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Dispute Settlement Body
22 November 2019

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 22 NOVEMBER 2019[1]

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

Prior to the adoption of the Agenda, the Chairman informed delegations that the consultations on the 2019 Draft Annual Report were ongoing and that more time was needed to continue these consultations on some elements of this Draft. Therefore, the Chair proposed that the item concerning the adoption of the 2019 Draft Annual Report of the DSB be removed from the Agenda of the present meeting. The Secretariat would continue updating the draft Report to reflect the DSB's actions until the end of 2019 as well as the actions to be taken in the first few months of 2020 in order for the DSB to be able to adopt the Report in time to be submitted to the General Council, which would then forward the Annual Report of the DSB to the 12th Ministerial Conference to be held in June 2020.

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[1] The **22 November 2019 DSB meeting was suspended** on the Agenda item entitled: "Pending Appeals - Statement by the Chairman" to allow more time for Chair's consultations. Subsequently, the meeting was **reconvened on 3 December 2019** in order to consider the suspended item (see page 23).

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.201)

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.176)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.139)

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.23)

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States (WT/DS471/17/Add.15)

F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.10 – WT/DS478/22/Add.10)

G. Brazil – Certain measures concerning taxation and charges: Status report by Brazil (WT/DS472/16)

H. Brazil – Certain measures concerning taxation and charges: Status report by Brazil (WT/DS497/14)

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 required 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.201)

1.2. The Chairman drew attention to document WT/DS184/15/Add.201, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the dispute 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 November 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 latest 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.176)

1.6. The Chairman drew attention to document WT/DS160/24/Add.176, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the dispute 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 November 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 for its statement made at the present meeting. The EU wished to refer to its previous statements and reiterated that it wished to resolve this dispute as soon as possible.

1.9. The representative of China said that his country noted that the United States had provided 177 status reports in this dispute. However, none of these reports indicated any progress on implementation. Regrettably, nearly two decades after the DSB had adopted the Panel report in this dispute, the United States continued to fail to bring its WTO-inconsistent measures into conformity, as prescribed by Article 21.1 of the DSU. The United States was a bad example as the only WTO Member who failed to implement the DSB's recommendations and rulings under the TRIPS Agreement. Prompt compliance was a fundamental legal obligation set out in by Article 21.1 of the DSU. The fulfilment of this obligation was essential to the well-functioning of the dispute settlement system which contributed to the existence of a rules-based multilateral trading system. When the United States, the most frequent user and the main beneficiary of the system, had chosen to disregard its implementation obligation for this long, the effectiveness of the dispute settlement system to rein in trade distortions was inevitably compromised. 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 DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.139)

1.11. The Chairman drew attention to document WT/DS291/37/Add.139, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the dispute concerning measures affecting the approval and marketing of biotech products.

1.12. 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 had concluded that there were no safety concerns. As repeatedly 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, and this at all stages of the authorization procedure. This had resulted in a clear improvement of the situation. At previous DSB meetings, the United States had referred to what was known as the EU "opt-out Directive". The EU wished to reiterate that the DSB's recommendations and rulings did not cover that "opt-out Directive". The EU acted in line with its WTO obligations. Finally, the EU wished to recall that the EU approval system was not covered by the DSB's recommendations and rulings.

1.13. The representative of the United States thanked the European Union ("EU") for its status report and for its statement made at the present meeting. The United States continued to see persistent delays that affected dozens of applications that had been awaiting approval for an extended period. The EU had previously suggested that the fault was with the applicants. The United States disagreed; US concerns related to delays at every stage of the approval process resulting from the actions or inactions of the EU and its member States. Even when the EU had finally approved a biotech product, EU member States continued to impose unwarranted restrictions on the supposedly approved product. As the United States had noted at prior DSB meetings, the amendment of EU Directive 2001/18, through EU Directive 2015/413, permitted EU member States to restrict or prohibit certain uses of genetically-modified organisms ("GMOs"), even where the European Food Safety Authority ("EFSA") had concluded that the product was safe. At least 17 EU member States, as well as certain regions within EU member States, had submitted requests to adopt such measures with respect to MON-810 maize. The EU's only response, which it continued to repeat, was that the member States did not restrict marketing or free movement of MON-810 in the EU. As the United States had noted at the prior DSB meeting, this answer did nothing to address US concerns. The restrictions adopted by EU member States restricted international trade in these products and had no scientific justification. Indeed, this was why the DSB had adopted findings that such restrictions on MON-810 were in breach of the EU's WTO commitments. The United States 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.

1.14. The representative of the European Union said that, in response to the US statement, the EU wished to make the following comments. First, the WTO Agreement 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. Second, no EU member State had imposed any "ban" on the use of GMOs. The EU understood that the United States accepted that point as they only referred to applications for restriction. Under the terms of the Directive, an EU member State could adopt measures restricting or prohibiting cultivation only when such measures were in line with EU law and when such measures were reasoned, proportional, non-discriminatory and based on compelling grounds. The EU's third point was that the free movement of seeds 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 wished to note that, according to the provisions of the opt-out Directive, and in particular Article 26b, point 8, the measures adopted under the Directive "shall not affect the free circulation of authorised GMOs" in the EU. Currently, the EU Common Catalogue of varieties of agricultural species included 150 varieties of maize MON-810, to which the United States had referred. Those 150 varieties of MON-810 maize were allowed to be marketed in the EU. Thus far, the European Commission had never received any complaint from seed operators or other stakeholders concerning the restriction of marketing of MON-810 seeds in the EU. This confirmed the smooth functioning of the internal market for MON-810 seeds. If the United States had any evidence at their disposal substantiating the disruption of the free movement of MON-810 seeds within the EU, the EU would be happy to discuss this with the United States bilaterally.

1.15. 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.23)

1.16. The Chairman drew attention to document WT/DS464/17/Add.23, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the dispute concerning anti-dumping and countervailing measures on large residential washers from Korea.

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

1.18. The representative of Korea said that her country wished to thank the United States for its status report. Korea, once again, urged the United States to take prompt and appropriate steps to implement the DSB's recommendations for the "as such" measure in this dispute.

1.19. 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 WTO-consistency of its differential pricing methodology and had asked the Panels to ignore the Appellate Body's findings. Canada remained deeply concerned with the continued US 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.

1.20. 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.15)

1.21. The Chairman drew attention to document WT/DS471/17/Add.15, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the dispute concerning certain methodologies and their application to anti-dumping proceedings involving China.

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

1.23. 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 which had found that certain measures taken by the United States were inconsistent with the requirements of the Anti-Dumping Agreement, including: (i) the use of zeroing under the W-T methodology was "as such" inconsistent with Article 2.4.2; (ii) the so-called "single rate presumption" as such violated Articles 6.10 and 9.2; and (iii) the "adverse facts available" was a norm of general and prospective application which could be subject to future "as such" challenges. Regrettably, more than two years after the DSB had adopted

its recommendations and rulings in this dispute, and 15 months after the expiry of the reasonable period of time, the United States continued to fail to bring its WTO-inconsistent measures into conformity. What was even worse was that none of the 16 status reports provided thus far by the United States could indicate any concrete implementation action. As a consequence, the WTO-incompatible US anti-dumping measures continued to infringe China's legitimate interests provided for in relevant covered agreements. On 1 November 2019, the Arbitrator appointed in accordance with Article 22.6 of the DSU had determined that the level of nullification or impairment incurred was US$ 3.579 billion. Notably, this was the third largest nullification amount that had been awarded in the history of the WTO. This was a testimony of the severe hardship that Chinese companies and workers were enduring. As China had noted at prior DSB meetings, the US failure to implement the DSB's recommendations and rulings, especially in the context of various trade remedy disputes, had become a systemic problem that should be of concern to the entire Membership. Therefore, it was not surprising that China was not the only victim of such conduct. Over the past years, the United States had chosen to ignore the DSB's recommendations and rulings whenever they were contrary to its interests. The United States had either maintained its WTO-inconsistent measures unchanged or applied certain cosmetic changes which had not fundamentally eliminated their non-conformity. WTO Members such as China, Canada, Korea and Viet Nam were forced to repeatedly bring such matters, which had already been settled, before panels and the Appellate Body. This entailed that various resources were being wasted in those unnecessary dispute settlement proceedings, and that the effectiveness and confidence of Members regarding the dispute settlement system was being severely undermined. Article 21.1 of the DSU was clear: "[p]rompt compliance with recommendations or rulings of the DSB was essential in order to ensure effective resolution of disputes to the benefit of all Members". As the principal architect and main user of the dispute settlement system, no Member was in a better position than the United States to know about the importance of fulfilling its implementation obligations. China was still waiting to see concrete actions from the United States to promptly and completely implement the DSB's recommendations and rulings in this dispute. Nevertheless, China stood ready to take proper actions in accordance with WTO rules in order to safeguard its legitimate interests.

1.24. The representative of the United States said that the United States was aware of the decision of the Arbitrator concerning the level of nullification or impairment. China's decision to pursue that arbitration was disappointing, and not constructive. The United States was troubled that the Arbitrator had applied an approach to determining the amount of impact on China that had no foundation in economic analysis. Specifically, the first step of the Arbitrator's two-step approach necessarily inflated and overstated the impact. The United States had explained this to the Arbitrator. Even China had argued against the use of a two-step approach. It was unfortunate that the Arbitrator nevertheless had applied its two-step approach over the objections of the United States and China. The United States was willing to discuss this matter with China on a bilateral basis.

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

F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.10 – WT/DS478/22/Add.10)

1.26. The Chairman drew attention to document WT/DS477/21/Add.10 – WT/DS478/22/Add.10, which contained the status report by Indonesia on progress in the implementation of the DSB's recommendations in the dispute concerning importation of horticultural products, animals and animal products.

