and the General Council Chair. Proposals made by Members were aimed at improving the functioning of

the Appellate Body. As a result, it would be appropriate to launch the AB selection processes in order to ensure that the WTO could continue to count on its dispute settlement mechanism.

8.15. The representative of Korea said that his country wished to refer to its statements made at previous DSB meetings. Korea supported the statement made by Mexico based on the revised joint proposal contained in document WT/DSB/W/609/Rev.11 of which Korea was a co-sponsor. The revised joint proposal included two additional selection processes to replace the two outgoing AB Members whose second terms of office would expire in six months. Korea wished to express and share its deep concern and a sense of urgency regarding the filling of the vacancies in the Appellate Body. Korea looked forward to making good progress in the informal process led by the DSB Chairman, as Facilitator under the auspices of the General Council, as soon as possible.

8.16. The representative of Hong Kong, China said that his delegation wished to refer to its statements made at previous DSB meetings and to reiterate its disappointment and concern with the impasse in the AB selection processes, which remained unresolved. His delegation appreciated the efforts made by various Members to address a Member's concerns with the Appellate Body in the informal process under the auspices of the General Council. Hong Kong, China was committed to engaging constructively in order to find a solution as soon as possible. Hong Kong, China urged all Members, and in particular those that had raised systemic concerns, to do the same. Hong Kong, China wished to emphasize that the discussion on improving the DSU should not be a reason to delay the AB appointments. It was not justifiable to attach pre-conditions to the launch of the AB selection processes. Hong Kong, China called on Members to lift the blockage of the AB selection processes without further delay.

8.17. The representative of India said that his 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 commence the AB selection processes. Members had a collective responsibility to fill the vacancies in the Appellate Body as they arose. Therefore, India called on all Members to engage constructively pursuant to Article 17.2 of the DSU so as to immediately start the AB selection processes as a priority.

8.18. The representative of Brazil said that his country wished to refer to its statements made at previous DSB meetings regarding the urgency of launching the AB selection processes. The proposal contained in document WT/DSB/W/609/Rev.11 covered the filling of six vacancies, with the departures of Mr. Thomas R. Graham and Mr. Ujal Singh Bhatia in December 2019. In order to resolve this issue, Members had to discuss the proposals put forward to overcome this impasse. To this end, Brazil welcomed the progress achieved by the informal process under the auspices of the General Council. Members had demonstrated that they were ready to engage in pragmatic discussions to resolve these issues.

8.19. The representative of Mexico, speaking on behalf of the 75 co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.11, expressed regret that for the twenty-fourth time, Members still had not been able to start the AB selection processes and had continuously failed to fulfill their duties as WTO Members. The fact that a Member might have concerns about certain aspects of the functioning of the Appellate Body could not serve as a pretext to impair and disrupt the work of the Appellate Body. There was no legal justification for the current impasse in the AB selection processes, which resulted in nullification and impairment for many Members. Article 17.2 of the DSU clearly stated that: "[v]acancies shall be filled as they arise". No discussions should prevent the Appellate Body from continuing to operate fully and Members had to comply with their obligation under the DSU to fill the AB vacancies. 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.

8.20. The representative of Mexico said that the proposal contained in document WT/DSB/W/609/Rev.11, covered the selection processes of six of the seven Appellate Body members. Despite the repeated attempts made by 75 delegations to launch the AB selection processes to fill the vacancies, the Appellate Body would not be operational in 24 weeks. This situation was completely unacceptable and would have a serious systemic implication on the Organization. Each and every Member had agreed that Members had the right to appeal the recommendations issued by panels. This right was an essential part of the dispute settlement system and the multilateral trading system. It was also one of the most significant outcomes of the Uruguay Round. It was unacceptable that the concerns raised by a single Member deprived 164 Members of

this right. At present, more than 20 Members, individually and/or collectively, had submitted over ten proposals to the General Council seeking to address the concerns expressed by one Member. This should allow Members to immediately begin the AB selection processes. More importantly, Members had to separate the AB selection processes from any other systemic concerns. All Members had a shared responsibility to resolve this issue as soon as possible. Therefore, Mexico wished to reiterate its call on Members to act responsibly by immediately beginning the selection processes to replace six of the seven Appellate Body members.

8.21. The representative of Colombia said that his country wished to recall that over two years ago, seven Latin American countries had submitted the proposal to start the AB selection process for the first time. At the present meeting, these countries continued to hope that this would lead to a solution that would allow Members to launch the selection processes for six out of the seven members of the Appellate Body. As at the present meeting, only 75 Members co-sponsored the proposal, which did not represent half of the Membership. Therefore, Colombia urged all remaining Members who valued the importance of the multilateral trading system to co-sponsor this proposal. Colombia called upon Members, once again, to make progress in the informal process facilitated by the DSB Chairman. Colombia hoped that this would help to unblock the impasse in the AB selection processes.

8.22. The representative of New Zealand said that his country wished to reiterate its support for the joint proposal contained in document WT/DSB/W/609/Rev.11. New Zealand emphasized the importance of commencing the AB selection processes as soon as possible, and wished to refer to its statements made on this matter at previous DSB meetings.

8.23. The Chairman thanked all delegations for their statements. He 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 a number of delegations had stated, this matter urgently required political engagement on the part of all WTO Members. Indeed, that requirement was only becoming more urgent with each passing DSB meeting. As some Members had stated at the present meeting, the proposal contained in document WT/DSB/W/609/Rev.11 related to appointments of six of the seven members of the Appellate Body. As a number of delegations had referenced, under the auspices of the General Council, he had agreed to assist the Chair of the General Council, in his personal capacity as Facilitator, in an informal process of focused discussions on Appellate Body matters. He then recalled that on 7 May 2019, he had provided a second progress report to the General Council on these informal consultations. This report had been circulated to all Members in document JOB/GC/217. The Chairman said that he currently continued the informal process of solution-focused discussions in a range of different formats. It was his intention to hold an open-ended informal meeting for transparency purposes and to make another progress report to the General Council at its meeting on 23 July 2019.

8.24. The DSB took note of the statements.