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Dispute Settlement Body
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MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 22 JULY 2019

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

Table of Contents

1 SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

A. United States – Anti-dumping measures on certain hot rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.197)

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.172)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.135)

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.19)

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States (WT/DS471/17/Add.11)

F. Indonesia – Measures concerning the importation of chicken meat and chicken products: Status report by Indonesia (WT/DS484/18/Add.10)

G. United States – Anti-dumping measures on certain oil country tubular goods from Korea: Status report by the United States (WT/DS488/12/Add.10)

H. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.6 – WT/DS478/22/Add.6)

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.197)

1.2. The Chairman drew attention to document WT/DS184/15/Add.197, 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 11 July 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 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.172)

1.6. The Chairman drew attention to document WT/DS160/24/Add.172, 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 11 July 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 China noted that the United States had submitted 173 status reports 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, Section 110(5) of the US Copyright Act, which had been found inconsistent with the requirements of the Berne Convention and the TRIPS Agreement, remained intact. As a result, the United States had been continuously failing to accord the minimum standard of protection as required by the TRIPS Agreement and it 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 equalled or surpassed that of any other Member. Indeed, none of the damaging technology transfer practices of China that the United States 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, once again, had tried to derail the discussion under this Agenda item by irrelevant accusation against China's intellectual property protection. The issue under this Agenda item was quite straightforward: the question was whether the United States fully implemented the DSB's recommendations and rulings in this dispute. Obviously, the answer was negative. In its statement, the United States had suggested that its intellectual property protection "equalled or surpassed" that of any other Member. However, that assertion contradicted a simple fact. In this dispute, the United States continued to fail to accord the minimum standard of protection as required by the TRIPS Agreement. And such persistent

non-compliance had made the United States the only WTO Member who failed to implement the DSB's recommendations and rulings under the TRIPS Agreement. With respect to vague accusations against China's intellectual property protection and industrial policy, China would refrain from repeating its positions which had been fully elaborated on many occasions, such as the 28 May 2018 DSB meeting and the 26 July 2018 General Council meeting. China noted that such criticisms mainly came from a notorious Section 301 Report issued by the USTR in 2018. Regrettably, that report had been fabricated on the wilful distortion of selective facts and dubious evidence that either could not be verified or be admitted in any credible dispute settlement proceeding. While China always welcomed constructive dialogues with Members, it simply did not have any appetite for blame games. Back to this Agenda item, the long overdue US implementation had undermined the effectiveness and credibility of the WTO dispute settlement system. China urged the United States to faithfully honour its implementation obligation 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 could not take place for such a long time in this dispute.

1.12. The representative of the United States said that the United States was disappointed that China had chosen this forum to – once again – propagate inaccuracies and misrepresentations about the USTR's Section 301 investigation of China's forced technology transfer practices and the report's findings. Contrary to China's assertions, the United States had made its findings on China's unreasonable acts, policies, and practices after having received and considered extensive hearing testimony and other evidence over an investigation that had lasted seven months. The United States had issued a 200-page report in March 2018 documenting how China had engaged in unfair practices, including forced technology transfer, failing to protect US intellectual property rights, and conducting and supporting cyber theft from US companies, robbing them of sensitive commercial information and trade secrets.[1] The United States had followed-up with an update to the report in November 2018, finding that China had failed to address fundamentally these concerns. These unfair trade practices and other actions by China had cost the United States and its businesses hundreds of billions of dollars every year. Indeed, no one, other than China, seriously defended as fair the forced technology transfer policies followed by China. For example, at the conclusion of the meeting of trade ministers of the United States, Japan, and the EU in September 2018, the Ministers, consistent with prior statements, "recalled their shared view that no country should require or pressure technology transfer from foreign companies to domestic companies, including, for example, through the use of JV requirements, foreign equity limitations, administrative review and licensing processes, or other means. The Ministers found such practices to be deplorable". The Ministers also "affirmed their commitment to effective means to stop harmful forced technology transfer policies and practices". China had labelled US actions as "aggressive unilateralism". In the US view, this was a deliberate misrepresentation of US actions and intentions. It was China that had chosen to engage in forced technology transfer, not the United States. The facts demonstrating China's acts, policies, and practices had been clear. Therefore, the United States had faced a stark choice: either take action to protect its citizens, innovators, and businesses against the serious, on-going harm from China's policies and practices – or simply accept that this harm would continue because the WTO did not provide the necessary disciplines or remedies. The view of the US Administration was clear: the United States would not passively accept unfair and harmful practices that caused real-world harm to US workers and businesses just because the WTO did not provide an effective remedy for those practices.

1.13. The representative of China wished to reiterate that the Section 301 investigation by the United States, which had targeted China's so-called forced technology transfer, did not have any legal or factual basis. In this Section 301 investigation, the USTR had acted at the same time as the prosecutor, jury and judge. The report that came of that investigation had been fabricated on the wilful distortion of selective facts and dubious evidence that either could not be verified or be admitted in any credible dispute proceeding. China would refrain from engaging in blame games. However, China urged the United States to implement its WTO obligations by complying with the TRIPS Agreement and the DSU. China also wished to urge the United States to stop its unilateralism.

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

[1] Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974, Office of the United States Trade Representative, available at https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF.

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.135)

1.15. The Chairman drew attention to document WT/DS291/37/Add.135, 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.

1.16. The representative of the European Union said that the EU 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. As explained by the EU and confirmed by the US delegation during the EU-US biannual consultations held on 12 June 2019, efforts to reduce delays in authorization procedures were constantly maintained at a high level. This had resulted in a clear improvement of the situation. It was worthwhile noting that the slow reaction of the applicants in certain applications also increased the overall average time needed for risk assessment. On 12 July 2019, two draft authorizations for GM maize[2] had been presented for a vote in a member States Committee with a "no opinion" result. These measures would be submitted for a vote in the Appeal Committee in September 2019. On the same day, two draft authorizations for renewal of the authorizations of a GM soybean[3] and a GM oilseed rape[4] had been presented for a vote in an Appeal Committee with a "no opinion" result. The European Commission would then decide on these authorizations. During the 24 June 2019 DSB meeting, the United States had referred to what was known as the European "Opt-out Directive". The EU wished to reiterate that the DSB's recommendations and rulings in this dispute did not cover that Opt-out Directive. As for the US suggestion related to the statement by the EU Group of Scientific Advisors, the EU wished to clarify that this statement focused on the future challenges for products obtained by new mutagenesis techniques. That statement did not state nor imply that Directive 2001/18/EC would not be fit for purpose as regarded "conventional GMOs". The EU acted in line with its WTO obligations. The EU wished to conclude that the EU approval system was not covered by the DSB's recommendations and rulings.

1.17. The representative of the United States thanked the European Union (EU) for its status report and its statement made at the present meeting. 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 European Commission in 2019. 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 EU member State had taken action to ban the cultivation of such a product. 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 genetically modified organisms, or 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

[2] MON 89034 × 1507 × MON 88017 × 59122 × DAS-40278-9 (and GM maize combining two, three or four of the single events MON 89034, 1507, MON 88017, 59122 and DAS-40278-9) and MON 89034 × 1507 × NK603 × DAS-40278-9 (and sub-combinations MON 89034 × NK603 × DAS-40278-9, 1507 × NK603 × DAS-40278-9 and NK603 × DAS-40278-9).

[3] Renewal of soybean A2704-12.

[4] Renewal of oilseed rape T45.

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 should 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.

1.18. The representative of the European Union said that the WTO Agreements did not require full international harmonization and left some regulatory space or autonomy to individual WTO Members. The EU 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 referred to by the United States, an EU member State could adopt measures restricting or prohibiting cultivation only when such measures were in line with EU law and were reasoned, proportional, non-discriminatory and based on compelling grounds. The free movement of seeds in the EU market was embedded in Article 22 of Directive 2001/18/EC which provided that "[m]ember States may not prohibit, restrict or impede the placing on the market of GMOs, as or in products, which comply with the requirements of this Directive". The EU 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 authorized GMOs" in the EU. Currently, the "EU Common Catalogue of varieties of agricultural species" included 150 varieties of MON-810 maize, which were allowed to be marketed in the EU. Until now, the EU Commission had never received any complaints from seed operators or other stakeholders concerning the restriction of marketing of MON-810 maize seeds in the EU. This confirmed the smooth functioning of the internal market of MON-810 maize seeds. 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. 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 environment protection.

1.19. 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.19)

1.20. The Chairman drew attention to document WT/DS464/17/Add.19, 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.

1.21. The representative of the United States said that the United States had provided a status report in this dispute on 11 July 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.

1.22. 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 rulings and recommendations 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 at issue in this dispute.

1.23. 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 the United States 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.

1.24. The representative of China said that the Panel and Appellate Body in this dispute had concluded that "the United States' use of zeroing when applying the W-T comparison methodology is inconsistent 'as such' with Article 2.4.2 of the Anti-Dumping Agreement". China was deeply concerned about US compliance with the DSB's adopted recommendations and rulings in this dispute. The situation looked even more dire when it came to implementation in respect of WTO-inconsistent "as such" measures. Just as demonstrated in this dispute, the United States had consistently showed little will to move forward in this area. However, when inconsistent "as such" measures could not be brought into conformity, a reality check suggested that it was almost inevitable for those measures to be brought up again and again in future dispute settlement proceedings. Various resources were wasted for all parties in grappling with those relitigated issues, while the credibility and effectiveness of the dispute settlement mechanism was also being seriously undermined. Implementation was critical to the well-functioning of the dispute settlement system. Anything short of prompt and full compliance was a clear departure from the clear rules set out in DSU. This should be of grave concern to the Membership. China, therefore, urged the United States to honour its WTO obligations by faithfully implementing the DSB's adopted recommendations and rulings in all its cases.

1.25. The representative of the United States said that the United States certainly disagreed with China's statement under this Agenda item but wished to make a second statement under this Agenda item in response to the statement made by Canada. The United States recalled that Canada had commenced a dispute settlement proceeding against the United States concerning the use of a differential pricing analysis and zeroing. Canada had lost that dispute before the panel. The United States was willing, of course, to discuss Canada's concerns bilaterally.

1.26. 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.11)

1.27. The Chairman drew attention to document WT/DS471/17/Add.11, 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.

1.28. The representative of the United States said that the United States had provided a status report in this dispute on 11 July 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.

1.29. 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 the 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. China was deeply disappointed that, more than two years after the DSB had adopted recommendations and rulings in this dispute, and 11 months after the expiry of the reasonable period of time, the United States continued to fail to bring its inconsistent measures into conformity with WTO rules. Besides "consulting with interested parties", no implementation progress could be detected. Without implementation, these WTO-inconsistent measures continued to infringe China's legitimate economic interests, distorted relevant international markets and undermined the rules-based dispute settlement mechanism. Ironically, when the United States was the complainant in a dispute, it never shied away from aggressively pursuing prompt implementation by responding parties. China encouraged the United States to apply the same degree of enthusiasm in promoting implementation both in its offensive and defensive cases. 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". China, therefore, urged the United States to take concrete actions to fulfil its WTO obligations and promptly bring its measures in conformity with the DSB's recommendations and rulings in this dispute.

1.30. 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.10)

1.31. The Chairman drew attention to document WT/DS484/18/Add.10, 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.

1.32. The representative of Indonesia said that her country submitted its report in accordance with Article 21.6 of DSU. On 22 November 2017, the DSB had adopted the recommendations and rulings in this dispute. At the 22 January 2018 DSB meeting, Indonesia had informed the DSB of its intention regarding the implementation of the DSB's recommendations and rulings in this matter. Indonesia and Brazil had also informed the DSB, on 15 March 2018, of their agreement on a reasonable period of time for Indonesia to implement the DSB's recommendations and rulings. This reasonable period of time had expired on 22 July 2018. Indonesia had stated its intention of implementing the DSB's recommendations and rulings at previous DSB meetings as well as in bilateral meetings with Brazil. As Indonesia had explained, all products covered in this dispute could now be imported. Importers could also modify their licenses at any time without any sanctions. These changes were reflected in the new Minister of Trade Regulation No. 29/2019 concerning Provisions for Import and Export of Animals and Animal Products which had come into force on 24 April 2019. It was available in English on the Ministry of Trade website. With respect to the distribution plan requirement, there would be no such obligation in the new Minister of Agriculture Regulation. The draft regulation was now going through the enactment process. With respect to undue delay, Indonesia wished to reiterate that all animals and animal products, both fresh and processed, imported into Indonesia had to be accompanied by a health or veterinary certificate from their country of origin. The desk review process for the questionnaire submitted by Brazil had been completed. Nevertheless, based on the result of the review, Indonesian authorities had kindly requested Brazil to provide further information *inter alia* on the result of surveillance/monitoring of Salmonella and the recall system mechanism. Indonesia stood ready to continue communicating, and holding consultations as and when necessary, with Brazil with regard to this matter.