1.27. The representative of Indonesia said that his country had submitted this report pursuant to Article 21.6 of the DSU. Indonesia was committed to implementing the DSB's recommendations and rulings in these disputes. Significant changes or adjustments had been made, both in the Ministry of Agriculture (MoA) and Ministry of Trade (MoT) regulations, in order to address the measures at issue by removing *inter alia* the measures of: (i) harvest period restriction; (ii) import realization requirements; (iii) six-months harvest requirement; and (iv) reference price. No such measures could now be found to exist. Indonesia also wished to report that the latest adjustment had been made by issuing MoT Regulation No. 72/2019 which amended MoT Regulation No. 29/2019 concerning Provisions for Export and Import of Animal and Animal Products. This Regulation had been notified to the Committee on Import Licensing on 16 October 2019 in document G/LIC/N/2/IDN/44. Regarding Measure 18, Indonesia wished to reaffirm that the documents required for the statutory changes, including the draft amendments and their respective academic drafts, had been prepared by the Government. Indonesia committed itself to continuing the process

of amending its relevant laws in conformity with its national laws and regulations. Indonesia would continue to engage with New Zealand and the United States regarding matters related to the DSB's recommendations and rulings in these disputes.

1.28. The representative of New Zealand said that New Zealand wished to thank Indonesia for its status report and for its statement made at the present meeting. New Zealand acknowledged the steps that had been taken by Indonesia, and Indonesia's commitment to comply fully with the DSB's recommendations and rulings in this dispute. 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. New Zealand was particularly concerned about: the failure to remove Measure 18; and the continued enforcement of limited application windows and validity periods; harvest period import bans; import realization requirements; and restrictions placed on import volumes based on storage capacity. These issues, and others, continued to adversely impact New Zealand exporters. Indonesia had yet to provide a clear explanation of how it would bring these measures into compliance, and the timelines for doing so. New Zealand strongly encouraged Indonesia to take appropriate steps, swiftly, to achieve long-term, commercially meaningful compliance with the DSB's recommendations and rulings in this dispute.

1.29. 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 understood that Indonesia claimed to have "completed its enactment process" of certain regulations, but it was still waiting to hear from Indonesia on whether and how such action would bring its measures into full compliance. It also remained unclear how Indonesia's proposed legislative amendments would address Measure 18 and when Indonesia would complete its process. The United States looked forward to receiving further detail from Indonesia regarding the changes to its regulations and laws, especially with respect to Ministry of Agriculture Regulation 39/2019 on RIPH requirements and Regulation 46/2019 on Strategic Horticultural Commodities.

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

G. Brazil – Certain measures concerning taxation and charges: Status report by Brazil (WT/DS472/16)

1.31. The Chairman drew attention to document WT/DS472/16, which contained the status report by Brazil on progress in the implementation of the DSB's recommendations in the dispute concerning certain measures concerning taxation and charges.

1.32. The representative of Brazil said that his country had submitted a status report in this dispute on 11 November 2019, in accordance with Article 21.6 of the DSU. In this regard, Brazil wished to provide information on the steps which it had taken towards the implementation of the DSB's rulings and recommendations in this dispute. On 11 January 2019, the DSB had adopted the recommendations and rulings in this dispute. At the 28 January 2019 DSB meeting, Brazil had informed the Membership of its intention to implement the DSB's recommendations and rulings in this dispute. Brazil and the EU had agreed that the reasonable period of time (RPT) for Brazil to implement the DSB's recommendations and rulings would end on 31 December 2019, with the exception of the measures found to be prohibited subsidies, for which Brazil had agreed to bring its measures into compliance on 21 June 2019. With regard to implementation, three programmes had expired before the adoption of the reports of the Panel and of the Appellate Body: INOVAR-AUTO had expired on 31 December 2017; PATVD had expired on 22 January 2017; and Digital Inclusion had expired on 30 December 2015. These programmes had expired and had not been renewed. Therefore, there were no further pending obligations with regard to the implementation of the DSB's recommendations in relation to those programmes. With regard to the findings on "Processos Produtivos Básicos" (PPBs), on 19 June 2019, the Ministry of the Economy and the Ministry of Science and Technology had issued Interministerial Implementing Order 1 revoking Implementing Orders which had been found to be inconsistent with the covered agreements. With respect to the findings on the Informatics and PADIS programmes, preparations were on-going and Brazil was consulting with all interested stakeholders in order to bring those measures into conformity within the agreed RPT.

1.33. The representative of the European Union said that his delegation wished to thank Brazil for its status report and for its statement made at the present meeting. The EU wished to resolve this dispute as soon as possible and was following Brazil's implementation efforts very closely. The EU recalled that the reasonable period of time (RPT) agreed by the parties would expire on 31 December 2019. In addition, as agreed between the parties in document WT/DS472/15, the time period for the withdrawal of the subsidies that had been found to be prohibited had expired on 21 June 2019. The EU took note of the steps taken by Brazil towards compliance, as set out in the status report and as repeated in its statement made at the present meeting. However, the EU still wished to raise a certain number of questions. The EU's first question related to the prohibited subsidies. The EU took note of Brazil's contention that certain programmes had expired before the adoption of the reports in this dispute, and that they had not been renewed. The EU also took note that for the findings on the so-called nested "Processos Produtivos Básicos" (PPBs), Brazil had revoked certain measures, in particular, Implementing Orders, and that some new substitute measures had been enacted. The EU, therefore, asked whether Brazil could confirm that all of Implementing Orders concerned had been revoked. The EU believed that many of these measures remained in force and that it would therefore be useful to receive a detailed list of the Implementing Orders that had been revoked. Assuming that some of the measures at issue remained in force, the EU asked whether Brazil could explain what it would do to address the current situation. In addition, the EU had concerns about many of the substitute Implementing Orders that had been enacted. The EU recalled that such substitute measures also had to be consistent with WTO rules, and the EU reserved its position in this respect. The EU would appreciate it if Brazil could provide it with a detailed list of the substitute Implementing Orders so that the EU could confirm that, indeed, the matter was satisfactorily resolved. With respect to the removal of the other discriminatory elements covered by the RPT, the EU understood, and Brazil's statement had confirmed this understanding, that Brazil was preparing to enact legislation. The EU looked forward to Brazil's full compliance with respect to these measures before the expiry of the reasonable period of time. The EU expected Brazil to be able to comply with the 31 December 2019 deadline, as Brazil had indicated in its statement made at the present meeting as well as in its status report. In conclusion, the EU looked forward to finding a good outcome with Brazil remained available to discuss these issues bilaterally.

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

H. Brazil – Certain measures concerning taxation and charges: Status report by Brazil (WT/DS497/14)

1.35. The Chairman drew attention to document WT/DS497/14, which contained the status report by Brazil on progress in the implementation of the DSB's recommendations in the dispute concerning certain measures concerning taxation and charges.

1.36. The representative of Brazil said that his country had submitted a status report regarding this dispute on 11 November 2019, in accordance with Article 21.6 of the DSU. On 11 January 2019, the DSB had adopted its recommendations and rulings in this dispute. At the 28 January 2019 DSB meeting, Brazil had informed the Membership of its intention to implement the DSB's recommendations and rulings in this dispute. Brazil and Japan had agreed that the reasonable period of time (RPT) for Brazil to implement the DSB's recommendations and rulings would end on 31 December 2019, with the exception of the measures found to be prohibited subsidies, for which Brazil had agreed to bring its measures into compliance on 21 June 2019. Three programmes had expired before the adoption of the reports of the Panel and Appellate Body: INOVAR-AUTO had expired on 31 December 2017; PATVD had expired on 22 January 2017; and Digital Inclusion had expired on 30 December 2015. These programmes had expired and had not been renewed. Therefore, there were no further obligations with regard to the DSB's recommendations regarding those programmes. With regard to the findings on "Processos Produtivos Básicos" (PPBs), on 19 June 2019, the Ministry of the Economy and the Ministry of Science and Technology had issued Interministerial Implementing Order 1 revoking Implementing Orders which had been found to be inconsistent with the covered agreements. With respect to the findings on the Informatics and PADIS programmes, preparations were on-going and Brazil was consulting with all interested stakeholders in order to bring those measures into conformity within the agreed RPT.

1.37. The representative of Japan said that his country wished to thank Brazil for its status report and for its statement made at the present meeting. Japan referred to its statements made at the January 2019 DSB meetings. Japan continued to seek a full and prompt implementation of the DSB's recommendations and rulings in this dispute by 31 December 2019, as agreed between the parties.

While Japan acknowledged the actions taken by Brazil in this regard, several of Japan's questions regarding Brazil's measures to comply with the DSB's recommendations and rulings remained unanswered. First, with respect to prohibited subsidies, Brazil had indicated in its report that all the relevant prohibited subsidies had been revoked before the agreed deadline of 21 June 2019. However, it appeared that a number of prohibited subsidies remained in force. Japan would be grateful if Brazil could: (i) provide Japan with a list of all the prohibited subsidies, identifying which ICT programme(s) each of them related to; (ii) identify the prohibited subsidies that it had already revoked, and those that were no longer in effect due to the expiry of the relevant ICT programme contained in that list; and (iii) explain how Brazil planned to address the remaining prohibited subsidies should that be the case. Furthermore, Japan believed that the Implementing Orders, which seemed to be aimed at amending or replacing the prohibited subsidies, appeared to be inconsistent with the WTO Agreement. Japan asked whether Brazil could confirm that the new orders in place did not contain local manufacturing obligations or discriminatory treatment which had been found to be WTO-inconsistent by the adopted reports in this dispute. Japan asked whether Brazil could provide a list of these new measures so as to allow Japan to verify whether they were all WTO-consistent. Finally, the deadline for Brazil to implement the DSB's recommendations and rulings was looming. As Brazil had already reported, it was preparing to bring the Informatics and PADIS programmes into compliance. Japan would appreciate an explanation from Brazil on the necessary procedures and on the timeline for enacting the legislation with respect to these two programmes by 31 December 2019. Japan would continue to closely monitor all of Brazil's actions towards bringing the measures at issue into conformity, as well as any substitute measures that were or would be in effect. Japan hoped to receive responses from Brazil to the points made in this statement at the earliest time possible and looked forward to discussing these matters with Brazil.