1.33. The representative of Brazil said that his country thanked Indonesia for its status report. Brazil recalled that it had now been one year since the expiry of the reasonable period of time to implement the DSB's recommendations and rulings in this dispute. Since Brazil had initiated compliance proceedings in this dispute, Brazil preferred to address these issues before the panel. Nevertheless, Brazil did not believe that the changes mentioned in Indonesia's status report brought Indonesia into compliance with its obligations under the covered agreements.

1.34. 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.10)

1.35. The Chairman drew attention to document WT/DS488/12/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 anti-dumping measures on certain oil country tubular goods from Korea.

1.36. The representative of the United States said that the United States had provided a status report in this dispute on 11 July 2019, in accordance with Article 21.6 of the DSU. The report noted that the US Department of Commerce had published a final decision memorandum on 5 July 2019, in which it had implemented the DSB's recommendations in a manner that respected US WTO obligations. The determination by the US Department of Commerce fully responded to the findings of the WTO panel in relation to determining profit for purposes of constructed value. The United States had therefore come into compliance within the reasonable period of time agreed to by Korea and the United States, which had expired on 12 July 2019.

1.37. The representative of the Korea said that Korea thanked the United States for its status report. First of all, Korea wished to point out procedural aspects related to the implementation by the United States. According to the US status report and statement, the US Department of Commerce (USDOC) had published, on 5 July 2019, a final decision memorandum revising certain aspects of the final determination in the anti-dumping duty order on certain oil country tubular goods from Korea. However, as of 5 July 2019, neither Korea nor any of the Korean interested parties participating in the Section 129 proceeding had been notified of the US final determination. In fact, it was not until ten days later, on 15 July 2019, that USDOC officials had uploaded a final determination notice, dated 5 July 2019, to the administrative record. For this reason, Korea considered that, even if posting its final determination had constituted "publication" and "implementation" of its revised measures, the United States clearly had not complied with the DSB's rulings and recommendations within the reasonable period of time, which had expired on 12 July 2019. Also, in terms of the consistency of the compliance measure of the United States, Korea noted that the USDOC had determined to make no changes to the Section 129 preliminary determination. Thus, Korea remained of the view that the United States had not achieved compliance with the DSB's rulings and recommendations through its Section 129 proceeding. Therefore, Korea wished to reiterate its comments made at the 24 June 2019 DSB meeting. Korea believed that the final determination did not achieve compliance in every key issue in this dispute, among others: (i) the use of the respondent's actual sales data under the "preferred method" of Article 2.2.2 chapeau 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 would take appropriate steps to maintain and protect its rights under the DSU within the context of this dispute.

1.38. The representative of the United States said that the United States respectfully took exception to the point that the United States had not complied fully with the DSB's recommendations. The US Department of Commerce's determination addressed the DSB's recommendation first by clarifying the scope of the anti-dumping duty order on certain oil country tubular goods from Korea. The US Department of Commerce had further determined that it was unable to use respondents' actual data to determine profit for constructed value, that it had resorted to a reasonable method to determine the appropriate data to calculate this profit, and that it had calculated and applied a profit cap based on "facts available". If it did become necessary, the United States was fully prepared to defend this determination. The United States remained open to further discussions to address any concerns that Korea might have.

1.39. The DSB took note of the statements.

H. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.6 – WT/DS478/22/Add.6)

1.40. The Chairman drew attention to document WT/DS477/21/Add.6 – WT/DS478/22/Add.6, 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.

1.41. The representative of Indonesia said that her country submitted its 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 these disputes. At the 28 February 2018 DSB meeting, Indonesia had informed the DSB that it intended to implement the DSB's recommendations and rulings in these disputes, but that it would need a reasonable period of time to do so. Pursuant to Article 21.3(b) of the DSU, Indonesia, New Zealand and the United States had mutually agreed on a reasonable period of time to implement the DSB's recommendations and rulings. That reasonable period of time had expired on 22 July 2018. Nevertheless, with regard to the DSB's recommendations and rulings concerning Measure 18, Indonesia, New Zealand and the United States also had mutually agreed that Indonesia would have more time to make statutory changes to comply with the DSB's recommendations and rulings in these disputes. Accordingly, New Zealand and the United States would not initiate further proceedings concerning Measure 18 until at least 22 June 2019. At the present meeting, Indonesia wished to inform the DSB that Indonesia had already taken appropriate steps to implement the DSB's recommendations and rulings in these disputes within the reasonable period of time agreed to by the parties as reflected in Indonesia's status report submitted ahead of the 28 January 2019 DSB meeting. Indonesia also wished to inform the DSB that bilateral engagement had taken place between Indonesia and New Zealand and the United States after the expiry of the reasonable period of time. During this engagement, Indonesia had presented in great detail concrete steps that Indonesia had taken to adjust its regulations so as to be in line with the DSB's recommendations and rulings, i.e., to improve the importation system with a view to attaining full compliance status. In line with those bilateral engagements, Indonesia also had further amended the existing regulations as shown by the enactment of the Minister of Trade Regulation No. 29/2019 concerning Provisions for Import and Export of Animals and Animal Products and the Minister of Trade Regulation No. 44/2019 concerning the Import Provision on Horticultural Products. These regulations had come into force on 24 April 2019 and 12 June 2019 respectively. Indonesia was also making further adjustments to the Minister of Agriculture Regulations that would be finalized soon. The draft regulations were now undergoing the enactment process. Regarding Measure 18, the drafts of amendment along with its academic drafts had been prepared by the Government and would soon be finalized. This would be discussed in a meeting at the Ministerial level.

1.42. The representative of New Zealand wished to thank Indonesia for its statement made at the present meeting and its status report. New Zealand acknowledged the steps that had been taken by Indonesia to date to bring its regulations into compliance with the DSB's recommendations and rulings, and Indonesia's commitment to comply fully with the DSB's recommendations and rulings. New Zealand noted that both of the compliance deadlines that had been agreed between the parties had now expired. New Zealand was seriously disappointed 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 and the continued enforcement by Indonesia of: limited application windows and validity periods, harvest period import bans, import realisation requirements and restrictions placed on import volumes based on storage capacity. These issues, and others, continued to adversely impact New Zealand exporters. The New Zealand Embassy in Jakarta was therefore following developments closely and would also appreciate direct updates on progress, including concrete timelines for further regulatory and legislative changes. New Zealand strongly encouraged Indonesia to take appropriate steps, swiftly, to achieve long-term, commercially meaningful, compliance with the DSB's recommendations and rulings.

1.43. 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 would 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.

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

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

A. Statement by the European Union

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

2.2. The representative of 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.

2.3. 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.

2.4. The representative of Brazil said that as an original party to the Byrd Amendment disputes, 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 called on the United States to comply fully with the DSB's recommendations and rulings in this dispute.

2.5. The representative of the United States said that as the United States had noted at previous DSB meetings, the Deficit Reduction Act – which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) – 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. In May 2019, the EU had notified the DSB that disbursements under CDSOA from EU exports to the United States had totalled US$4,660.86 in fiscal year 2018. As such, the current level of countermeasures under the Arbitrator's formula in relation to goods entered before 2007 was US$3,355.82. The EU had announced it would apply an additional duty of 0.001% on certain imports of the United States. These values were no doubt outweighed by the associated costs resulting from the application of these countermeasures. 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 – including the European Union as a responding party – confirmed this widespread understanding of Article 21.6 of the DSU. 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.

2.6. The representative of the European Union recalled that the Continued Dumping and Subsidy Offset Act of 2000 had been found in breach of WTO rules for transferring anti-dumping and countervailing duties to the US industry. As long as the redistribution of collected duties continued, the United States would be 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.

2.7. The DSB took note of the statements.

3 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

3.1. 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.

3.2. The representative of the United States said that 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 – under a different Agenda item – 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". Under this Agenda item, however, the EU argued that by submitting a compliance communication, 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. At recent DSB meetings, the European Union had attempted to reconcile this view with the EU's long-standing, contrary position. The EU argued that the situation in the "US — Offset Act (Byrd Amendment)" dispute (DS217, DS234) differed from that of the "EC – Large Civil Aircraft" dispute (DS316) because, in "US — Offset Act (Byrd Amendment)", the dispute had been adjudicated and there were no further proceedings pending. With this statement, the EU suggested that the issue of compliance in the "US — Offset Act (Byrd Amendment)" dispute had been adjudicated; in fact, it had not. The United States had repealed the Continued Dumping and Subsidy Offset Act of 2000 measure after all of the proceedings in the dispute. By way of contrast, in the "EC – Large Civil Aircraft" dispute (DS316), the EU's claim of compliance had already been rejected by the DSB through its adoption of compliance panel and appellate reports. Under the EU's own view, the EU should be providing a status report. Yet it had failed to do so, demonstrating the inconsistency in the EU's position depending on its status as complaining or responding party. The US position had been consistent and clear: 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 DSB meetings provide status reports in the "EC – Large Civil Aircraft" dispute (DS316).

3.3. The representative of the European Union said that his delegation maintained its statement 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. 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 at previous DSB meetings, 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" dispute (DS316), 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" dispute (DS316), the EU had notified to the WTO a new set of measures in a compliance communication which had been presented 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 that 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. The EU wished to stress, once again, 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.

3.4. The DSB took note of the statements.

4 STATEMENT BY THE UNITED STATES ON TRANSPARENCY IN WTO DISPUTE SETTLEMENT

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 said that the United States had requested that this item be placed on the Agenda of the present meeting to discuss an important systemic issue that was critical for the legitimacy of the WTO: transparency – or, perhaps more accurately, the lack of transparency – in WTO dispute settlement. For more than 20 years, the United States had called for Members to support the WTO by bringing openness and accountability to its operations, including dispute settlement.[5] At the 1998 Ministerial Conference, the United States had proposed that all dispute settlement hearings at the WTO be opened to the public, and all submissions by the parties be made publicly available. In its statement at the 1998 Ministerial Conference, the United States had urged that Members could act to improve transparency even without changes to the rules. To that end, the United States had formally offered to open every panel proceeding that it was a party to and had invited every other Member to agree to make this happen. The United States had also made a proposal to mandate greater transparency through public meetings and access to submissions, but that proposal was without prejudice to the ability of Members to agree to greater transparency in each dispute. The story over 20 years later was disappointing, at best. Several WTO Members – including Australia, Canada, Chinese Taipei, the European Union, Japan, New Zealand, Norway and others – had joined the United States in supporting greater transparency in WTO dispute settlement, for example, by agreeing to open hearings and public submissions. But most WTO Members continued to insist on closed hearings and confidential submissions. What was worse, some even sought to prevent the United States and other Members from making statements publicly available through direct viewing when they were made. By pushing to keep WTO dispute settlement closed and secret, these Members denied other Members, the public, and the WTO itself of significant benefits. Open and transparent WTO dispute settlement enhanced WTO Members' understanding of the dispute settlement system, particularly for those who did not participate often in the system. Transparent dispute settlement promoted confidence in the professionalism and objectivity of WTO adjudicators, to the benefit of both parties and the dispute settlement system as a whole. Experience under the WTO dispute settlement system since 1995 had demonstrated that the findings contained in reports adopted by the DSB could affect large sectors of society. At the same time, increased Membership in the WTO had also meant that more governments and their citizens had an interest in the DSB's recommendations. Yet the citizens of the parties, and those Members not party to a dispute, had been unable to even observe the arguments or proceedings that resulted in these recommendations. The public had a legitimate interest in WTO dispute settlement proceedings. Indeed, acceptance of the results of WTO dispute settlement could be facilitated if those being asked to assist in the task of implementation, such as the constituencies of legislators, had confidence that the DSB's recommendations were the result of a fair and adequate process. Despite the myriad benefits that greater transparency would bring to the WTO, a number of Members – including several major users of the dispute settlement system such as China, India, Indonesia, Korea, Mexico, Russia, Turkey, Vietnam and others – had not only failed to agree to be more transparent in WTO dispute settlement. These Members had also actively obstructed efforts by others to provide greater transparency. Regrettably, some panels had acquiesced to the efforts of those Members by failing to permit another party to at least make its own statements open to public observation. And so what the United States had observed in the early days of the WTO continued to remain the general rule, and not the exception: "Today, when one nation challenges the trade practices of another, the proceeding takes place behind closed doors".[6] This was unacceptable. The lack of transparency in WTO dispute settlement at the inception of the WTO had been regrettable, but could perhaps be viewed as a remnant of the GATT system Members had inherited that could be expected to change as the WTO dispute settlement system matured. Over 20 years later and after the initiation of nearly 600 disputes, the continued lack of transparency was

[5] See, e.g., Statement by the President of the United States, WTO Ministerial 1998, available at https://www.wto.org/english/thewto_e/minist_e/min98_e/anniv_e/clinton_e.htm.