1.38. 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 recalled 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. Even if the amounts had considerably decreased, the most recent report under the Continued Dumping and Subsidy Offset Act of 2000, from December 2018, showed that amounts were still being, in practice, disbursed. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations and rulings. As long as the United States did not fully stop transferring collected duties, this Agenda item would rightly remain under the surveillance of the DSB. The EU assured Members that, due to the long-standing nature of this breach, it would continue to insist in this respect, as a matter of principle, independent of the cost resulting from the application of such limited duties. 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 DSB's Agenda as long as the United States had not fully implemented the WTO ruling and the disbursements ceased completely.

2.3. The representative of Canada said that his country wished to thank the European Union for placing this item on the DSB's Agenda. Canada agreed with the EU that the Byrd Amendment should remain subject to the surveillance of the DSB until the United States ceased to administer it.

2.4. The representative of Brazil said that, as an original party to this dispute, Brazil wished to thank, once again, the EU for placing this item on the DSB's Agenda. As anti-dumping and countervailing duties were still being disbursed to US domestic petitioners, Brazil called on the United States to fully comply 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 – had been enacted into law in February 2006. Accordingly, the United States had implemented 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 12 years ago. Even aside from this, the United States questioned the trade rationale for inscribing this item on the DSB's Agenda. In May 2019, the EU had notified the DSB that disbursements related to EU exports to the United States had totalled US$ 4,660.86 in fiscal year 2018. As such, the EU had announced it would apply an additional duty of 0.001 percent – that is, one-one thousandth of a percent – on certain imports of the United States, including imports of sweet corn. One would think the EU member State customs authorities would incur far greater costs from applying these minuscule tariffs than the duties they collected. But it had been evident for years that it was not common sense that was driving the EU's approach to the present Agenda item. With respect to the EU's request for status reports in this matter, as the United States had already explained at previous DSB meetings, there was no obligation under the DSU to provide further status reports once a Member announced that it had implemented the DSB's recommendations, regardless of whether the complaining party disagreed about compliance. The practice of Members – 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 come into compliance in this dispute, there was nothing more for the United States to provide in a status report.

2.6. 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 noted that, once again, the European Union had not provided Members with a status report concerning the "EC – Large Civil Aircraft" (DS316) dispute. 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. The EU's position appeared to be premised on two unfounded assertions, neither of which was based on the text of the DSU. First, the EU had erroneously argued that where "a matter is with the adjudicators, it is temporarily taken out of the DSB's surveillance". At the 28 October 2019 DSB meeting, the EU had phrased this as "the crucial point for the defending party's obligation to provide status reports to the DSB is the stage of the dispute. In the Airbus case, the dispute is at a stage where the defending party does not have an obligation to submit status reports to the DSB". There was nothing in the DSU text to support that argument, and the EU provided no explanation for how it read Article 21.6 of the DSU to contain this limitation. And as Members well knew, based on the DSB's findings of EU non-compliance in this dispute, the DSB had recently authorized the United States to impose countermeasures in excess of US$ 7 billion annually due to the adverse effects on the United States from subsidies provided by four EU member States. Second, the EU, once again, relied on its incorrect assertion that the EU's initiation of compliance panel proceedings meant that the DSB was somehow deprived of its authority to "maintain surveillance of implementation of rulings and recommendations". Yet again, there was nothing in Article 2 of the DSU or elsewhere that limited the DSB's authority in this manner. It was another invention of the EU. 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 meetings provide status reports in this DS316 dispute.

3.3. The representative of the European Union said that, as in previous DSB meetings, the United States had explicitly stated 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 EU believed that such an assertion by the United States remained without merit. As the EU had repeatedly explained in past DSB meetings, and as the United States had just mentioned in its

statement, 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 Members, once more, that in this dispute, the EU had notified to the WTO a new set of measures in a compliance communication which had been tabled at the 28 May 2018 DSB meeting. The United States had responded that the measures included in that communication did not bring the EU in full compliance with DSB's recommendations and rulings. 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, and it was currently reviewing "the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB. Therefore, there was a compliance proceeding still ongoing in this dispute. Whether or not the matter was "resolved" in the sense of Article 21.6 was the very subject matter of this on-going litigation. The EU asked 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. Under Article 21.6 DSU, the issue of implementation shall remain on the DSB's Agenda until the issue was resolved. In the "US — Offset Act (Byrd Amendment)" dispute (DS217), the EU did not agree with the US assertion that it had implemented the DSB's recommendations and rulings. This meant that the matter remained unresolved for the purposes of Article 21.6 DSU. If the United States did not agree that the matter remained unresolved, nothing prevented the United States from seeking a multilateral determination through a compliance procedure, asking for a confirmation of its assertion that the Byrd Amendment measure had been repealed in line with the WTO findings, just like the EU was doing in this dispute.

3.4. The DSB took note of the statements.

4 STATEMENT BY THE UNITED STATES ON SYSTEMIC CONCERNS REGARDING THE COMPENSATION OF APPELLATE BODY MEMBERS

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 placed this item on the DSB's Agenda to discuss an issue of systemic importance: the compensation structure for Appellate Body members. The United States also wished to draw attention to the compensation that had been provided in the past to former Appellate Body members who continued to decide appeals past the end of their terms under the so-called Rule 15. As Members considered *why* the Appellate Body had felt free to depart from the clear rules agreed upon by Members, certain structural features, such as this one, might be relevant. At the outset, the United States wished to be clear: the issue raised by the United States at the present meeting did not concern any particular Appellate Body member or former Appellate Body member. The illustrative figures in the present statement were historical and not intended to reflect the conduct of current Appellate Body members. Rather, the US intention was to further Members' understanding of the compensation structure as a general matter, and to consider the possible consequences of that structure. The United States had sought from the WTO Secretariat a deeper understanding of the compensation arrangement and practices. An Appellate Body member's compensation consisted of two primary elements. First, a person serving on the Appellate Body received a monthly retainer fee. The purpose of the retainer fee was to ensure that persons could be available at all times, despite the part-time nature of the employment. In 1995, WTO Members had considered a retainer fee of CHF 7,000 per month to be appropriate. In 2019, Appellate Body members received a retainer fee plus a monthly administrative fee that totalled approximately CHF 9,415 per month. These fees produced an annual income of nearly CHF 113,000. The United States had learned that, in practice, ex-Appellate Body members continuing to decide appeals past the end of their terms also received the retainer fee. Thus, so long as any appeal to which they were assigned remained active, an ex-member received CHF 9,415 per month. The second element was a daily working fee. In addition to the monthly retainer, Appellate Body members received a daily fee based on the number of days worked. Payment of this fee was not subject to regular reporting requirements to WTO Members, for example, through the Budget

Committee. In 2019, Appellate Body and ex-Appellate Body members working on appeals received a fee of CHF 783 per day worked. Looking at the yearly averages over the past four years, Appellate Body members had received, on average, a working fee that ranged from nearly CHF 12,000 to more than CHF 15,000 *per month*. This would mean that Appellate Body members had collected the daily fee for nearly every working day every month. Together with the monthly retainer fee, these two elements alone could result in annual compensation of approximately CHF 300,000 for an Appellate Body member. The same was true for ex-Appellate Body members, depending on their level of activity. The value of this compensation was even higher when tax benefits were considered. For purposes of comparison, the United States understood that this compensation was significantly more than the annual salary of a WTO Deputy Director-General. Of course, a Deputy Director-General was a full-time position, while serving as an Appellate Body member was, by design, a part-time role. In addition to a monthly retainer and daily fees, Appellate Body members received a per diem of CHF 374 per day for meals and lodging while in Geneva. As part of the per diem arrangement, Appellate Body members had the option to receive CHF 3,000 per month for rent payments. In such cases, the member still received a per diem allowance for meals of CHF 150 per day. It was the US understanding that Appellate Body members had made use of this rental-reimbursement option. By doing so, the annual payment to Appellate Body members increased by CHF 36,000, *plus* the additional meal allowance of CHF 150 per day. The United States understood that the average monthly per diem payment for each Appellate Body member had routinely exceeded CHF 4,000 despite, on average in recent years, only eight days of hearings per year for each member. The United States did not think it reasonable for an individual to be provided a year-round apartment in Geneva, at WTO Members' expense, when that individual's duties required him or her to be in Geneva perhaps a dozen days per year. In addition to compensation and per diems, airline tickets were paid for by the WTO. The United States understood the expenditure for airline tickets had typically exceeded about CHF 5,000 per Appellate Body member per month. Taken together, the amount of compensation and other payments realized per member had remained steady and at a high level – well in excess of CHF 300,000 for part-time employment. The number of reports circulated over recent years had remained steady – about five to six reports per year.

4.3. The United States said that, during this time, to assist in the preparation of these five or six reports, the Appellate Body had received significant legal and administrative support. Currently, the Appellate Body Secretariat consisted of approximately 20 professional staff with a budget of over CHF 7 million, of which roughly CHF 4.3 million contributed to staffing resources. There could be no question that Appellate Body members were well resourced and supported. Although the United States thought it unlikely that any WTO Member had anticipated that persons on the Appellate Body would claim to be working on WTO disputes essentially every working day of the year, Members had agreed to this compensation structure. The United States had done so, however, based on the understanding that the Appellate Body would respect the rules as set out in the DSU. Those rules included the requirement that appellate reports be issued in 60 days or, exceptionally, 90 days, and the requirement that WTO Members – and not the Appellate Body itself – appointed Appellate Body members. These rules were no longer being respected. The United States would question whether this approach to compensation created the appropriate incentive. Under this system, the more time spent on an appeal meant higher compensation. An appeal that extended beyond the 90-day deadline might benefit Appellate Body members in a way that strict adherence to that deadline would not. The benefit realized might be even more substantial for an ex-Appellate Body member who would not have otherwise received the monthly retainer for the duration of the appeal. The monthly retainer had been intended to compensate persons for making themselves available to hear an appeal on short notice. However, this did not apply to an ex-Appellate Body member, who even under the so-called Rule 15, could not be assigned to any new appeals. Therefore, the not-previously disclosed practice of continuing to pay a monthly retainer fee to persons past the end of their DSB-approved terms had significant financial implications. Indeed, were an ex-Appellate Body member to continue to work on an appeal for a year past the end of his or her term, the financial implication would be to receive over CHF 100,000 in additional compensation. A system that provided a financial reward for violating DSU rules and prolonging the duration of an appeal would appear inconsistent with the objective behind the DSU rule of providing for the prompt resolution of disputes. The United States, therefore, asked whether the current structure created the correct incentive, or a negative one. The United States also asked whether this structure encouraged prolonged appeals at the expense of clear WTO rules. Without debate or effective oversight, the United States asked whether WTO Members had acquiesced in a compensation structure that undermined, rather than promoted, the prompt resolution of a dispute. As part of this discussion, the United States affirmed its strong commitment to the independence of adjudicators, including the Appellate Body. As reflected in the Rules of Conduct, Appellate Body members fulfilled their responsibility to act independently by serving in their individual capacity, and by avoiding any conflicts of interest. The United States also

supported institutional accountability. The United States did not believe that "independence" and "accountability" were mutually exclusive. Members had a collective responsibility to ensure accountability, while respecting the independence of WTO adjudicators. Understanding and overseeing the compensation of adjudicators was therefore an important responsibility for WTO Members in administering and ensuring the proper functioning of the dispute settlement system. It was the hope of the United States that Members would reflect further on the questions raised in the present statement. The United States looked forward to continued discussion on this important issue.

4.4. The representative of Canada said that his country wished to thank the United States for raising these questions and for furthering Members' understanding of these issues. With respect to financial as well as other WTO institutional matters, Canada supported transparency and good governance. Canada noted the importance of taking into account all relevant factors when comparing compensation.

4.5. The representative of the European Union said that his delegation wished to thank the United States for its intervention. As a preliminary point, the EU wished to state the obvious: a "systemic" discussion on the remuneration of Appellate Body members could only be fruitful if there was indeed a functioning Appellate Body. The EU, therefore, hoped that the DSB would be able to finally agree to the proposal to launch the AB selection processes to fill the vacancies in the Appellate Body. The EU was open to discussing the remuneration structure that would apply to a newly composed Appellate Body and looked forward to proposals from Members raising systemic concerns. Regarding the current remuneration structure, the EU recalled that this structure and specific amounts had been decided by the WTO Membership itself. The basic principles relating to the "[c]onditions of employment of [Appellate Body] members", including the remuneration structure, had been approved by the DSB in its decision contained in document WT/DSB/1, circulated on 19 June 1995. In 1995, the DSB had considered, in particular, that "[t]he contractual basis of members of the Appellate Body should reflect the overriding concern that candidates are of a high enough calibre to ensure the integrity and authority of decisions taken by the Appellate Body". Given the part-time nature of employment of Appellate Body members, the DSB had decided that: "[t]he requirement that high-calibre members be available at all times could be met, on a flexible basis, by offering Appellate Body members contracts based on a monthly retainer plus a fee for actual days worked". Accordingly, it had been decided that "the retainer should be set at a minimum of [CHF] 7,000 per month, plus a fully-adequate daily fee, travel expenses and a per diem. The actual amounts should be set on the basis of further research on current rates for equivalent services under similar conditions". The daily fee had been initially set at CHF 600. Since 1995, the level of remuneration had been updated by the WTO Membership several times. As from 2011, the retainer had been fixed at CHF 9,085 and the daily fee at CHF 783. This meant that, between 1995 and now, these sums had been increased by approximately 30 percent, while the basic structure linked to the partial employment had remained the same. It was also worth recalling that Appellate Body members were not entitled to health care and retirement benefits available to WTO staff. The EU believed that the overriding concern, i.e. that the employment conditions of Appellate Body members had to be such so as to ensure that those members were of a high enough calibre to guarantee the integrity and authority of decisions taken by the Appellate Body, remained valid. The remuneration should indeed be such as to attract the best candidates and ensure their independence and impartiality. Within those parameters, one could imagine different remuneration structures and the EU remained open to discussing proposals that the United States might wish to formulate on this issue. The EU wished to point out that the current remuneration structure was the result of the fact that, *de jure*, the position of an AB member was a part-time job and, therefore, their remuneration depended, in part, on their workload. This might lead to situations where Appellate Body members received substantial amounts if their workload was particularly high. One alternative, already foreshadowed in the WT/DSB/1 decision of 1995, would be to move to a full-time employment for Appellate Body members. The EU understood that the United States had also been supportive in the past of a move towards a full-time employment of Appellate Body members. The United States had made some points relating to the remuneration currently received by the remaining Appellate Body members, and also regarding the remuneration under Rule 15. While the United States had argued that these concerns were "systemic", it was clear that they had been triggered by the very specific situation in which the Appellate Body currently found itself , and this had been the case for the past two years, due to the limited number of AB members remaining, as a result of the blockage of the AB selection processes. With more workload per member, it was not surprising that the amount per capita in daily fees was higher. The EU would, indeed, expect the remaining Appellate Body members to fully invest in the disposition of appeals. The fact that they worked longer hours, even though their work was officially part-time, deserved commendation rather than criticism. Also, with regard to Rule 15, the Appellate Body had been in a very specific situation during the past two years during which,

because of the backlog regarding the hearing of disputes which had been created by the blockage of the AB selection processes, out-going members had to continue working full-time, possibly also foregoing other employment opportunities. To conclude, the EU wished to reiterate that the it was open to having a systemic discussion on the remuneration of Appellate Body members and looked forward to proposals that Members might wish to formulate in that regard. Such a discussion could obviously only bear fruit if there was an operational Appellate Body.

4.6. The representative of Australia said that her country wished to thank the United States for raising this systemic issue. Australia believed that budget oversight, accountability and transparency were important matters for the WTO, including in respect of compensation for Appellate Body members. It was important for all WTO Members who were fully invested in the system to pay close attention to these issues. In this regard, Australia would welcome further discussions on the information outlined by the United States at the present meeting and would appreciate further clarity from the Secretariat on the specific issues raised. Australia was particularly concerned to ensure that the DSB's oversight role was properly maintained. Australia supported a model of compensation and entitlements for Appellate Body members that was adequate and appropriate to reflect the nature and scope of their important work.

4.7. The representative of Korea said that Korea wished to thank the United States for its statement and took note of the concerns expressed. Korea believed that the compensation of adjudicators, including that of AB members, was an important issue which was closely related to the efficiency of the system as a whole, both in terms of resource management and the quality of the service that the system provided to Members. Korea looked forward to in-depth discussions with the aim of reaching a practical solution in the near future.

4.8. The representative of Uruguay said that his country wished to thank the United States for introducing this item into the Agenda which, along with previous statements it had made in other fora, shed light on the systemic concerns that the United States had concerning the functioning of the Appellate Body. Uruguay agreed that the manner in which economic incentives were structured could have an important impact on the behaviour of individuals. Nevertheless, in the absence of objective information, Uruguay did not think it would be prudent to draw a correlation between the circulation of AB reports beyond 90 days and the way in which compensation for AB members was structured. Other factors, such as the complexity of appeals, the lack of human resources and delays due to the translation of reports, among others, could also contribute to such delays. Should there be evidence of a statistically significant correlation in this regard, Uruguay would be ready to consider any proposals related to the compensation structure for AB members for transparency purposes. Uruguay would also be ready consider the creation of incentives that would enable AB members to comply with the requirements set out in the DSU.

4.9. The representative of China said that his country wished to thank the United States for placing this item on the DSB's Agenda and noted that this was the first time that a WTO Member raised this issue in a DSB meeting. Without prejudice to its later position, China wished to make the following observations. First, according to Article 17.8 of the DSU, "the expenses of persons serving on the Appellate Body, including travel and subsistence allowance, shall be met from the WTO Budget". Therefore, there was a clear and compulsory obligation for WTO Members to meet this requirement. Article 17.8 of the DSU also provided that this obligation was "in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration". In other words, such criteria should be adopted by the General Council, not by the DSB; and recommendations regarding these criteria should be made by the CBFA not the DSB. Therefore, it appeared that the DSB was not an appropriate forum to discuss the issue of compensation of AB members. However, once the criteria were adopted, there was a clear obligation that the expenses of the Appellate Body be met from the WTO budget. Any obstruction with regard to this automatic obligation constituted a violation of the WTO rules. Second, the compensation scheme for Appellate Body members had been adopted by WTO Members in DSB Decision WT/DSB/1 on the "Establishment of the Appellate Body" on 10 February 1995.[2] This Decision provided that the amount of the retainer and *per diem* scheme "would have to be large enough to offset a member's opportunity cost of work foregone because of potential conflicts of interest" and "the compensation should be high enough to provide an incentive for a member not to take on work which might create a conflict of interest". Simply put, there was a clear intention from WTO Members to provide a market competitive compensation to Appellate Body members in order to attract "high-calibre members [who would] be available at all times". Third, the compensation of Appellate Body members was

[2] WT/DSB/1(19 June 1995).