[6] Statement by the President of the United States, WTO Ministerial 1998, available at https://www.wto.org/english/thewto_e/minist_e/min98_e/anniv_e/clinton_e.htm.

simply untenable and threatened to further erode public support for and, ultimately the viability of, this system that Members professed to support. In its statement at the present meeting, the United States would first examine the rules and dispel common myths that certain Members sought to perpetuate about the dispute settlement system. There was no obligation in the DSU for WTO dispute settlement to be transparent. However, as the United States would explain, while the DSU did not mandate and ensure transparency, it did not prohibit decisions by Members to provide transparency, either. Second, the United States would highlight that while some Members had promoted transparent dispute settlement over the years, for too long, too many Members that claimed to support the multilateral trading system actively undermined it by promoting a lack of transparency in WTO dispute settlement. The positions of those Members opposed to greater transparency in WTO dispute settlement were misguided and only served to erode support for the WTO and its dispute settlement system. Third, the United States would explain why opposition to greater transparency was contrary to the choices Members had made in other fora, including other international adjudicatory systems and regional free trade agreements. This highlighted that WTO Members did not object to transparent dispute settlement in principle. Rather, Members recognized the value of transparency. Thus, there should be no impediment for all Members to take action now to remedy the lack of transparency in WTO dispute settlement. Fourth, before concluding, the United States would discuss briefly additional benefits associated with a transparent dispute settlement system.

4.3. With regard to the issue that the lack of transparency in WTO dispute settlement was not required by the DSU, the United States said that the text of the DSU did not mandate a lack of transparency in WTO dispute settlement. The relevant provisions of the DSU made clear that WTO adjudicators – panels, the Appellate Body, and arbitrators under Articles 21.3(c), 22.6, and 25 of the DSU – were not precluded from opening their meetings and hearings to all Members and the public. The DSU also made clear that nothing in the DSU precluded a party from making its submissions publicly available. To the contrary, and as the United States would discuss, the scope of confidentiality provided for in the DSU was explicit and limited and did not extend to the "arguments" or "positions" of a party.

4.4. First, the DSU did not preclude open meetings. In this regard, the United States said that panels, the Appellate Body and Arbitrators had opened their meetings to observation by WTO Members and the public upon request, and this was entirely consistent with the DSU. There was no DSU impediment to open meetings. Article 14.1 and Appendix 3 of the DSU did not mandate closed panel meetings or preclude open panel meetings. Article 14.1 of the DSU (entitled "Confidentiality") provided that a panel's "deliberations" shall be confidential.[7] A panel's "deliberations" referred to the internal discussions and debates among panel members concerning the dispute.[8] But panel deliberations was not synonymous with panel meetings. These were different terms used in the DSU with distinct meanings. In fact, whereas Article 14.1 of the DSU referred to a panel's "deliberations", other provisions of the DSU made reference to a panel meeting.[9] Panel working procedures often explicitly distinguished between the deliberations of the panel (which were confidential) and the meetings of the panel with the parties, which could be opened or closed, depending on the parties to the dispute. Thus, maintaining a panel's deliberations as confidential in no way suggested that a panel's meetings with the parties to a dispute also had to be maintained as confidential. In its experience proposing open panel meetings, the United States had heard from certain Members opposed to greater transparency that Appendix 3 of the DSU precluded open panel meetings. Those Members often pointed to paragraph 2 of Appendix 3, which indicated that a panel shall meet in closed session. Reliance on this paragraph alone was an incomplete reading of the DSU. Article 12.1 of the DSU stated that a panel could depart from the working procedures in Appendix 3 after consulting the parties to a dispute. In other words, it was clear from the DSU that a panel could decide *not* to meet in closed session after consulting with the parties. These provisions of the DSU also had to be read and applied in conjunction with Article 18.2 of the DSU.[10] The second sentence of Article 18.2 was the critical provision on transparency in the DSU. It provided as follows: "Nothing

[7] Article 14.1 of the DSU ("[p]anel deliberations shall be confidential).

[8] See, e.g., Cambridge English Dictionary Online, "deliberation", available at https://dictionary.cambridge.org/us/, ("considering or discussing something).

[9] See, e.g., Article 15.2 of the DSU ("[a]t the request of a party, the panel shall hold a further meeting with the parties on the issues identified in the written comments).

[10] Article 18.2 of the DSU ("[w]ritten submissions to the panel or the Appellate Body shall be treated as confidential, but shall be made available to the parties to the dispute. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential. A party to a dispute shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public).

in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public". What Article 18.2 provided was that no other provision of the DSU could interfere with a party's right to disclose its own positions to the public, including statements made in the course of a panel meeting. Thus, Article 18.2 of the DSU made clear that a party to a dispute could make public its statements and answers during a panel meeting. And if those statements could be made public, there was no reason why a party could not seek to have such statements and answers made public at the time they were spoken. Appellate oral hearings had also been opened to observation by WTO Members and the public, and this was fully consistent with the DSU. Article 17.10 of the DSU did not preclude open hearings by the Appellate Body. Article 17.10, first sentence, stated as follows: "the proceedings of the Appellate Body shall be confidential".[11] This provision did *not* state that an oral hearing had to be closed to the public and non-participating WTO Members. And the text of the DSU confirmed that the statements of WTO Members at an appellate oral hearing needed not be kept confidential against that party's wishes. First, the DSU did not even mention an oral hearing of the Appellate Body. The omission of any mention of an Appellate Body oral hearing in Article 17 meant that Article 17.10 could not be directed at the question of whether such a hearing should be open or closed. Second, Article 17.10 also had to be read and applied in conjunction with Article 18.2 of the DSU. As noted, Article 18.2 stated that nothing in the DSU shall prevent a Member from making public statements of its own position. This text made clear that a Member that was party to an appeal could agree to make public its statements and answers to questions during an appellate hearing. And if those statements could be made public, again, there was no reason why that party could not have such statements and answers made public at the time they were spoken. Third, the practice of the Appellate Body to permit third-party observation of appellate oral hearings confirmed an understanding that Article 17.10 of the DSU did not mandate closed hearings. There was nothing in the DSU that authorized a third-party to observe any Appellate Body hearing, as opposed to the panel stage, at which a third-party was given the opportunity to participate in a separate third-party session under Article 10.2 of the DSU. If Article 17.10 required that the appellate hearing be confidential, then third parties would have no right to attend and would not be permitted to observe the confidential oral hearing. Fourth, an interpretation of Article 17.10 of the DSU as requiring the confidentiality of appellate hearings was not consistent with Article 17, which required that the Appellate Body decide an appeal through issuance of an appellate report. Like panel reports, Appellate Body reports routinely described the arguments of the parties and third parties at the hearing. If Article 17.10 was construed as requiring the hearing be confidential, then such description or quotations would be a breach of confidentiality. An Appellate Body report also disclosed the arguments of the parties and third parties in their written submissions, and notices of appeal were circulated as public WT/DS documents in every appeal. They were not kept confidential despite forming part of the "proceedings". Of course, no meaningful report could be issued without engaging with the notice of appeal or the parties' arguments. In addition to panel and appellate proceedings, the DSU provided for arbitral proceedings in Articles 21.3(c), 22.6 and 25. There was no provision of the DSU applicable to arbitrators that corresponded to Article 14 or Article 17.10, nor was there any other provision of the DSU that suggested meetings with arbitrators could not be opened to the public. Thus, there was no DSU impediment to Members taking action now to improve the transparency in WTO dispute settlement by agreeing to permit observation of the meetings and hearings in their disputes by all Members and the public.

4.5. Second, the DSU did not preclude Members from making their submissions public. In this regard, the United States said that the DSU did not preclude Members from making their submissions and oral statements public. The confidentiality a Member could invoke under Article 18.2 of the DSU was limited, and it was important to distinguish between what it provided and what it did not. There were only two references in Article 18.2 to maintaining something as confidential. The first sentence of Article 18.2 provided that: "[w]ritten submissions to the panel or the Appellate Body shall be treated as confidential, but shall be made available to the parties to the dispute". However, the second sentence of Article 18.2, as discussed, provided that: "[n]othing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public". Read together, this meant that a Member could make public its own written submissions, oral statements, and responses to questions (i.e., statements of its own position), but it *could not* make public the "written submission[]" of another Member. The only other reference to maintaining something as confidential in Article 18.2 was in the third sentence, which provided that: "Members shall treat as confidential information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential". Information meant "facts about a situation, person, event,

[11] Article 17.1 of the DSU ("[t]he proceedings of the Appellate Body shall be confidential. The reports of the Appellate Body shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made").

etc.",[12] and in the context of Article 18 of the DSU, was contained in and a subset of a submission. This was demonstrated, for example, in the last sentence of Article 18.2, which referred to "information contained in" a written submission. "Information" did not refer to "arguments" or "positions" of a Member. Not only did this follow from the ordinary meaning of "information", but it followed from the context of Articles 14.2 and 17.10 of the DSU, which required panel and appellate reports to be drafted "in the light of the information provided and the statements made" (that is, the written and oral submissions that were the statements of a Member's position). And Article 18.2 of the DSU did not refer to all "information", but rather only that information which another Member had designated as confidential. Even where a Member had designated specific "information" as confidential, that Member was obligated by Article 18.2 to provide, upon request, a non-confidential summary of that "information" that could be made public. In sum, each Member had the right to make public its own submissions and statements. Thus, there was no DSU impediment to Members taking action now to improve the transparency in WTO dispute settlement by agreeing to make their submissions available to all Members and the public.

4.6. Third, the DSU did not provide for confidentiality of "arguments" or "positions" of a party. In this regard, the United States said that some Members, in opposing open meetings or public submissions, had argued that the DSU provided for the confidentiality of "arguments" or "positions" of a party. It did not, and there were several reasons why such an argument failed. No provision of the DSU provided for the confidentiality of "arguments" or "positions". The United States had already discussed the limited references to confidentiality and what they provided. Moreover, a requirement to maintain arguments or positions as confidential would conflict with several provisions of the DSU. First, such a requirement would render inutile the right of a Member under Article 18.2 of the DSU to disclose to the public its own statements given that in a dispute settlement proceeding a Member's statements were by their nature going to engage with, and thus reveal, the arguments and positions of another Member. A Member's statement of its own positions would necessarily relate to the arguments of the other Members. No respondent could ever disclose its own statements consistent with a requirement not to reveal the other party's arguments or positions. For example, a responding party in a dispute sought to explain that the complaining party had not demonstrated that a challenged measure was inconsistent with the WTO obligations identified by the complaining party. Even if the responding party had merely stated its position that a particular measure was *consistent* with a particular provision of a covered agreement, that statement would reveal *the measure* challenged by the complainant and, by implication, the *position* of the complainant with respect to that measure and legal claim. Second, if a party or third-party could maintain its positions and arguments as confidential, it would not be possible for panels to issue reports satisfying the requirements of the DSU. This explained why no panel had ever treated the arguments or positions of a party as confidential. For example, a panel, in its report, was required to "set out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes".[13] A panel report was also required to include "descriptive (factual and argument) sections".[14] Consequently, a panel report would set out each party's and third-party's arguments and positions, including any defences invoked. Nothing in the DSU provided that the material required to be included (and thus disclosed) in a panel report was nonetheless to be treated as confidential. There was nothing inherently confidential about a party or third-party's arguments and positions in a dispute, and these were routinely made public throughout the dispute settlement process. In fact, panels and the Appellate Body routinely called on parties and third parties to provide executive summaries of their arguments to be attached to their reports. Those executive summaries reflected the statements of the parties and third parties. It was difficult to reconcile attaching those statements to panel and appellate reports in the form of an executive summary, which would be made public, while finding that a Member was not permitted to disclose them.[15] The findings by several panels and the Appellate Body permitting a Member to make its statements publicly while permitting other Members in that dispute to maintain confidentiality of their statements was instructive. For example, in the appeal in "US – Continued Suspension", some Members had objected to opening the hearing for their statements, but that had not prevented the Appellate Body from opening the hearing to those Members who wished to deliver their statements publicly. The Appellate Body had decided that third participants could choose to deliver their statements in an open hearing while "[o]ral statements and responses to questions by third participants wishing to maintain the

[12] Cambridge English Dictionary Online, "information", available *at* https://dictionary.cambridge.org/us/.
[13] Article 12.7 of the DSU.
[14] Articles 15.1 and 15.2 of the DSU.
[15] In this regard, it is useful to note that the Appellate Body has itself recognized that "Appellate Body reports contain summaries of the participants' and third participants' written and oral submissions and frequently quote directly from them. Public disclosure of Appellate Body reports is an inherent and necessary feature of our rules-based system of adjudication "US – Continued Suspension" (AB), Annex IV, para. 5.

confidentiality of their submissions will not be subject to public observation". No party or third-party had been required to make any redaction from its oral statements even if the statement could have disclosed the arguments or positions of a third-party that had wished to maintain confidentiality for its submissions. Thus, one Member did not have a right to prevent another Member from disclosing their statements to the public even if they might disclose the "arguments" or "positions" of a party.

4.7. With regard to the issue that despite the efforts of the United States and other supporters of transparency, WTO dispute settlement remained overwhelmingly non-transparent, the United States said that although the United States and other Members had undertaken serious efforts to provide for greater transparency in WTO dispute settlement, the successes had been limited. Due to the unwillingness of certain Members, including several major users of the system, to agree to open panel meetings and public submissions, WTO dispute settlement remained largely a secret process unfolding behind closed doors. And further damaging the system, these same Members consistently objected to a request by a Member, such as the United States, that wished to make its own statements publicly available.

4.8. First, the United States and other Members had agreed to open meetings in a number of disputes. In this regard, the United States said that at least 22 panels,[16] 16 appeals,[17] and six arbitrators[18] in proceedings under Article 22.6 of the DSU had opened their meetings – but this was a minority of proceedings in the nearly 600 disputes initiated to date. Those experiences had been beneficial for Members and for the public, and thus ultimately for the WTO. The United States had been a leading Member in requesting transparent proceedings for disputes in which it was a party. The United States had been joined in these efforts by other Members that similarly valued transparency and recognized its importance for the continued viability of WTO dispute settlement, including Australia, Canada, Chinese Taipei, the European Union, Japan, New Zealand, and Norway among others. With regard to open meetings, the United States and European Union had agreed to open meetings in at least 15 dispute settlement proceedings.[19] It was notable that this list included open meetings by panels, the Appellate Body, and Article 22.6 Arbitrators in the large civil aircraft disputes, despite the commercial sensitivity of those disputes and the business confidential information and highly sensitive business confidential information involved. The United States had also worked closely with Canada and agreed to open meetings in a number of WTO disputes, including in at least nine separate proceedings and including open panel meetings, appellate hearings, and the meeting of an Article 22.6 Arbitrator.[20] Open meetings had also been held in disputes in which the United States was not a party, including for example the panel meetings in "EC – Bananas III" (21.5 – Ecuador) (DS27), "EC – IT Products" (Japan) (DS376), "EC – IT Products"

[16] See, e.g., "US/Canada – Continued Suspension", "EC and certain member States – Large Civil Aircraft", "US – Large Civil Aircraft" (2nd complaint), "EC – Bananas III" (Article 21.5 – US), "US – Continued Zeroing", "US – Zeroing" (EC) (Article 21.5 – EC), "Australia – Apples", "US – Zeroing" (Japan) (Article 21.5 – Japan), "EC – IT Products", "US – COOL", "EC and certain member States – Large Civil Aircraft" (Article 21.5 – US), "US – Measures Affecting Trade in Large Civil Aircraft" (Article 21.5 – EU), "EC – Seal Products" (Canada, Norway), "US – Supercalendered Paper" (Canada), "United States – Conditional Tax Incentives for Large Civil Aircraft", "Canada – Wine" (Australia), "US – Steel and Aluminum Products" (EU), "US – Steel and Aluminum Products" (Canada), "US – Steel and Aluminum Products" (Norway), and "US – Steel and Aluminum Products" (Switzerland).

[17] See, e.g., "US/Canada – Continued Suspension", "EC – Bananas III" (Article 21.5 – Ecuador II) /"EC – Bananas" III (Article 21.5 – US), "EC – Seal Products" (Canada, Norway), "Australia – Apples" (NZ), "US – Zeroing" (Japan) (Article 21.5 – Japan), "US – Zeroing" (EC) (Article 21.5 – EC), "US – Continued Zeroing", "EC and certain member States – Large Civil Aircraft", "US – Large Civil Aircraft" (2nd complaint), "EC and certain member States – Large Civil Aircraft" (Article 21.5 – US), "US – Measures Affecting Trade in Large Civil Aircraft" (Article 21.5 – EU), "US – Supercalendered Paper" (Canada), and "United States – Conditional Tax Incentives for Large Civil Aircraft".

[18] "EC – Large Civil Aircraft" (22.6 – EU), "US – Large Civil Aircraft" (22.6 – US), "US – Zeroing" (EC) (22.6 – US), "US – COOL" (Mexico) (22.6 – US), "US – COOL" (Canada) (22.6 – US), and "US – Tuna II" (22.6 – US).

[19] See, e.g., "EC – Bananas III" (Article 21.5 – US) (DS27), "US – Continued Zeroing" (DS350), "US – Zeroing" (EC) (Article 21.5 – EC) (DS294), "EC – IT Products" (DS375), "US – Continued Suspension" (DS320), "EC and certain member States – Large Civil Aircraft" (DS316), "EC and certain member States – Large Civil Aircraft" (Article 21.5 – US) (DS316), "EC and certain member States – Large Civil Aircraft" (Article 21.5 II – EU) (DS316), "EC and certain member States – Large Civil Aircraft" (Article 22.6 – EU) (DS316), "US – Large Civil Aircraft" (2nd complaint) (DS353), "US – Large Civil Aircraft" (2nd complaint) (Article 21.5 – EU) (DS353), "US – Large Civil Aircraft" (2nd complaint) (Article 22.6 – EU) (DS353), "United States — Conditional Tax Incentives for Large Civil Aircraft" (DS487), "United States – Steel and Aluminum Products" (EU) (DS548), and "EU – Additional Duties" (US) (DS559).

[20] See, e.g., "US – COOL" (DS384), "US – COOL" (Article 21.5 – Canada) (DS384), "US – COOL" (Article 22.6 – US) (DS384), "US/Canada – Continued Suspension" (DS320/DS321), "US – Supercalendered Paper" (DS505), "US – Lumber AD" (DS534), "US – Lumber CVD" (DS533), "US – Steel and Aluminum Products" (DS550), and "Canada – Additional Duties" (US) (DS557).

(Chinese Taipei) (DS377), "Canada – Renewable Energy / Feed-In Tariff Program" (EU, Japan) (DS412/DS426), and "Canada – Wine" (Australia), and the panel meetings and appellate hearings in "Australia – Apples" (New Zealand) (DS367) and "EC – Seal Products" (Canada, Norway) (DS400/DS401). With respect to the open meetings and hearings that had taken place, the experience had been entirely successful. The United States was not aware of any incidents of improper behaviour by observing members of the public, and the presence of public observers did not appear to have affected the professionalism with which parties, third parties, and adjudicators had traditionally conducted themselves. While this observation normally occurred via transmission to a viewing room, this had been true even in instances in which the public had been allowed to observe from the same room in which the meeting had been taking place. Nor had the passive observation of meetings by members of the public interfered with the intergovernmental nature of the WTO, the government-to-government nature of dispute settlement, or the ability of parties to settle a dispute through the negotiation of a mutually agreed solution. Attendance at open panel meetings had varied, but one would expect this given that not all disputes would be of equal interest or of interest to the same persons. Moreover, the important point was that the benefits from having open meetings arose regardless of actual attendance. This was because the mere possibility of attending a meeting helped to ensure confidence in the system and that the system had nothing to hide. In short, any concerns expressed with regard to open meetings had not come to pass. Instead, open meetings had served to promote transparency and confidence in the WTO dispute settlement system, had increased familiarity with the objective, professional manner in which hearings were conducted, and had consequently provided potential benefits for the implementation of any resulting recommendations by the DSB.

4.9. Second, due to opposition by some Members, including certain major users of the WTO dispute settlement system, closed meetings and non-public submissions unfortunately remained the general rule, not the exception. The United States said that despite the benefits that greater transparency would bring to the WTO and its dispute settlement system, for too long, too many Members that claimed to support the multilateral trading system actively undermined it by promoting a lack of transparency in WTO dispute settlement. If the only WTO disputes were between supporters of open meetings, the WTO would have a very transparent dispute settlement process. But such disputes represented the small minority of disputes. Ironically, it was some of the most frequent users of the system, that had actively opposed requests for public meetings and had not made their submissions public. For example: (i) the United States had proposed open meetings in at least 17 disputes with China, but China had always declined; (ii) the United States had proposed open meetings in at least nine disputes with India, but India had always declined; (iii) the United States had proposed open meetings in at least six disputes with Korea, but Korea had always declined; (iv) the United States had proposed open meetings in at least three disputes with Indonesia, but Indonesia had always declined; (v) the United States had proposed open meetings in at least three disputes with Turkey, but Turkey had always declined; and (vi) the United States had proposed open meeting in at least nine disputes with Mexico, and Mexico had declined, except for in a joint dispute with Canada. The United States had also requested open meetings in disputes with Brazil and Russia, and each of those Members had declined. These Members represented some of the most frequent users of the system they all professed to support. Their opposition to open meetings and greater transparency in WTO dispute settlement was misguided and only served to further erode support for the system. And what was worse, these Members consistently objected to a request by a Member, such as the United States, that wished to make its own statements publicly available at the time they were spoken. It would be understandable, if misguided, for them to seek to keep their own statements confidential. But there was no basis in the DSU or in logic for the assertion that *they* should have the ability to keep US statements of its own position confidential, *against* US wishes. Regrettably, certain panels had acquiesced in those efforts. The United States highly regretted those decisions, which were not required by the DSU and undermined the legitimacy of the dispute settlement mechanism. The positions of these non-transparent Members were not required by the "state-to-state" or intergovernmental nature of WTO dispute settlement. As the United States would discuss shortly, many WTO Members, including these Members, participated in other state-to-state adjudicatory systems and provided for open hearings and public submissions. The positions of these non-transparent Members were also not required by the subject matter. There was nothing in the subject matter of the WTO agreements that inherently required confidentiality, unless specifically provided for. And the fact that the most frequent users of the dispute settlement system, the United States and the European Union, both sought to have all of their disputes publicly observed demonstrated there was nothing in the subject matter of the WTO agreements that had to be kept confidential. The positions of these non-transparent Members were also not required by an alleged "sensitivity" of disputes. First, the argument made no sense at all where such a Member was challenging a measure of the United States. Second, as the United States would discuss later in its

statement, other intergovernmental fora had dealt with issues that were intergovernmental in nature and were at least as sensitive as those involved in WTO disputes. Third, if a dispute truly concerned a sensitive issue, that was all the more reason that the public should have a full opportunity to observe the dispute settlement process. And, as the United States and European Union had demonstrated in the context of the aircraft disputes, sensitive commercial information could be protected while also providing for open hearings and public submissions.

4.10. Third, the United States and several other Members made their submissions public, but many Members did not. The United States said that ensuring that all Members and the public had access to the parties' submissions in dispute settlement proceedings was a key component of maintaining support for the dispute settlement system. As discussed, there was no DSU impediment to making one's own submissions public (or publicly available). The United States made public its submissions for all disputes in which it was a party or third-party. The United States understood that, like the United States, other Members such as the European Union and Australia posted their submissions online. Unfortunately, too many Members, including significant users and beneficiaries of the system – such as, China, India, Indonesia, Korea, Mexico, Russia, and Vietnam, for example – insisted on maintaining their submissions as confidential. The United States did not disagree that these Members had the right to do so. This was explicitly provided for in Article 18.2 of the DSU. However, the United States questioned why they had taken that decision and how they thought this could contribute to the legitimacy of (and, ultimately, the viability of) the system that they professed to support. For example, the United States understood that these Members accessed US submissions that had been made public in past disputes. Certain of these Members had cited to those US submissions in their own arguments. The United States considered that to be positive because each Member should be accountable for its views and be able to explain how a position it currently was espousing related to a position it had taken in another dispute. And the United States also considered that it helped WTO adjudicators to come to better reasoned decisions to consider how the view of a Member might or might not have changed, and whether its position as a litigant might have affected its interpretive views. But if it was a good quality of WTO dispute settlement to be able to hold the United States accountable for its views, it equally had to be the case that it was good for WTO dispute settlement to be able to hold every other WTO Member accountable for its views. Put differently, the United States could not see a basis for China, or India, or Korea, or Russia, or Mexico, or Vietnam, or Indonesia, or any other Member to consider that it should not also be held accountable for its views as expressed in on-going and past disputes. A Member that kept its submissions confidential deprived the WTO dispute settlement system of important benefits. That a Member chose to keep its submissions confidential naturally could raise concerns about the extent to which it was willing to explain its views, both domestically and internationally. That is, the question was raised whether that Member was taking views that did not correspond to other views it had taken, or that had not been fully considered internally. Such concerns about the nature of positions being taken by non-transparent Members also did not contribute to the legitimacy of the dispute settlement system.