significantly lower than that of their peers in other international judicial bodies. When the Appellate Body was composed of seven members, the annual remuneration of an Appellate Body member was estimated at about CHF 220,000 (US$ 222,700) which comprised a monthly retainer fee (CHF 9,031), a monthly administrative fee (CHF 330) as well as per diem fees (which amounted to CHF 8,947 on average on a monthly basis).[3] There was no pension or other benefits applicable to Appellate Body members. However, their peers from the International Court of Justice and the International Criminal Court, for instance, earned higher compensation, which respectively amounted to US$ 245,000[4] and US$ 240,000[5] respectively not including various allowances and pension. When compared with other adjudicators providing similar services such as commercial and investment arbitrators, the remuneration of Appellate Body members was significantly lower. An ICSID arbitrator was "entitled to receive a fee of US$ 3,000 per day of meetings or other work performed in connection with the proceedings"[6] and the median duration of such ICSID arbitration was about 1266 days.[7] Fourth, the WTO was a Member-driven institution, which was in the best interest of the entire Membership. In that sense, the compensation of Appellate Body members, just like other budget issues could and should be subject to vigorous oversight by WTO Members. However, such oversight needed to be conducted based on objective and reasonable assessments of relevant facts. They should by no means be perceived or used as a leverage to unduly influence the Appellate Body whose independence and impartiality were valuable but very susceptible to this kind of interference. Finally, China was open to discuss the issue raised by the United States at the present meeting with the United States and the entire WTO Membership. WTO Members could and should find a solution on this issue very quickly. Given the essential role of the Appellate Body, the WTO could and should provide a reasonable and fair compensation to those persons servicing the Appellate Body. The compensation should be good enough to ensure the proper functioning of the Appellate Body and reasonable enough to compensate their professional contributions and to compete with other international adjudication bodies. Such compensation should also be fair enough to ensure the independence and accountability of Appellate Body members.

4.10. The representative of Mexico said that his country had listened carefully to the statement made by the United States and wished to thank the United States for sharing this information. Mexico had always supported enhanced transparency and good governance of the WTO. Mexico noted that the United States had pointed out to a link between the issue of AB compensation and its concerns with respect to Rule 15 of the Working Procedures for Appellate Review and the 90-day period set out in Article 17.5 of the DSU. Mexico, like other delegations, failed to see a clear correlation in this regard. It was important to remember that the US concerns were currently being discussed in the General Council's informal process on AB matters, in which more than 80 Members had submitted 12 proposals to address such concerns in an effort to find a solution. In the course of the informal process on AB matters, Amb. Walker presented the points of convergence regarding the 12 proposals. Mexico underlined that the US concerns had been discussed extensively in the informal process. First, Mexico wished to point out that the figures quoted by the United States should not come as a surprise given the fact that the Appellate Body had not been composed of seven Members since 2018. The remaining Members had to review a greater number of appeals, which in turn increased their compensation and justified the need for application of Rule 15. Furthermore, it seemed unreasonable to discuss concerns about the consequence of the problem rather than its cause. The budget for the Appellate Body, in particular for the compensation of its members, had been adopted by all Members upon the creation of the WTO in 1995. In the same way, Members, in the CBFA had subsequently approved by consensus the amendment to the Appellate Body budget, which had included an increase in compensation in 2007. Mexico, therefore, believed that it would

[3] According to the Annex 7 of the 2018 Appellate Body Report (WT/AB/29), the average number of appeals notified to the DSB from 2014 to 2018 was close to 10 per year. China therefore chose to take the year of 2005 (10 appeals) as the benchmark to simulate the work days paid to Appellate Body members. According to a document on the dispute settlement expenditures (WT/BFA/W/228) prepared by the CBFA in 2011, the total work days paid to Appellate Body members in 2005 were 966 days which amounted to 11.5 days per member per month. Given that the work day fee was set at CHF 778, the monthly compensation of an Appellate Body member derived from the work day fee was, therefore, of CHF 8,947.

[4] Report of the Secretary-General, Conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and President and judges of the International Residual Mechanism for Criminal Tribunals, Seventy-fourth session of the UN General Assembly (18 September 2019), A/74/354*, at p.5.

[5] Report of the Committee on Budget and Finance on the work of its twenty-ninth session, Sixteenth session of International Criminal Court Assembly of States Parties (3 November 2017), ICC-ASP/16/15, at p.13.

[6] https://icsid.worldbank.org/en/Pages/icsiddocs/Schedule-of-Fees.aspx (last visit on 18 November 2019).

[7] Jeffery Commission, The duration and costs of ICSID and UNCITRAL investment treaty arbitrations, Funding in Focus Content Series (2016), at p.9.

be positive and constructive for any Member that expressed concerns to also provide pragmatic solutions. Now more than ever it was necessary for Members to focus their efforts on overcoming the challenges that paralyzed the current dispute settlement system, in particular the functioning of the Appellate Body. The Appellate Body only had three members out of seven and possibly only one if there was no consensus at the present meeting on the proposal under the next Agenda item. This situation required urgent and immediate attention of all Members.

4.11. The DSB took note of the statements.

5 APPELLATE BODY APPOINTMENTS: PROPOSAL BY ANGOLA; ARGENTINA; AUSTRALIA; BENIN; PLURINATIONAL STATE OF BOLIVIA; BOTSWANA; BRAZIL; BURKINA FASO; BURUNDI; CABO VERDE; CAMEROON; CANADA; CENTRAL AFRICAN REPUBLIC; CHAD; CHILE; CHINA; COLOMBIA; CONGO; COSTA RICA; CÔTE D'IVOIRE; CUBA; DEMOCRATIC REPUBLIC OF CONGO; DJIBOUTI; DOMINICAN REPUBLIC; ECUADOR; EGYPT; EL SALVADOR; ESWATINI; THE EUROPEAN UNION; GABON; THE GAMBIA; GHANA; GUATEMALA; GUINEA; GUINEA-BISSAU; HONDURAS; HONG KONG, CHINA; ICELAND; INDIA; INDONESIA; ISRAEL; KAZAKHSTAN; KENYA; REPUBLIC OF KOREA; LESOTHO; LIECHTENSTEIN; MADAGASCAR; MALAWI; MALAYSIA; MALI; MAURITANIA; MAURITIUS; MEXICO; MOROCCO; MOZAMBIQUE; NAMIBIA; NEW ZEALAND; NICARAGUA; NIGER; NIGERIA; NORTH MACEDONIA; NORWAY; PAKISTAN; PANAMA; PARAGUAY; PERU; QATAR; RUSSIAN FEDERATION; RWANDA; SENEGAL; SEYCHELLES; SIERRA LEONE; SINGAPORE; SOUTH AFRICA; SWITZERLAND; THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU; TANZANIA; THAILAND; TOGO; TUNISIA; TURKEY; UGANDA; UKRAINE; URUGUAY; THE BOLIVARIAN REPUBLIC OF VENEZUELA; VIET NAM; ZAMBIA AND ZIMBABWE (WT/DSB/W/609/REV.14)

5.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Mexico, on behalf of a number of delegations. He drew attention to the proposal contained in document WT/DSB/W/609/Rev.14. He then invited the representative of Mexico to speak.

5.2. The representative of the Mexico, speaking on behalf of the co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.14, said that the delegations in question had agreed to submit the joint proposal dated 19 September 2019 to launch the AB selection processes. His delegation, on behalf of these 116 Members, wished to make the following statement. The increasing and considerable number of Members submitting this joint proposal reflected a common concern with the current situation in the Appellate Body that was seriously affecting its functioning and the overall dispute settlement system against the best interest of its Members. WTO Members had a responsibility to safeguard and preserve the Appellate Body, the dispute settlement system and the multilateral trading system. Thus, it was the Members' duty to launch the AB selection processes, as set out in the joint proposal before the DSB at the present meeting. This proposal sought to: (i) start six selection processes: one process to replace Mr. Ricardo Ramírez-Hernández, whose second term expired on 30 June 2017; a second process to fill the vacancy 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 expired on 11 December 2017; a fourth process to replace Mr. Shree Baboo Chekitan Servansing, whose four-year term of office expired on 30 September 2018; a fifth process to replace Mr. Ujal Singh Bhatia, whose second term would expire on 10 December 2019; and a sixth process to replace Mr. Thomas R. Graham whose second term would expire on 10 December 2019; (ii) to establish a Selection Committee; (iii) to set a deadline of 30 days for the submission of candidates; and (iv) to request that the Selection Committee issue its recommendation within 60 days after the deadline for nominations of candidates. The proponents were flexible regarding 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.

5.3. 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. As the EU had previously stated many times, WTO Members had a shared responsibility to resolve this issue as soon as possible, and to fill the outstanding vacancies as required by Article 17.2 of the DSU. Mindful of this responsibility, the EU and others had submitted concrete proposals to the General Council in order to address the concerns raised by the United States and to unblock the AB selection processes. The EU wished to thank all Members who had engaged in these discussions and those who had made other proposals in the informal process on AB matters. Those discussions had been

fruitful. As the EU had said, the EU welcomed the report and the draft General Council decision presented by Amb. Walker to the General Council on 15 October 2019. The EU considered that this was a sound and balanced way to move the process forward in order to meet its objective which was to unblock the AB appointments. In this respect, the EU wished to thank Amb. Walker for his efforts and his good work. This was the 14th time that this proposal featured on the DSB's Agenda and, despite Members' best efforts, the EU was under no illusion that the AB selection processes would not be launched at the present meeting. The present meeting was also the last regular DSB meeting before 10 December 2019, when the terms of office of two of the three remaining AB members would expire. At this juncture, the EU wished to convey a clear message of determination. The EU was determined to ensure that the dispute settlement process operated as intended by the WTO Agreements, which included an independent and impartial appellate review of legal issues contained in the panel reports. To that end, and as a matter of priority, the EU would continue to support all efforts leading to the unblocking of the AB selection processes, which had to continue until the situation was resolved. Pending such resolution, the EU was also determined to preserve its rights, as enshrined in the WTO Agreements, notably the right to appellate review. The EU would also continue to prepare contingency measures that would apply in the event where the AB selection processes remained blocked. The EU wished to thank all Members that had co-sponsored the proposal to launch the AB selection processes and invited all other Members to endorse this proposal.