4.11. With regard to the issue that Members' positions in other fora illustrate Members did not object to transparency in principle, the United States said that opposition to greater transparency was contrary to the choices Members had made in other fora, including other international adjudicatory systems and regional free trade agreements. This highlighted that most Members did not object to transparency in principle. A number of international dispute settlement fora and tribunals were (or had been) open to the public, such as the International Court of Justice,[21] the International Tribunal for the Law of the Sea,[22] the International Criminal Tribunal for the former Yugoslavia,[23] the International Criminal Tribunal for Rwanda,[24] the European Court of Human Rights,[25] the African Court on Human and Peoples' Rights,[26] and the Inter-American Court of Human

[21] Statute of the International Court of Justice, Article 46 ("The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted); Article 59, Rules of Court.

[22] Statute of the International Tribunal for the Law of the Sea, Article 26.2 ("The hearing shall be public, unless the Tribunal decides otherwise or unless the parties demand that the public be not admitted); Article 74, Rules of the Tribunal.

[23] Rule 78, Rules of Procedure and Evidence.

[24] Rule 78, Rules of Procedure and Evidence.

[25] Rule 33, Chapter 1, Title II, Rules of Court.

[26] Article 10, on the Establishment of an African Court of Human and Peoples' Rights, Protocol to the African Charter on Human and Peoples' Rights. Rules of Court, Rule 43 ("Public Hearings") ("1. Cases shall be heard in open court. 2. However, the Court may, of its own accord or at the request of a party, hold its hearings in camera if, in its opinion, it is in the interest of public morality, safety or public order to do so. 3. Whenever the Court orders that any proceedings shall not be conducted in public, the Court shall give one or more of the

Rights.[27] These fora dealt with issues that were intergovernmental in nature and were at least as sensitive as those involved in WTO disputes. For example, these fora had addressed boundary disputes, use of force, nuclear weapons, human rights violations, and genocide. There were at least two key conclusions to be drawn from these comparisons. First, a comparison of WTO dispute settlement to other international dispute settlement fora revealed that the WTO, with perhaps the most active dispute settlement system, was one of the least transparent dispute settlement systems. Second, Members' participation in these other more transparent fora demonstrated that Members did not object in principle to greater transparency. Rather, they recognized the benefits it brought to these institutions. These same conclusions could be drawn from an examination of Members' participation in regional free trade agreements. At least 40 regional free trade agreements, involving more than 75 WTO Members, required transparency – be it through public submissions, open hearings, or both. Members involved in such agreements included: Argentina, Armenia, Australia, Bahrain, Botswana, Brazil, Brunei, Canada, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Eswatini, the European Union, Georgia, Guatemala, Honduras, Hong Kong, China; Iceland, Israel, Japan, Jordan, Korea, Lesotho, Liechtenstein, Malaysia, Mexico, Moldova, Montenegro, Morocco, Mozambique, Namibia, New Zealand, Nicaragua, Norway, Oman, Panama, Paraguay, Peru, Singapore, South Africa, Switzerland, Ukraine, Uruguay, the United States, and Vietnam. Again, Members' participation in regional free trade agreements requiring transparency underscored that the WTO lagged behind other fora, and a significant number of WTO Members did not in principle oppose transparency. The United States noted that this list also included some Members, like Brazil, Korea, Mexico, and Vietnam that had objected to open meetings in disputes with the United States. It was difficult to reconcile those Members' support for transparency in other fora, including regional free trade agreements, while opposing transparency in WTO dispute settlement. Why should WTO dispute settlement be any less transparent than these other fora in which Members participated? Why would Members encourage the perception that WTO dispute settlement had something to hide?

4.12. With regard to the issue that increased transparency enhanced Members' Understanding of the WTO dispute settlement, the United States said that the benefits of increased transparency in WTO dispute settlement were numerous. Increased transparency, through open meetings and public submissions, was essential if the results of WTO dispute settlement were to enjoy legitimacy. Another benefit was that open and transparent WTO dispute settlement proceedings enhanced WTO Members' understanding of the dispute settlement system. This was particularly true for those who did not participate often in the system. The United States also noted that third parties in some disputes had requested additional rights, often requesting to attend the entirety of panel meetings and to receive all submissions. To be clear, the United States considered that a panel could not grant additional "rights" without the agreement of the parties to a dispute. However, where the parties to a dispute agreed to open their meetings to all WTO Members and the public, and they made their submissions publicly available, third-parties (as well as all WTO Members and the public) would have the ability to observe all panel meetings and receive all submissions. The United States therefore found it ironic that some Members had opposed opening panel meetings to the public, while simultaneously requesting panels to provide them with additional third-party rights. In making such requests, those Members recognized that there was value in transparency and in seeing the parties' arguments at the time they were made. But in opposing the opening of meetings to other Members and the public, those Members had sought to obtain the benefit of greater transparency solely for themselves, while denying it to other Members and the public. The apparent position of these Members that the benefits of improved transparency should be limited to only a few Members was simply untenable. On a related and final note before concluding, the United States recalled that some Members in the past had suggested that opening meetings and making submissions available to all WTO Members, but not the public, would be a positive incremental step towards greater transparency. The United States seriously disagreed. Not only was there no basis in the DSU to restrict the ability of any WTO Member to make public statements of its own position – the operative word being "public", not "restricted" – but such an approach would only serve to reinforce perceptions about the lack of transparency in WTO dispute settlement, thereby further undermining its support.

4.13. In conclusion, with regard to the issue that if Members claimed to support the WTO dispute settlement system, they should take all steps now to provide for a transparent dispute settlement system, the United States said that many Members claimed to want to reform and keep relevant the WTO, and the United States had seen some proposals brought forward to enhance transparency and

reasons specified in sub-rule 2 of this Rule as the basis of its decision. The parties or their legal representatives shall be permitted to be present and heard *in camera*).

[27] Statute of the Inter-American Court of Human Rights, Article 24(1) ("The hearings shall be public, unless the Court, in exceptional circumstances, decides otherwise).

notifications. But the actions of too many Members had stymied transparency in WTO dispute settlement for far too long. As reviewed in this statement, the lack of transparency in WTO dispute settlement was not required by the DSU and Members could not defend the lack of transparency on this basis. To the contrary, whether the WTO had an open and transparent dispute settlement system depended, to a great extent, on the willingness of Members to support such a system. The United States had also highlighted that Members' participation in other fora illustrated Members did not object to transparency in international adjudicatory systems and trade agreements in principle. Thus, there was no impediment to Members taking action now to address this lack of transparency in WTO dispute settlement. It was long overdue for Members to agree to open all substantive dispute settlement meetings to observation by all Members and the public while protecting confidential information. Each Member should immediately take steps in each dispute in which it was participating to request to make its statements publicly observable and to make its written submissions publicly available.

4.14. The representative of the European Union said that the EU thanked the United States for raising this important matter and supported the proposals to enhance transparency in dispute settlement proceedings. The EU was strongly committed to ensuring trade policy was transparent in order to enhance legitimacy and public trust. Against that background, the EU had been advocating for increased transparency in WTO dispute settlement, including by making open meetings a general rule and by making party submissions public. The EU had supported proposals to this effect also in the on-going process of DSU review. The EU wished to underline the importance of transparency in dispute settlement proceedings from a systemic perspective. The WTO dispute settlement as it currently operated had nothing to hide, so an increased transparency could only increase its legitimacy with the public and reduce the space for misrepresentation. The EU urged WTO Members to adopt practices of increased transparency that were possible under the DSU. The EU recalled that the "Additional Practices and Procedures in the Conduct of WTO Disputes – Transparency of Dispute Proceedings" under the Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes contained in document JOB/DSB/1/Add.3 was one existing concrete initiative to foster transparency. The EU also looked forward to continuing discussions in relevant WTO fora on further proposals with increased transparency in mind. Of course, transparency in dispute settlement proceedings presupposed a functioning dispute settlement system. The EU, therefore, also reiterated its call on all Members to fill the outstanding vacancies on the Appellate Body as soon as possible.

4.15. The representative of Canada said that Canada thanked the United States for raising this important matter. Canada was a strong supporter of transparency in the functioning of the WTO dispute settlement system, including open hearings. Canada believed that transparency contributed to increase the legitimacy of the system as a whole. Canada recalled that it had been a party in the first dispute in which the Appellate Body had decided to hold an open hearing, a decision that Canada had advocated for, along with the other disputing parties. Concrete initiatives at the WTO already existed to foster transparency. In particular, Canada wished to point out that there was a practice document on transparency under the Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes contained in document JOB/DSB/1/Add.3. Australia, the European Union, Norway and Canada had endorsed that document, which remained – as all practice documents – open for endorsement by Members. This initiative demonstrated that further transparency could be achieved without modifying the existing rules. Canada believed that there was no practical reason not to work towards increasing transparency. As such, Canada thanked the United States for raising this important issue and encouraged all Members to embrace measures and practices to increase transparency.

4.16. The representative of Japan said that his country wished to thank the United States for raising this important systemic issue, which concerned all WTO Members. Japan noted that there was nothing in the text of the DSU, which would require the lack of transparency or absolute confidentiality in dispute settlement proceedings. As observed by the Appellate Body, "under the DSU, confidentiality is relative and time-bound".[28] Japan recognized that the interest in transparency needed to be balanced with other potentially competing interests, such as the protection of confidential information. Japan's past experience had been positive in this respect. Japan believed that the issue of transparency was of tremendous importance for the legitimacy and integrity, as well as the fair and impartial administration, of the WTO dispute settlement system. Japan looked forward to working with other WTO Members on this important matter.

[28] Appellate Body Reports, US/Canada – Continued Suspensions, Annex IV, para9.

4.17. The representative of Australia said that her country welcomed the US encouragement of Members to adopt practices that enhanced transparency and openness in WTO dispute settlement proceedings. Australia was a strong supporter of transparency in WTO dispute settlement. Australia published all its party and third-party dispute submissions, advocated for open hearings, and supported enhanced third-party rights. Most recently, in its dispute proceedings in "Canada – Wine (Australia)" dispute (DS537), Australia and Canada had agreed to: (i) hold hearings that were open to the public; (ii) make all their submissions to the Panel publicly available; and (iii) invite third parties to attend the entirety of both meetings with the Panel. As noted by Canada, Australia had also endorsed Canada's practice documents that increased transparency of dispute procedures and time-tabling. Australia believed that enhanced transparency of dispute settlement proceedings – including through publishing submissions and holding hearings that were open to the public – helped strengthen the system as a whole. All Members shared a responsibility to support and improve the efficient and effective operation of the WTO dispute settlement system and to increase legitimacy and public support for the system. Accordingly, Australia encouraged all Members to give positive consideration to the US call for greater openness and transparency in dispute settlement proceedings.

4.18. The representative of New Zealand said that his country wished to thank the United States for placing this item on the Agenda of the present meeting. New Zealand was a strong advocate for increased transparency throughout the WTO. In the dispute settlement context – while New Zealand recognized the rights that the DSU provided principal parties – New Zealand saw considerable value in hearings open to the public and publicly available submissions, with appropriate safeguards to protect, for instance, business confidential information. New Zealand itself sought such transparency in the dispute settlement provisions of its regional trade agreements. New Zealand believed that transparency in WTO dispute settlement helped increase confidence in the rules-based multilateral trading system among their stakeholders, businesses and communities. It also helped these stakeholders see the valuable asset that Members had in the WTO dispute settlement system. New Zealand also believed that increasing the ability for all WTO Members to access hearings and submissions, without having to join as third parties, would assist all Members to better engage with the dispute settlement system, increasing its accessibility. As mentioned by the representatives of Members who had spoken previously, considerable thought had been given to this issue in the past. In particular, New Zealand welcomed Canada and other Members highlighting the document "Additional Practices and Procedures in the Conduct of WTO Disputes – Transparency of Dispute Proceedings" under the Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes contained in document JOB/DSB/1/Add.3 – which New Zealand considered to contain some useful elements to inform discussions on enhancing transparency.

4.19. The representative of Norway said that transparency and publicity were, generally, key components for securing the legitimacy of legal proceedings. Thus, Norway had been, and remained, a strong supporter of efforts to promote the transparency of procedures in WTO disputes, such as the "Additional Practices and Procedures in the Conduct of WTO Disputes – Transparency of Dispute Proceedings" under the Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes contained in document JOB/DSB/1/Add.3 from 2016. Norway wished to underline the importance of supporting due process during challenging times for the dispute settlement system.

4.20. The representative of the Russian Federation said that as mentioned by the United States, according to the DSU, panels shall meet in closed sessions. After listening carefully to US concerns, her country failed to understand why there should be a departure from the rules agreed by Members. While not questioning the right of a party to make available its own position to the public, Russia believed that the DSU didn't contain any provisions allowing a party to make its statements and answers provided in the course of a panel meeting or appeal hearing available for the public. The DSU provided clear rules in that regard. Any departure from the rules provided therein and their applicability to disputes could be permitted only in cases when there was an agreement between the parties to such disputes. One party to a dispute could not change procedures and rules on its own. According to Article 14.1 of the DSU, panel deliberations shall be confidential. According to Article 12.1 of the DSU, panels shall follow the working procedures in Appendix 3 unless a panel decided otherwise after having consulted with the parties to a dispute. According to paragraph 2 of Appendix 3 of the DSU, panels shall meet in closed sessions. According to paragraph 3 of Appendix 3 of the DSU, the deliberations of the panel and the documents submitted to each party shall be kept confidential. Therefore, not only the deliberations of the panel and the documents submitted shall remain confidential, but also substantive panel meetings including any statements and

announcements made by a panel, parties, or third parties. A proper reading of the DSU provisions should secure a balance between a Member's right to disclose statements of its own position to the public and this Member's obligation to respect the confidentiality of other parties' or third parties' positions in the dispute. In this sense, the party who chose to disclose its statement to the public should do it in such a way as to refrain from unnecessarily publicizing the arguments of the other party or parties in a dispute. Although the DSU provided the opportunity for a Member to express its position to the public, it didn't expressly permit it to do so during substantive meetings with the parties. As had been mentioned previously, panel meetings were confidential. Therefore, there was no basis in the DSU for granting a Member the right to express its position to the public during panel meetings. On the contrary, the DSU required that Members ensured the confidentiality of panel meetings, of deliberations of the panel, of the time-table, and of oral and written statements by parties and third parties. As for the US reference to participation in several international adjudicatory systems that provided for open hearings, the Russian Federation wished to draw Members' attention to the statutes and rules of these international adjudicatory systems and invited Members to compare them with the relevant rules of the WTO. The WTO proceedings were closed. Russia believed that it was better to pose the question to the United States, as one of the drafters of the current rules, as to why they decided to establish closed panel sessions and appellate hearings. In any case, the reality was that the current burning issue was not transparency but the continuing blockage of the AB selection processes and the risk of not having an operational Appellate Body in December 2019. Soon, Members would not have a proper dispute settlement system, whether transparent or non-transparent.

4.21. The representative of China said that his country noted that this Agenda item requested by the United States did not relate to any specific dispute, but was nevertheless listed as item 4 on the Agenda of the present meeting. He recalled that China had requested that an item of a similar nature be placed on the Agenda of the 21 November 2018 DSB meeting. This item, titled "Right of a Member to Decide the Composition of its Delegation for Consultations", appeared as the last Agenda item (item 24) of that meeting. China asked whether this suggested that Agenda items raised by the United States were more important than those raised by other WTO Members. China hoped the WTO Secretariat could review and correct its relevant practices. With regard to the matter at hand, China said that the issue of transparency in dispute settlement had probably been among the most difficult and sensitive issues during the DSU negotiations. China recalled that many Members in previous DSB Special Sessions had fully elaborated their legitimate concerns on proposals regarding open hearings, *amicus curiae*, publication of submissions, etc. Thus far, relevant proponents had not come up with any effective solution to address the concerns raised. At the present meeting, China had listened carefully to the statement made by the United States but had yet to be convinced of the necessity and practicality of approaching this highly controversial issue or even of according it priority under the current circumstances. The United States had only been able to find a few cases with public hearings, which indicated that the majority of Members could not agree to such a proposal. And it also showed that the United States simply ignored the significant divergence between developed and developing-country Members on this issue. First, the WTO dispute settlement was intergovernmental in nature. Article 18.2 of the DSU provided that: "[w]ritten submissions to the panel or the Appellate Body shall be treated as confidential". And paragraphs 2 and 3 of Appendix 3 provided that: "[t]he panel shall meet in closed session"; and that "[t]he deliberation of the panel and documents submitted to it shall be kept confidential". Article 17.10 of the DSU prescribed that: "[t]he proceedings of the Appellate Body shall be confidential". These articles explicitly required that submissions of parties and relevant proceeding meetings be kept closed and confidential. China believed that these DSU provisions were unequivocal and fundamental. One could not interpret these plain-language provisions so as to make them mean the opposite. Therefore, neither a panel nor the Appellate Body had the discretion to decide whether a meeting should be open or not. Second, proposals on so-called enhanced transparency came with serious side effects that should not be overlooked by Members. Confidentiality played a critical role for the efficiency and effectiveness of substantive meetings. The presence of the public would inevitably divert the focus of adjudicators from the substance to the optics of how arguments or presentations might appear to outsiders. Disputing parties could also find it harder to reach a mutually satisfactory solution when the private diplomatic environment began to fade away. The parties and the respective Secretariats would also bear a greater burden in ensuring the proper handling of confidential information during open hearings. In addition, excessive transparency requirements also posed unique challenges to many developing-country Members. When compared to their counterparts in developed-country Members, non-governmental organizations (NGOs) of developing-country Members had capacity constraints in participating and expressing concerns in dispute settlement proceedings. Permitting *amicus curiae* would inevitably place developing country Members in a more disadvantaged position during dispute settlement proceedings. Furthermore, the

practice of other international tribunals with respect to transparency might not fit into the particular situation of the WTO. Each tribunal operated pursuant to its own authorizing treaty. When comparing the WTO with its counterparts, WTO adjudicators were bound by much more stringent time-frames. Article 12.9, Article 17.5, Article 21.5 and Article 22.6 of the DSU respectively set out explicit deadlines for panel, appellate and arbitration proceedings. While Members, including the United States, were insisting that the Appellate Body comply with strict time-frames, loading WTO adjudicators with additional burdens of transparency, which would adversely affect their ability to comply with deadlines, seemed to be a counterproductive proposal. In contrast, China believed the existing rules and practices were adequate to ensure the transparency and public understanding of the dispute settlement system. For example, Article 18.2 of the DSU did not preclude a disputing party from disclosing statements of its positions, including those contained in its oral statements at a panel meeting or appellate hearing, to the public. Records of prior discussions and the discussions at the present meeting reaffirmed the fact that the unnecessary transparency elements in dispute settlement were not supported by many Members. When the dispute settlement system was facing unprecedented risk due to the still on-going Appellate Body blockage crisis, the priority had to be accorded to discussions on how best to save the drowning Appellate Body without further delay. In the end, there would be no meeting to be opened to the public if the United States continued to block the system.

4.22. The representative of India said that his country took note of the statement made by the United States under this Agenda item. At the outset, India wished to make it clear that the existing provisions contained in the DSU and the rules followed by panels and the Appellate Body on transparency were sufficient and appropriate. The WTO dispute settlement system had originally been conceived to be a diplomatic government–to-government process, with some elements of public involvement for the efficient settlement of disputes. The main objective of the dispute settlement system was to resolve disputes among Members by preferring a solution mutually acceptable to disputing parties without invoking the dispute settlement procedures of the DSU. There were concerns that fully open panel and Appellate Body proceedings could lead to trial by media and could eventually place unwarranted public pressure on panelists or Appellate Body members. This situation would jeopardize the interests of developing countries and LDCs which had resource and capacity constraints in relation to the dispute settlement system. India also wished to clarify that its position on transparency had been consistent, both at the WTO and in its trade agreements. At present, the WTO dispute settlement system was facing an existential crisis of grievous concern as the Appellate Body would be paralyzed by December 2019. India believed that an independent, two-stage dispute settlement system was imperative for the fair enforcement of the rules of international trade. The impending paralysis and possible disappearance of the Appellate Body would be a fatal blow to the credibility of the WTO. Therefore, an expeditious resolution of the Appellate Body crisis needed to be at the top of the agenda, and discussions on any other issue would divert the attention of Members. Further, the issue of transparency was one of the twelve issues under negotiation in the DSB special session. India asked that Members let the DSB special session first negotiate and come out with a final, agreeable text on transparency, acceptable to all Members. Therefore, India urged all Members to first initiate the AB selection processes and not be diverted to other issues that were not important at this point in time.

4.23. The DSB took note of the statements.

5 UNITED STATES – SAFEGUARD MEASURE ON IMPORTS OF CRYSTALLINE SILICON PHOTOVOLTAIC PRODUCTS

A. Request for the establishment of a Panel by China (WT/DS562/8)

5.1. The Chairman drew attention to the communication from China contained in document WT/DS562/8. He then invited the representative of China to speak.

5.2. The representative of China said that his country requested that the DSB establish a Panel with standard terms of reference to examine the matter referred to in document WT/DS562/8. China had requested consultations to the United States in this matter on 14 August 2018. China had engaged in good faith talks with the United States on 22 October 2018 with a view to finding a mutually satisfactory solution. Unfortunately, those consultations had failed to resolve the matter. After reflecting on this matter, China had decided to request the establishment of a panel on 11 July 2019. This matter concerned the imposition of a definitive safeguard measure by the United States on imports of certain crystalline silicon photovoltaic cells, whether partially or fully assembled into other products. These products included modules, laminates, panels, and building-integrated materials.

The definitive measure had been adopted pursuant to Proclamation 9693 of 23 January 2018. The measure had taken the form of a tariff-rate quota on imports of solar cells for a period of 4 years, with unchanging in-quota quantities and annual reductions in rates of duty applicable for the second, third and fourth years. The duty rate for the first year had been set at the level of 30%. The US measure violated the core principles of the WTO disciplining the proper use of safeguard measures. It had failed to provide a reasoned and adequate explanation of any of the essential conditions that could justify the imposition of a safeguard measure as laid down in Article XIX of the GATT 1994 and various provisions of the Agreement on Safeguards, including an unforeseen increase in imports, serious injury to the domestic industry causally linked to the increase in imports, and the non-attribution of injury caused by factors other than those increased imports. As Members were aware, this was not the first challenge against US safeguard measures. There had been several prior challenges to US safeguard measures that had led to findings that these measures had been WTO-inconsistent. And this was not the first challenge to these specific safeguard measures. On 14 August 2018, Korea had submitted a similar panel request following unsuccessful consultations with the United States. The DSB had established a Panel at its 26 September 2018 meeting and those proceedings were on-going. China was firmly convinced that a panel would find that the measures imposed by the United States were impermissible under both the GATT and the Agreement on Safeguards. It was important to bear in mind that safeguard measures constituted emergency protection against imports, an extraordinary action that should rarely be taken. A WTO-inconsistent safeguard measure was a serious problem for the trading system. Such a measure negatively affected the rights of other Members who had their trade flows improperly restricted and affected by the safeguard measure. And such a measure undermined the predictability and certainty that the multilateral trading system sought to provide to all trading countries. China therefore requested that the DSB establish a panel with standard terms of reference.

5.3. The representative of the United States said that the WTO Agreement recognized the right of Members to temporarily suspend concessions and other obligations in order to take a safeguard action when a product was being imported into its territory in such increased quantities and under such conditions as to cause serious injury or threat of serious injury to the Member's domestic industry. The United States had exercised this right with respect to imports of crystalline silicon photovoltaic (CSPV) products and had imposed such a safeguard action. An independent investigative authority, the US International Trade Commission, had determined that the domestic industry producing like or similar products had been seriously injured and that the cause of that injury had been increased imports of the products at issue. The US process had been open and transparent, and fully in accord with both US domestic safeguard law and WTO obligations. The United States also noted that China's request to establish a panel improperly included a claim not referenced in China's request for consultations. For these reasons, the United States was not in a position to agree to the establishment of a panel at the present meeting.