5.4. The representative of Ecuador, speaking on behalf of the Group of Latin American and Caribbean countries (GRULAC) that were Members of the WTO, said that the countries in question wished to reiterate their serious concerns about the current impasse in the AB selection processes. The Appellate Body was a key component of the multilateral trading system. Ecuador wished to thank Amb. Walker for his efforts in the informal process on AB matters, in particular with regard to the draft decision of the General Council contained in document JOB/GC/222, which had been presented to Members at the 15 October 2019 GC meeting. Nonetheless, Members had still not seen any progress. Many Members had supported Mexico's proposal contained in document WT/DSB/W/609/Rev.14. The group of co-sponsors had listened to the concerns about the functioning of the Appellate Body and had also participated constructively in discussions on these concerns. Nonetheless, Ecuador believed that the existence of such concerns did not justify the impasse in the AB selection processes. Pursuant to Article 17.2 of the DSU, vacancies had to be filled as they arose. This was an obligation of WTO Members. Thus, it was time for the entire Membership to find a constructive and definitive solution to this matter. Otherwise, the Appellate Body would soon cease to be functional. Ecuador reaffirmed its support for the informal process on AB matters and its willingness to continue to contribute to the efforts of Members that sought, as a matter of priority, to bring about the unblocking of the AB selection processes.

5.5. The representative of Norway said that the 10 December 2019 deadline was fast approaching, and that Members had not yet filled the vacancies in the Appellate Body. This meant that the Appellate Body would be unable to fulfil its functions in the very near future. It was hard to believe that pronouncing these words was necessary, 25 years after Members had signed the historic Marrakesh Agreement, which had established the WTO and an effective and successful dispute settlement mechanism. As all Members knew, this situation could have been avoided. It was not the result of some inescapable or sudden complication. It was brought upon Members intentionally but regrettably, without any clear direction. What Members needed now was clarity and action. Members might disagree on the ideal functioning of the Appellate Body, but Norway was not afraid of hearing arguments. That was what cooperation was about. In conclusion, Norway wished to take this opportunity to ask that the United States unblock the AB selection processes. Norway also asked that the United States present clearly what it might see as a possible way forward and as potential and preferred solutions. Norway stood ready to discuss ways forward and possible outcomes that could end the current impasse.

5.6. The representative of Guatemala said that, on 22 November 2017, exactly two years ago, a group of 50 Members, including Guatemala, had formally proposed to launch the AB selection processes after more than a year of impasse. At the present meeting, 116 Members, more than two thirds of the Membership, were co-sponsoring the proposal contained in document WT/DSB/W/609/Rev.14. No Member except for the United States was opposing the launch of the AB selection processes. For nearly three years, Members had been focusing on understanding US concerns and proposing solutions to address them. The United States had had the attention of all Members, civil society, practitioners, academics and stakeholders from around the world. Delegates, Ambassadors and Senior officials had been meeting in different configurations to discuss ways to address US concerns. Hundreds of papers, workshops, seminars and roundtables had been organized around the world to discuss the current situation. An informal process on AB matters facilitated by

Amb. Walker was ongoing. Twelve proposals had been tabled by several Members with a view to finding pragmatic solutions to US concerns. The informal process had concluded with a draft decision (proposed by Amb. Walker as Facilitator) to be adopted by the General Council. This proposed draft decision had been aimed at resolving the US concerns. Unfortunately, every idea, proposal and effort had been met with silence from the United States, a repetition of US concerns or the formulation of additional concerns. Over nearly three years, the United States had not put forward a single proposal to resolve its concerns. Neither had the United States expressed any sympathy with any of the proposals made by Members. On the contrary, the United States continued to voice additional so-called "systemic concerns". A potential solution seemed to move even further away. The most recent US concern involved the WTO budget and put at risk the functioning of the WTO Secretariat. In less than 20 days, Members would witness the end of an institution that had benefited the entire Membership, including the United States. The Appellate Body and the dispute settlement system, more generally, had been fundamental in preserving the rules-based multilateral trading system. Guatemala believed that as of 10 December 2019 Members should put US concerns aside and start discussing what Members needed to do to as a matter of urgency in order to address their concerns. For instance, Members needed to ensure that, while they did not have a functional Appellate Body, they would preserve the binding nature of the dispute settlement system. Members would also need to ensure that they could still have recourse to a provisional mechanism for the review of issues of law covered in panel reports and legal interpretations developed by panels. Guatemala, as the great majority of Members, could not afford to lose a system based on the rule of law and due process. The rule of law and due process were particularly important for developing countries and least developed countries. Guatemala remained committed to taking positive steps to have a fully functional dispute settlement system, including a standing Appellate Body.

5.7. The representative of Canada said that his country supported the statement made by Mexico, and shared the concerns expressed by many Members. Canada took note that there were now 116 WTO Members calling for the launch of the AB selection processes. Canada invited WTO Members that had not yet sponsored the proposal contained in document WT/DSB/W/609/Rev.14 to consider joining the 116 Members calling for the launch of the AB selection processes. The critical mass of WTO Members behind this proposal was a clear testimony to the importance that Members collectively accorded to a fully functioning Appellate Body as an integral part of the dispute settlement system. Canada remained committed to working with other interested Members, including the United States, with a view to addressing concerns and undertaking the AB selection processes expeditiously. Canada expressed deep regret that the DSB had not complied with its obligation under Article 17.2 of the DSU to appoint Appellate Body members to fill the vacancies. The text of the DSU was clear: "[v]acancies shall be filled as they arise". This requirement did not provide for any exception or justification not to fill the vacancies as they arose.

5.8. The representative of the United States thanked the Chairman for the continued work on these issues. As the United States had explained at prior DSB meetings, the United States was not in a position to support the proposed decision. The systemic concerns that the United States had identified remained unaddressed. The United States recognized the work of Amb. Walker as Facilitator in the informal process on AB matters, including the report provided to Members at the 15 October 2019 General Council meeting. As the United States had explained, the fundamental problem was that the Appellate Body was not respecting the current, clear language of the DSU. Members could not find meaningful solutions to this problem without understanding how they had arrived at this point. Without an accurate diagnosis, Members could not assess the likely effectiveness of any potential solution. While the Facilitator's Report suggested agreement among some Members that the DSU imposed clear limitations on the Appellate Body, the United States failed to see convergence on how to ensure that those limitations were respected going forward, and what were the consequences for continued failure to adhere to those limitations. If WTO Members say that they supported a rules-based trading system, the representative of the United States asked how Members could permit the WTO Appellate Body to break the rules Members had agreed to in 1995. The US view across multiple US Administrations had been clear and consistent: when the Appellate Body overreached and abused the authority it had been given within the dispute settlement system, it undermined the legitimacy of the system and damaged the interests of all WTO Members who cared about having the agreements respected as they had been negotiated and agreed. The United States would continue to insist that WTO rules be followed by the WTO dispute settlement system, and would continue its efforts and discussions with Members and with the Chairman to seek a solution on these important issues.

5.9. The representative of Korea said that his country wished to thank Amb. Walker for his efforts as Facilitator in the informal process on AB matters to help Members find a solution to the current

AB crisis. Korea wished to share its observations on the current situation as well as how it planned to deal with future discussions on this matter. The WTO dispute settlement system, including the Appellate Body, had served Members well during the past 24 years. Particularly, appellate review was a core feature of the WTO dispute settlement system, offering an opportunity to correct legal errors contained in panel reports and thereby playing an important role in assisting the DSB in the settlement of disputes. A properly functioning Appellate Body was critical in providing security and predictability to the multilateral trading system. Like many other Members, Korea was very concerned with the stalemate faced by Members. In particular, as the 10 December 2019 deadline loomed, Korea was increasingly worried that Members might miss the opportunity to find a solution before permanent damage was inflicted on the dispute settlement system. Korea sincerely hoped Members could collectively find pragmatic solutions in a timely manner, and Korea would spare no effort in participating in and contributing to these discussions with concrete ideas in due course.

5.10. The representative of South Africa said that the dispute settlement system played an important role in a rules-based system. South Africa wished to be associated with Members that called for the launching of the AB selection processes. The Appellate Body was critical for the enforcement of rights and obligations of Members. In a spirit of cooperation, Members needed to address the current impasse. The 10 December 2019 deadline loomed, and a dysfunctional Appellate Body would be a systemic problem for all Members. South Africa understood the concerns that had been raised by one Member and, in the spirit of working together, 12 proposals had been tabled by the Membership to address these concerns. Areas of convergence had been identified by Amb. Walker as Facilitator of the informal process on AB matters to resolve these concerns. South Africa believed that a rules-based system depended on an independent, functional and impartial Appellate Body, and that a two-stage system was important to a rules-based multilateral trading system.

5.11. The representative of Thailand said that his country, as a co-sponsor of the joint proposal contained in document WT/DSB/W/609/Rev.14, appreciated the on-going efforts of Mexico and the co-sponsors of the joint proposal to try to make progress towards filling the vacancies in the Appellate Body. Thailand regretted that this proposal had not been given effect. Such a failure undermined the effective and smooth functioning of the dispute settlement system. Thailand considered that the informal process on AB matters conducted under the auspices of the General Council by Amb. Walker as Facilitator was an efficient and appropriate way to address Members' concerns and to clarify aspects related to the functioning of the dispute settlement system. The informal process had helped maintain the principles and objectives of the rules-based multilateral trading system and had built trust among Members. Given the urgency of the matter, Thailand remained committed to working constructively with all Members to resolve the Appellate Body impasse as quickly as possible.