5.4. The DSB took note of the statements and agreed to revert to this matter.

6 INDIA – MEASURES CONCERNING SUGAR AND SUGARCANE

A. Request for the establishment of a Panel by Brazil (WT/DS579/7)

B. Request for the establishment of a Panel by Australia (WT/DS580/7)

C. Request for the establishment of a panel by Guatemala (WT/DS581/8)

6.1. The Chairman proposed that three panel requests under this Agenda item be considered separately.

A. Request for the establishment of a Panel by Brazil (WT/DS579/7)

6.2. The Chairman drew attention to the communication from Brazil contained in document WT/DS579/7. He then invited the representative of Brazil to speak.

6.3. The representative of Brazil said that his country requested that the DSB establish a panel at the present meeting with standard terms of reference in order to examine India's measures on sugar and sugarcane. Brazil believed that the Indian government provided support exceeding the levels of domestic support allowed to India under the Agreement on Agriculture and also granted export subsidies prohibited by that Agreement. In recent years, India had intensified its support measures for the sugar sector. For instance, since 2010-2011, the Indian government had practically doubled

the minimum price for sugar cane and, from 2017-2018 to 2018-2019, had increased its mandatory export quota from 2 to 5 million tonnes of sugar. For Brazil, these measures depreciated the international price of sugar and harmed Brazilian exporters. The fact that Australia and Guatemala were also requesting a panel at the present meeting showed the extent to which the Indian policies were negatively impacting the international sugar market. Brazil hoped that following these panel requests, India would make every effort to bring its measures into conformity with its WTO obligations, in order to re-establish fair conditions of competition in that market. Brazil requested that a single panel be established in accordance with Article 9.1 of the DSU to examine the complaints of Australia, Brazil and Guatemala. This was the most efficient course of action both in terms of coherence and certainty of the decision. It was also the best use of WTO resources.

6.4. The representative of India said that his country wished to express its disappointment with Brazil's decision to request the establishment of a panel on India's measures concerning sugar and sugarcane at the present meeting. India believed that consultations held with Brazil on 15 April 2019 had been constructive. During these consultations, India had proactively explained its measures concerning sugar and sugarcane in good faith. Notably, India had demonstrated that Brazil's exports of sugar and related products to India had been increasing in recent years. Further, India had stated that it had a negligible share in the global sugar trade as compared to Brazil which accounted for almost 42% of the global sugar trade. India had also offered to continue to engage in bilateral discussions to address any concerns that Brazil might have. India also wished to clarify that India's measures were aimed at preventing exploitation of over 35 million vulnerable "low-income resource-poor" farmers and to enable them to have a just and equitable share in economic development – a goal that all Members had solemnly taken upon themselves during the Uruguay Round and that they had reaffirmed with the Doha Ministerial Declaration. At this point, India reiterated that the measures identified by Brazil in its request for the establishment of a panel did not violate India's obligations under the Agreement on Agriculture. These measures neither had any trade-distorting effect on global sugar trade nor did they adversely affect Brazil's commercial interests. In fact, these measures had resulted in raising the domestic prices of sugar within India, thereby making imports of sugar into India more lucrative and making exports from India uneconomical. Therefore, in relation to Article 3.7 of the DSU, India believed that Brazil could have exercised its judgement as to whether its actions would be fruitful. India was rather surprised that despite India's explanation of the challenged measures in good faith and its offer for continuous bilateral engagement to resolve any issues, Brazil had instead chosen to request the establishment of a panel which would put a strain on the already thin and scarce resources of the DSB. For these reasons, India was not in a position to accept the establishment of a panel at the present meeting.

6.5. The DSB took note of the statements and agreed to revert to this matter.

B. Request for the establishment of a Panel by Australia (WT/DS580/7)

6.6. The Chairman drew attention to the communication from Australia contained in document WT/DS580/7. He then invited the representative of Australia to speak.

6.7. The representative of Australia said that her country requested that the DSB establish a panel with standard terms of reference to examine India's measures concerning sugar and sugarcane. Australia had requested consultations with India in this matter on 1 March 2019 and consultations had taken place on 16 April 2019. Unfortunately, those consultations had failed to resolve the matter. India maintained a series of measures that supported its domestic producers of sugar and sugarcane. These measures comprised domestic support, including price support, and export subsidies. Australia considered that these measures were inconsistent with India's obligations under the Agreement on Agriculture and the SCM Agreement relating to domestic support commitments and export subsidies. Australia also considered that India had failed to comply with its obligations to notify Members of its domestic support and export subsidies for sugar and sugarcane under the Agreement on Agriculture, the SCM Agreement and the GATT 1994. The global sugar market was currently experiencing significant oversupply. Australia, along with Brazil and Guatemala, was seriously concerned that a major contributing factor had been the overproduction of highly subsidized sugar in India: Indian production had increased from 22 million tonnes in 2016-17 to 34 million tonnes in 2017-18, leaving a surplus of more than 12 million tonnes. This, combined with expected production of 35.9 million tonnes in 2018-19, had kept downward pressure on the global sugar price. The global price had hit a decade low in September 2018 following India's announcement of an additional one billion Australian dollars in sugar subsidies that month. India had also mandated the export of five million tonnes of sugar in 2018-2019 and provided subsidies that were contingent on export performance in order to achieve this target. Australia valued its strong political, economic

and community ties with India, and remained open to further discussions with a view to resolving this matter. However, as India had taken no concrete steps to date to respond to Australia's long-standing concerns, Australia was now compelled to request the establishment of a panel to examine the matter. Australia noted that Brazil and Guatemala shared Australia's concerns, and also requested that the DSB establish a panel in relation to the same matter. Australia requested that a single panel be established in accordance with Article 9.1 of the DSU to examine the complaints of Australia, Brazil and Guatemala. This would enable this matter to be dealt with in the most efficient way at a time when the resources of the WTO were constrained, and would promote a consistent, clear and certain resolution of the dispute.

6.8. The representative of India said that his country was disappointed with Australia's decision to decision to request the establishment of a panel on India's measures concerning sugar and sugarcane at the present meeting. India believed that consultations held with Australia on 16 April 2019 had been constructive. During these consultations, India had proactively explained its measures concerning sugar and sugarcane in good faith. Notably, India had demonstrated that the measures that were challenged in this request for the establishment of a panel had no bearing on world sugar trade or Australia's ability to compete in the global trade of sugar. In fact, almost 98% of Australia's production of sugar was utilized towards exports and domestic demand with little headroom left for increasing exports any further. India had also offered to continue to engage in bilateral discussions to address any concerns that Australia might have. India also wished to clarify that India's measures were aimed at preventing exploitation of over 35 million vulnerable "low-income resource-poor" farmers and to enable them to have a just and equitable share in economic development – a goal that all Members had solemnly taken upon themselves during the Uruguay Round and that they had reaffirmed with the Doha Ministerial Declaration. At this point, India reiterated that the measures identified by Australia in its request for establishment of a panel did not violate India's obligations under the GATT 1994, the Agreement on Agriculture and the SCM Agreement. Neither did these measures have any trade-distorting effect on global sugar trade nor did they adversely affect Australia's commercial interests. In fact, these measures had resulted in raising the domestic prices of sugar within India thereby making imports of sugar into India more lucrative and making exports from India uneconomical. Therefore, in terms of Article 3.7 of the DSU, India believed that Australia could have exercised its judgement as to whether its actions would be fruitful. India was rather surprised that despite its explanation of the challenged measures in good faith and its offer for continuous bilateral engagement to resolve any issues, Australia had instead chosen to request the establishment of a panel which would put a strain on the already thin and scarce resources of the DSB. For these reasons, India was not in a position to accept the establishment of a panel at the present meeting.

6.9. The DSB took note of the statements and agreed to revert to this matter.

C. Request for the establishment of a Panel by Guatemala (WT/DS581/8)

6.10. The Chairman drew attention to the communication from Guatemala contained in document WT/DS581/8. He then invited the representative of Guatemala to speak.

6.11. The representative of Guatemala said that his country had requested consultations with India in this matter on 15 March 2019. Consultations had been held on 22 May 2019. These consultations, however, had failed to resolve the dispute. At the present meeting, Guatemala, therefore, requested that the DSB establish a panel with standard terms of reference to examine India's measures concerning sugarcane and sugar as set out in document WT/DS/581/8. To ensure the efficiency of the proceedings, Guatemala further requested that, in accordance with Article 9.1 of the DSU, a single panel be established to jointly examine the complaints of Guatemala, Australia and Brazil. Guatemala shared the concerns of Australia and Brazil. India's domestic support measures and export subsidies in favour of sugarcane and sugar producers encouraged farmers to produce surpluses of sugar, and sugar mills to export those surpluses to the international market, depressing the price of sugar worldwide. These measures were seriously harming Guatemala's sugar industry. In addition, Guatemala considered that these measures were inconsistent with India's domestic support and export subsidy-related obligations under the Agreement on Agriculture and the SCM Agreement. Notwithstanding Guatemala's request for the establishment of a panel, Guatemala remained open to discussing a possible mutually agreed solution with India that would address these concerns.

6.12. The representative of India said that his country was disappointed with Guatemala's decision to request the establishment of a panel on India's measures concerning sugar and sugarcane at the

present meeting. India believed that consultations held with Guatemala on 22 May 2019 had been constructive. During these consultations, India had proactively explained its measures concerning sugar and sugarcane in good faith. Notably, India had demonstrated that the measures that were challenged in this request for the establishment of a panel had no bearing on world sugar trade or Guatemala's ability to compete in the global trade of sugar. In fact, India had stated that not only its share of exports in global trade of sugar was negligible, the meagre exports of sugar by India did not compete with exports of sugar by Guatemala. India had also offered to continue to engage in bilateral discussions to address any concerns that Guatemala might have. India also wished to clarify that India's measures were aimed at preventing exploitation of over 35 million vulnerable "low-income resource-poor" farmers and to enable them to have a just and equitable share in economic development – a goal that all Members had solemnly taken upon themselves during the Uruguay Round and that they had reaffirmed with the Doha Ministerial Declaration. At this point, India reiterated that the measures identified by Guatemala in its request for the establishment of a panel did not violate India's obligations under the Agreement on Agriculture and the SCM Agreement. Neither did these measures have any trade-distorting effect on global sugar trade nor did they adversely affect Guatemala's commercial interests. In fact, these measures had resulted in raising the domestic prices of sugar within India, thereby making imports of sugar into India more lucrative and making exports from India uneconomical. Therefore, in terms of Article 3.7 of the DSU, India believed that Guatemala could have exercised its judgement as to whether its actions would be fruitful. India was rather surprised that despite India's explanation of the challenged measures in good faith and offer for continuous bilateral engagement to resolve any issues, Guatemala had instead chosen to request the establishment of a panel which would put a strain on the already thin and scarce resources of the DSB. For the above reasons, India was not in a position to accept the establishment of a panel at the present meeting.

6.13. The representative of the United States said that the United States simply wished to note that with respect to these three sub-items, these matters would appear on the Agenda of a future DSB meeting only at the request of the complaining Members.

6.14. The DSB took note of the statements and agreed to revert to this matter.

7 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; QATAR; 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.12)

7.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Mexico, on behalf of 76 delegations. He drew attention to the revised proposal contained in document WT/DSB/W/609/Rev.12 and invited the representative of Mexico to speak.

7.2. The representative of Mexico, speaking on behalf of the co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.12, said that the delegations in question had agreed to submit the joint proposal, dated 13 July 2019 to launch the AB selection processes. Mexico welcomed Qatar as new co-sponsor as well as 38 members of the African Group who had expressed their intention of co-sponsoring this proposal. At the present meeting, Mexico, speaking on behalf of these 114 delegations, wished to make the following statement. The increasing and 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. 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 of office expired on 30 June 2017; a second process to fill the vacancy resulting 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 of office expired on 11 December 2017; a fourth process to replace Mr. Shree Baboo Chekitan Servansing, whose first four-year term of office expired

on 30 September 2018; a fifth process to replace Mr. Ujal Singh Bhatia, whose second term of office will expire on 10 December 2019; and a sixth process to replace Mr. Thomas R. Graham whose second term of office 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.

7.3. 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 matter 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.