5.12. The representative of Switzerland said that, for more than two years, her country, like many other Members, had voiced its concerns about the impasse concerning the AB selection processes. Switzerland had consistently expressed regret that the DSB had not been in a position to launch the AB selection processes. Switzerland had also consistently called to engage constructively in order to find solutions to the current impasse. The present DSB meeting was the last meeting before the Appellate Body would in all likelihood lose its quorum, on 10 December 2019. When the WTO was established, 25 years ago, its dispute settlement system – that is its two-level system, with a standing Appellate Body which could hear appeals regarding panel rulings – had been conceived as a central component of the multilateral trading system in that it provided it with security and predictability. Switzerland believed that, 25 years later, this statement enshrined in Article 3.2 of the DSU was still valid. More than principles, security and predictability also represented shared values of the Membership, as demonstrated by the number of co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.14. Switzerland believed that the present situation was contrary to the long-term interests of all Members. Therefore, Switzerland urged, once again, all Members to engage constructively in order to solve the impasse regarding the AB selection processes without further delay. Switzerland wished to thank Amb. Walker for his efforts and proposals made as Facilitator in the informal process on AB matters under the auspices of the General Council. Switzerland remained strongly committed to continuing to work towards concrete solutions.

5.13. The representative of China said that his country supported the statement made by Mexico at the present meeting on behalf of 116 Members. This number represented 70.7% of the WTO Membership. China deeply regretted that the US illegal blockage had, once again, frustrated the Members' collective efforts to launch the AB selection processes. Article 17.2 of the DSU could not be any clearer about the Members' legal obligation to fill the vacancies in the Appellate Body. Yet, the United States had shown little willingness to fulfil this obligation. In particular, its persistent lack

of constructive engagement in the informal process on AB matters had prevented any meaningful discussions of various efforts made by WTO Members. Given the urgency of the matter, rather than asking why Members had come to this situation, it was much more important to discuss what concrete actions should be undertaken in order to overcome the current deadlock. The Appellate Body had gained its current prominence within a relatively short time span. In the past 24 years, 27 former and current AB members, through their shared dedication, wisdom and professionalism, had proved that "there can be such a thing as the international rule of law in trade".[8] From its inception until , the Appellate Body had issued 155 reports[9], and approximately 10 new appeals were expected to be notified to the DSB every year. Given the success which had been attributed to the appellate review, the WTO dispute settlement system had eclipsed any other similar mechanism. Unfortunately, the Appellate Body had become a victim of its own success. Although it could be further improved on various fronts, "the transformation of the Appellate Body from 'crown jewel' to a problem child in urgent need of reform in the space of a few months has been as dramatic as it is mystifying".[10] It was deeply regrettable that, 19 days from the present meeting, this "glorious experiment with the rule of law in international relations"[11] would come to an end. Without a functioning Appellate Body, the entire system would be sailing through uncharted waters. It was highly likely that the security and predictability that Members had enjoyed for more than two decades would eventually vaporize. It was also highly likely that the dispute settlement system would increasingly be subject to power dynamics. The rest of the dispute settlement system would, eventually, also be adversely impacted. On a broader note, the Appellate Body crisis was the crisis of the rules-based multilateral trading system. What Members chose to do going forward would define the future of the rule of law in the context of international trade. Time was running out. Concrete and swift actions were needed in order to find a solution to the current situation. China renewed its support to the informal process on AB matters and to Amb. Walker for his continued efforts as its Facilitator. China stood ready to further deepen the solution-orientated discussions in different configurations.

5.14. 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 deep concern that the impasse over the AB selection processes was still unresolved. As the situation remained unchanged, the Appellate Body would not be able to hear new appeals, for an unspecified period of time after 10 December 2019. This would undermine the dispute settlement system and posed serious challenges to the multilateral trading system. About 70% of the WTO Membership (116 Members) had co-sponsored the joint proposal contained in document WT/DSB/W/609/Rev.14 to try to stop this crisis from happening. But, unfortunately, this was not enough. Hong Kong, China invited all other Members to endorse this joint proposal so as to protect the dispute settlement system. Hong Kong, China appreciated the efforts made by various Members in the informal process on AB matters, under the auspices of the General Council, to address the concerns that had been raised by one Member with respect to the Appellate Body. However, Hong Kong, China emphasized that the discussion on improving the DSU should not be a reason to delay the AB selection processes. It was not justifiable to attach preconditions to the launching of the AB selection processes. His delegation called on all Members to resolve this matter without further delay.

5.15. The representative of Australia said that her country wished to refer to its previous statements made on this matter and wished to reiterate Australia's serious concerns regarding the DSB's inability to commence the AB selection processes. Australia welcomed the recent progress in the General Council's informal process on AB matters and welcomed the draft instrument for Members' consideration as a positive step forward. Australia hoped it could lead to unblocking the AB selection processes. In this regard, Australia recognized the significant contributions of many Members to the discussions and the leadership of Amb. Walker as Facilitator. However, Australia was clear-eyed about the hard work required for the rest of 2019 to address key concerns regarding the functioning of the Appellate Body. Australia was strongly committed to the work ahead and encouraged Members to continue solutions-focused, active engagement and to demonstrate the necessary flexibility to agree pragmatic solutions in the interests of all Members.

[8] James Bacchus, Not in clinical isolation, A History of Law and Lawyers in the GATT/WTO (2015), at p.516.

[9] https://www.wto.org/english/tratop_e/dispu_e/ab_reports_e.htm (last visit on 18 November 2019).

[10] Address by Ambassador Ujal Singh Bhatia on the launch of the WTO Appellate Body's Report for 2018, https://www.wto.org/english/tratop_e/dispu_e/ab_report_launch_e.htm (last visit on 18 November 2019).

[11] Farewell speech of Appellate Body member Peter Van den Bossche, https://www.wto.org/english/tratop_e/dispu_e/farwellspeech_peter_van_den_bossche_e.htm (last visit on 18 November 2019).

5.16. The representative of Singapore said that his delegation reiterated its serious systemic concerns on the persistent failure of Members to launch the AB selection processes. Singapore recalled that the Chairman had emphasized, at the 15 October 2019 DSB meeting, that the time required to conduct a selection process was such that the Appellate Body would suffer a "technical dip" from 11 December 2019 onwards. The Chairman had also noted that there was a number of appeals in the pipeline. It was indeed regrettable that, although this was the last regular DSB meeting before 11 December 2019, Members were still not in a position to reach a consensus on the launching of the AB selection processes. This was the case even as the number of appeals continued to increase, with a new appeal that had just been filed three days ago. With only 18 days left before 11 December 2019, Singapore called on all Members to continue engaging constructively and collaboratively to resolve the current impasse. Singapore remained committed to supporting Amb. Walker in his capacity as Facilitator in the informal process on AB matters, and urged all Members, especially the United States, to actively engage in finding concrete solutions. The AB selection processes should be allowed to proceed unconditionally in the meantime. Coincidentally, the date of the present meeting marked the second anniversary of the 22 November 2017 DSB meeting, when Singapore had joined the pioneer group of the 52 co-sponsors of the original joint proposal contained in document WT/DSB/W/609. The joint proposal was now in its fourteenth iteration. Singapore wished to take this opportunity to express its deep appreciation towards the hard work accomplished by Mexico in leading this effort. The number of co-sponsors had grown to 116. This reflected the belief shared by the vast majority of WTO Members that the current impasse had to be resolved.

5.17. The representative of New Zealand said that his country wished to reiterate its support for the co-sponsored proposal and wished to refer to its previous statements. As New Zealand had noted, with regret, at the 28 October 2019 DSB meeting, the Appellate Body would inevitably experience what had been described as a "technical dip" due to the time that was required for any AB selection process to be completed. The present meeting was the last regular DSB meeting before such a "technical dip" would occur. New Zealand continued to encourage all Members to engage constructively with a view to urgently addressing the situation.

5.18. The representative of Malaysia said that his country supported the statement made by Mexico on behalf of the co-sponsors. Malaysia believed in the primacy of the rules-based multilateral trading system. Should this system collapse, Members would be faced with the risk of sliding backwards in terms of global economic governance and this would undermine the credibility of the system. Malaysia, therefore, strongly supported the expeditious unblocking of the AB selection processes. It was Malaysia's hope that the AB could continue to be part of a multilateral enforcement mechanism.

5.19. The representative of Uruguay said that his country supported the statement made by Mexico on behalf of the co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.14, in the same way as Ecuador had in its statement made on behalf of GRULAC. Uruguay also wished to thank Amb. Walker for his efforts as Facilitator in the informal process on AB matters. This informal process had led to a concrete proposal dealing with several of the concerns that had been raised on this matter in order to overcome the current situation. Uruguay believed it was necessary to launch the AB selection processes without further delay. Eighteen days remained before the AB would stop operating due to an insufficient number of members. Looking beyond the concerns related to the functioning of the AB, and even though many of these concerns might in fact be shared by many, Members knew what the systemic consequences of a paralysis of the AB would be. The AB was one of the key components of the dispute settlement system. It was the Members' collective responsibility to preserve the right to appellate review for disputing Members. Uruguay was very worried that Members would not be complying with WTO rules, both in letter and in spirit. Even worse, perhaps, was that there would be a legal vacuum or a breaking away from the *pacta sunt servanda* principle.

5.20. The representative of India said that his country wished to refer to its previous statements on this matter and wished to reiterate its serious concerns regarding the DSB's inability to commence the AB selection processes. The WTO dispute settlement mechanism was an indispensable pillar of the multilateral trading system and the Appellate Body was essential to its proper functioning. India had a significant interest in a stable and predictable dispute settlement system within the WTO and was committed to the preservation of a functioning two-stage dispute settlement system. India deeply regretted that the DSB was unable to fulfil its legal obligation to appoint AB members. Members had a collective responsibility to fill the vacancies of the Appellate Body as they arose under Article 17.2 of the DSU. Therefore, India called on all Members to engage constructively.