7.4. The representative of the United States thanked the DSB 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. The systemic concerns that the United States had identified remained unaddressed. As the United States had explained at recent DSB meetings, for more than 16 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. 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 Chairperson to seek a solution on these important issues.

7.5. The representative of Canada said that his country supported the statement made by Mexico. It had now been over two years since the initiation of the AB selection processes was first proposed. The current proposal sought to launch the appointment processes for four current vacancies, and two additional upcoming vacancies at the Appellate Body. Canada commended the 38 new members of the African Group that had indicated their intention of joining the proposal as co-sponsors, as well as Qatar for its support of the proposal contained in document WT/DSB/W/609/Rev.12. There were now 114 supporters of the proposal. The fact that such a critical mass sought to launch the AB selection processes was a testimony to the importance that the WTO Membership accorded to the dispute settlement system, including a fully-functioning Appellate Body. 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 is 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, led by Amb. Walker as Facilitator, under the auspices of the General Council, to discuss the various proposals to address US concerns. Canada remained committed to working with other interested Members, including the United States, with a view to address those concerns and to start the AB selection processes expeditiously.

7.6. The representative of Singapore said that his country wished to refer to its statements made at previous DSB meetings and to reiterate its serious systemic concerns regarding the failure to launch the AB selection processes. Singapore welcomed Qatar and 38 members of the African Group as co-sponsors to the joint proposal contained in document WT/DSB/W/609/Rev.12. At the informal TNC/HODs meeting of 19 July 2019, the Director-General had reminded Members that only three working months were left before 10 December 2019. As the situation was getting more urgent, Singapore welcomed the broadening support for the joint proposal, which was supported by 114 delegations representing almost 70% of the Membership. At the same time, Singapore looked forward to the progress report on the informal process on Appellate Body matters, which Amb. Walker as Facilitator would present at the General Council meeting to be held on 23 July 2019. Singapore urged all Members, especially those who had raised concerns, to engage in the informal process on Appellate Body matters. 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.

7.7. The representative of New Zealand said that his country wished to reiterate its support for the co-sponsored proposal contained in document WT/DSB/W/609/Rev.12, to emphasize the systemic importance of commencing the AB selection processes as soon as possible, and to refer to its statements made at previous DSB meetings on this matter.

7.8. The representative of Norway said that his country welcomed the new co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.12. Norway wished to refer to its statements made at previous DSB meetings under this Agenda item, and again, to underline its serious concerns, as the need to resolve this situation was becoming more and more urgent.

7.9. The representative of Switzerland said that his country wished to refer to its statements made at previous DSB meetings on this matter. Again, Switzerland deeply regretted that the DSB remained unable to launch the AB selection processes. Members were now approaching the situation where the Appellate Body would be losing its minimal quorum. The situation was alarming, and Members had to act now. Once again, Switzerland urged all Members to engage constructively in order to find concrete solutions without further delay. Switzerland wished to reiterate that for its part it stood ready to continue the discussions in the context of the informal process under the auspices of the General Council.

7.10. 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. 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 urgent work required to address key concerns and was strongly committed to building on the valuable contributions made to date, with a view to developing a solution in the interests of all Members.

7.11. 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. Brazil welcomed the African Group and Qatar as co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.12. As a result, the majority of WTO Members were now co-proponents of launching the AB selection processes.

7.12. The representative of Ecuador, 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 on-going and prolonged situation regarding the impasse in the AB selection processes. These Members wished to reiterate their concern about the prolonged process aimed at finding a solution to this impasse. This significant impasse undermined the very foundations of the multilateral trading system. WTO Members part of the GRULAC welcomed the informal process on Appellate Body matters under the auspices of the General Council for the purposes of unblocking this prolonged paralysis in the AB selection processes. This high-level informal process underscored the urgency and importance of this issue. WTO Members part of the GRULAC wished to thank the DSB Chairman for his efforts as Facilitator of this informal process and for his report to Members on the work that had been undertaken in the context of that process. WTO Members part of the GRULAC wished to pay tribute to the work of the DSB Chairman in that respect. However, in spite of the numerous proposals that had been submitted, some of which had been submitted by WTO Members part of the GRULAC, no concrete progress had been made. WTO Members part of the GRULAC had been trying to respond to the concerns raised regarding the functioning of the Appellate Body. Thus far, these concerns had prevented the launching of the AB selection processes. Article 17.2 of the DSU stated that: "[v]acancies must be filled as they arise". This mandatory provision had 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 needed to show good faith in trying to find solutions. Otherwise, in December 2019, the Appellate Body would no longer be operational. Therefore, WTO Members part of the GRULAC wished to reiterate their willingness to continue to contribute to finding a definitive solution to this urgent problem and supported the efforts of Amb. Walker to this end.

7.13. The representative of Chinese Taipei said that his delegation wished to refer to its statements made at previous DSB meetings and welcomed the new co-sponsors of the proposal contained in

document WT/DSB/W/609/Rev.12. Chinese Taipei remained dedicated to finding a solution and urged all Members to engage constructively to this end.

7.14. The representative of Hong Kong, China said that his delegation wished to refer to its statements made at previous DSB meetings. Hong Kong, China wished to reiterate its disappointment and concern with the impasse in the AB selection processes, which remained unresolved. Hong Kong, China wished to emphasize that the discussions 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.

7.15. The representative of Japan said that his country wished to refer to its statements made at previous DSB meetings under the same Agenda item. Japan supported the informal process under the auspices of the General Council on matters related to the functioning of the Appellate Body which was being facilitated by Amb. Walker. The active engagement of all WTO Members was essential to the timely resolution of the matters related to the functioning of the Appellate Body.

7.16. The representative of Mexico, speaking on behalf of the 114 co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.12, expressed regret that for the twenty-fifth occasion, Members still had not been able to start the AB selection processes and had continuously failed to fulfill their duties 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 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. As Article 17.2 of the DSU clearly stated: "[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.

7.17. The representative of Mexico said that his country wished to thank the new co-sponsors who had decided to support the proposal contained in document WT/DSB/W/609/Rev.12. This brought the number of co-sponsors to 114 delegations. Mexico encouraged those Members who had not already done so to support this proposal. As previously mentioned, this proposal included the selection of six of the seven Appellate Body members. Despite the repeated attempts made by these 114 delegations to launch the AB selection processes to fill its vacancies, the Appellate Body would no longer be operational in 20 weeks. This situation was completely unacceptable and would have a serious systemic impact 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 for the concerns of a single Member to deprive 164 Members of this right. Currently, 114 delegations (almost 70% of Members) shared the same concern regarding the possibility of not having a functional Appellate Body by December 2019, since the Appellate Body would no longer have the minimum three members required to form a division pursuant to the provisions of Article 17.1 of the DSU, and would accordingly not be able to hear new appeals. Therefore, there was a risk that gradually, the dispute settlement system would no longer be operational. At present, 12 proposals had been submitted as part of the informal process on Appellate Body matters conducted under the auspices of the General Council. These proposals sought 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 concerns. All Members had a shared responsibility to resolve this issue as soon as possible. Therefore, Mexico wished to reiterate its urgent call on Members to act responsibly by immediately beginning the selection processes to replace six of the seven Appellate Body members.

7.18. The representative of Korea said that his country wished to refer to its statements made at previous DSB meetings. Korea welcomed the new co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.12 and supported the statement made by Mexico regarding the proposal of which Korea was a co-sponsor. Korea wished to express and shared a deep concern as well as a sense of urgency regarding the filling of the vacancies in the Appellate Body.

7.19. The representative of Uruguay said that his country supported the statements made by Mexico on behalf of the 114 co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.12, as well as Ecuador's statement made on behalf of members of the GRULAC that were also

WTO Members. Uruguay highlighted that WTO Members were currently engaged in constructive and positive discussions under the auspices of the General Council thanks to the leadership of the DSB Chairman as Facilitator. A significant number of proposals had been made by Members in the context of these discussions. These proposals were aimed at improving the functioning of the Appellate Body. In approximately 20 weeks, the situation would become critical. Therefore, Members needed to launch the AB selection processes as quickly as possible in order to ensure that Members and the WTO could count on a fully functioning Appellate Body and the dispute settlement mechanism.

7.20. The representative of China said that his country welcomed Qatar as a co-sponsor and the African Group Members that had expressed their intention of co-sponsoring the proposal contained in document WT/DSB/W/609/Rev.12. China supported the statement made by Mexico at the present meeting on behalf of 114 delegations. China regretted that the DSB, once again, had failed to launch 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 responsibility to promptly fill the vacancies of the Appellate Body, as required by Article 17.2 of the DSU, without any precondition. To break the AB selection deadlock, Members had established the informal process on AB matters facilitated by Amb. Walker and had sought to accommodate all concerns raised by the United States through various proposals. Regrettably, such sincere efforts had yet to receive any meaningful response from the United States. 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 through negotiations, increasing the probability that the complaint would be resolved and decreasing the time it took to remove the trade barriers at issue. Since 1995, the United States had won 85.7% of its offensive cases, beating the global average of 84.4%. When it came to defensive cases, the United States still achieved a 25% wining rate, which was far better than the global average of 16.6%. Even when the United States was not a party to a dispute, its businesses also benefitted from positive solutions to disputes, as these contributed to a viable international business environment. Therefore, if the WTO Appellate Body were to be paralyzed, not only the interests of the entire WTO Membership, but also that of the United States would be compromised. Moreover, the collapse of the adjudication function of the WTO would severely undermine the interests of developing-country Members. If the rule of law were to be replaced by the law of the jungle, those with least bargaining power would be the ones most likely to be harmed. Appellate procedures and practices could be improved, but blocking the AB selection processes was not the solution. It was easy to bring down a successful system, but far more difficult to rebuild one. On the one hand, history would remember those that had contributed to enhance the rules-based multilateral trading system. On the other hand, as one former 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. As a frequent user of the WTO dispute settlement system, China stood ready to work with other Members, as well as with the DSB Chairman, to save this "crown jewel" in a timely manner.

7.21. The representative of the United States said that the United States had listened closely as several Members had criticized the United States. These Members argued that the United States had failed to participate in on-going discussions on Appellate Body reform. These statements were wrong – and appeared to represent public posturing by these Members. The facts established that no Member had been more constructively and consistently engaged on these substantive issues than the United States. The United States wished to set the record straight. Over the past year, in the DSB, the United States had outlined its concerns in exhaustive detail. The United States had not avoided discussion; rather, the United States had laid out in the clearest possible terms the US position on the issues raised. While the DSU text was straightforward and clear, the United States recognized that the Appellate Body had ignored that text, and many WTO Members had not focused on just how far the Appellate Body's practice had strayed from that text. And so, beyond the US detailed statements made at DSB meetings, the United States had made clear its willingness to discuss these concerns further with any Member in order to deepen each other's understanding of these substantive issues. Several Members had participated in these dialogues and in many instances the United States had found the discussions to be frank and productive. In the informal process on Appellate Body matters, the United States had been represented at every stage of the process, seeking to gain a better understanding of each Member's views on the issues raised. As the United States had made clear, it was critical to understand if Members had a common understanding of the concerns raised. Unfortunately, one, or perhaps a few, WTO Members had indicated they did not share the concerns of the United States that the Appellate Body had deviated from the DSU text. These Members had not, however, adequately or persuasively explained how they could read the plain DSU text differently. Therefore, where a different understanding had become apparent, the

United States had registered the lack of any DSU textual basis for that different understanding during meetings of the General Council. So, the United States continued, as it had always done, to be engaged on these important substantive issues, including by meeting regularly with the DSB Chairperson as Facilitator and with Members to exchange views on the issues under discussion. Indeed, for several months, both within the informal process on Appellate Body matters and outside, the United States had actively sought engagement from Members on what the United States believed to be a fundamental issue. That is, how Members had come to this point where the Appellate Body, a body established by Members to serve the Members, was disregarding the clear rules that had been set by those same Members. In other words, Members needed to engage in a deeper discussion of *why* the Appellate Body had felt free to depart from what Members had agreed to. Engagement was a two-way street. Without further engagement from WTO Members on the cause of the problem, there was no reason to believe that simply adopting new or additional language, in whatever form, would be effective in addressing the concerns that the United States and other Members had raised.

7.22. 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 required urgent engagement on the part of all WTO Members. 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 the functioning of the Appellate Body. 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 had continued the informal process of solution-focused discussions in a range of different formats, including an open-ended informal meeting held on 18 July 2019 for transparency purposes. It was his intention to make another progress report to the General Council at its meeting on 23 July 2019.

7.23. The DSB took note of the statements.