5.21. The representative of Mexico, speaking on behalf of the 116 co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.14, regretted that for the twenty-ninth occasion, Members had still not been able to launch the AB selection processes and had thus continuously failed to fulfil their duty as Members of this Organization. The fact that a Member might have concerns about certain aspects of the functioning of the Appellate Body could not serve as a pretext to impair and disrupt the work of this body. There was no legal justification for the current blocking of the AB selection processes, which was causing concrete nullification and impairment for many Members. As Article 17.2 of the DSU clearly stated: "[v]acancies shall be filled as they arise". No discussion 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. Mexico noted with deep concern that as a result of the Members' continued failure to act by the next regular DSB meeting on 18 December 2019, the Appellate Body would not be able to perform its functions fully, against the best interest of all Members.

5.22. The representative of Mexico said that Members were 18 days away from the end of the term of office of two Appellate Body Members. The 116 co-sponsors represented the significant interest among the Membership in: (i) complying with the obligation to fill vacancies as they arose, in accordance with Article 17.2 of the DSU; (ii) addressing the concerns expressed regarding the deadlock that had prevailed for more than two years; and (iii) promoting the dispute settlement system. Members no longer had the luxury of time to delay the launch of the AB selection processes. The situation had gone far beyond one of mere concern. The deadline was fast approaching and after the 10 December 2019 the Appellate Body would face imminent paralysis. All ongoing disputes would consequently be affected by the lack of a fully-functioning dispute settlement system. This situation would, of course, undermine the right of all Members to engage in appellate proceedings. Nevertheless, and despite the possibility of there being no Appellate Body to count on, Members continued to show their confidence in the dispute settlement system, as clearly evidenced by the 17 requests for consultations received and the 15 panels established in 2019. The Membership had shown its serious commitment to finding a result-oriented process to address one Member's concerns, and this should be sufficient to enable Members to launch the AB selection processes at the present meeting. It was untenable that any concern, however valid it might be, should deprive 164 Members of their right to appellate review. Mexico deeply regretted that no consensus had been reached to date and wished to reiterate its readiness to work on a real solution. Mexico called for an end to the current impasse which was impeding the functioning of one of the central pillars of the multilateral trading system.

5.23. The representative of Japan said that his country wished to refer to its statements made on this matter at previous DSB meetings.

5.24. The representative of Chinese Taipei said that, as noted by several delegations, the present meeting was the last regular DSB meeting before two of the remaining three Appellate Body members' terms would expire. Chinese Taipei regretted that the DSB still could not agree to launch the AB selection processes. Chinese Taipei wished to refer to its statements made in previous DSB meetings on this matter. Chinese Taipei expressed its continued support of the informal process on AB matters conducted by Amb. Walker as Facilitator and hoped that Members could find a solution as soon as possible.

5.25. The representative of Afghanistan said that his country believed that a well-functioning dispute settlement system was an imperative component of the multilateral trading system and of the WTO in order to ensure a full and fair enforcement of the rules and obligations by Members. Afghanistan wished to reiterate the importance of the dispute settlement system in promoting a rules-based, open, transparent, inclusive, non-discriminatory and equitable international trading environment. Hence, Afghanistan wished to thank Mexico and all 116 co-sponsors calling for the immediate launch of the AB selection processes Afghanistan was pleased to announce that it wished to be associated with the co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.14 as a co-sponsor. Afghanistan called upon all Members to engage constructively and to find a pragmatic solution to the current AB impasse so as to prevent the collapse of the WTO dispute settlement system. His delegation was ready to engage with all Members to overcome this challenge without further delay.

5.26. The representative of Brazil said that Brazil wished to refer to its statements made on this matter at previous DSB meetings. As other delegations had recalled, this would be the last DSB meeting with a functional Appellate Body. The urgency of the immediate launching of the AB selection processes was more pressing now than ever. The practical consequences of the breach of

the collective obligation of Members to maintain a standing Appellate Body would soon be felt, including risks pertaining to the binding nature of WTO dispute settlement as a whole. Brazil maintained its engagement in the informal process on AB matters facilitated by Amb. Walker under the auspices of the General Council so as to help overcome the current impasse.

5.27. The representative of Turkey said that his delegation also wished to refer to its statements made at previous DSB meetings. It seemed, however, that Turkey would soon have to change its statement since there would be no functioning Appellate Body when the following regular DSB meeting would be held on 18 December 2019. As recalled by Mexico, this was the 29th DSB meeting during which Members called for the launch of the AB selection processes to fill the AB vacancies, as required by Article 17.2 of the DSU. This time, there were 116 Members voicing this urgency through the joint proposal submitted by Mexico and contained in document WT/DSB/W/609/Rev.14. And, this time, Members were just 20 days away from the possible paralysis of the Appellate Body which would not be able to hear new appeals. The security and predictability of the multilateral trading system that was mentioned in the DSU would be fading away. During the past two years, Members had held deep discussions on ways to provide more clarity as to the Members' understanding of the DSU, and nearly all Members had repeatedly stated that a functioning Appellate Body was at the core of a well-functioning dispute settlement system. As part of these discussions, 12 proposals had been submitted to address existing concerns of Members in several areas, unfortunately to no avail. Turkey was committed, as were other Members, to safeguarding a two-tier dispute settlement system and was ready to take part in all initiatives that aimed at achieving this objective. In this respect, Turkey would continue to support the informal process on AB matters facilitated by Amb. Walker under the auspices of the General Council. Turkey also considered that this informal process was a good way for Members to continue their discussions on areas of convergence that had been identified by Amb. Walker in the General Council meeting held on 15 October 2019.

5.28. The representative of Jamaica, speaking on behalf of the Group of African, Caribbean and Pacific countries (ACP Group), said that ACP Group Members remained concerned and regretted the fact that Members had not been able to resolve the current impasse over the launching of the AB selection processes. The Group remained resolute in its support towards the dispute settlement system. Jamaica reiterated its previous statements made on this matter, especially those that highlighted the extent to which the Appellate Body was an essential component of the WTO. Its support for the current dispute settlement system was validated by the existence of clear constitutional features such as the independence and impartiality of rulings, a lack of control by any one Member and the notion that rules took precedence over narrow political interests. Imperfect as the system might be, there was no shortage of evidence of its proven success. It was for this reason that the ACP Group joined other Members, at the present meeting, in calling for the immediate unblocking and launching of the AB selection processes. The ACP Group further called for the urgent resolution of issues that continued to impede the effective functioning of the Appellate Body as the legitimate forum for the resolution and enforcement of disputes. The ACP Group remained committed to working constructively with the Membership towards a concrete solution.

5.29. The Chairman thanked all delegations for their statements in what, as many Members had noted, was the last regular DSB meeting ahead of the 10 December 2019 deadline. As in the past, the DSB would take note of the statements expressing the respective positions of Members, which would be reflected in the minutes of the present meeting. As Members knew, under the auspices of the General Council, he had agreed to assist the Chair of the General Council, as Facilitator, in an informal process of focused discussions on Appellate Body matters. He recalled that, on 15 October 2019, he had provided a fourth progress report to the General Council on his informal consultations. This report had been circulated to all Members in document JOB/GC/222. He also recalled that, as part of that report, he had put forward a draft General Council Decision on the functioning of the Appellate Body for Members' consideration, under his own responsibility as Facilitator. The text of this draft decision had been based on the proposals submitted by Members and the extensive discussions in the informal process as well as the feedback that he had received since July 2019. As he had stated at the 15 October 2019 General Council meeting, it remained for Members to determine how to take this matter forward. He continued to assist the Chair of the General Council and Members, in his capacity as Facilitator, in order to find a workable and agreeable solution to improve the functioning of the Appellate Body and to avoid deadlock come December 2019.

5.30. The DSB took note of the statements.

6 PENDING APPEALS

A. Statement by the Chairman

6.1. The Chairman recalled that, at the 28 October 2019 DSB meeting, he had noted that a number of appeals were currently in the pipeline. In this regard, he had announced that he would be consulting with those Members who had such appeals in the pipeline ahead of 10 December 2019 in order to understand how to deal with those appeals. He wished to inform delegations that he had been consulting with the Members concerned, as well as with the other parties concerned, and that these consultations were currently ongoing. In light of this, he proposed to suspend the consideration of this Agenda item to allow time for consultations. The Chairman said that he would continue to consult on these matters and **would reconvene the meeting on this Agenda item by fax as soon as possible**.

6.2. **Following the resumption of the DSB meeting on 3 December 2019**, the Chairman recalled that, at the 22 November 2019 DSB meeting, he had suspended the Agenda item on "pending appeals" while he continued his consultations on this matter. In this context and given the unprecedented and highly unusual situation Members found themselves in, he had been consulting with Members who had such pending appeals, and with the other relevant parties. Together, they had discussed whether it was possible to reach a shared understanding on how to deal with those appeals in the pipeline ahead of 10 December 2019 – i.e. those disputes in respect of which a Notice of Appeal had already been lodged and disputes in respect of which such notice might yet be lodged before 10 December 2019 – and how the DSB might best facilitate that. This situation was without precedent and without prejudice to the positions that Members might have on the matters involved. The Chair regretted to advise that he had not been able to arrive at a shared understanding on this matter and, in particular, that there was no consensus among Members to extend the term of AB members whose terms would expire on 10 December 2019. Nevertheless, the Chairman reported, that it was his understanding that for those appeals on which hearings had already been concluded, the Division which conducted those hearings would complete the appeal. The appeals in the following disputes following were concerned: "Australia – Tobacco Plain Packaging (Honduras)" (DS435); "Australia – Tobacco Plain Packaging (Dominican Republic)" (DS441); "Russia – Railway Equipment" (DS499); and "US – Supercalendered Paper" (DS505). In respect of other disputes for which Notices of Appeal had been filed ahead of 10 December 2019, it appeared that appellants wanting their appeals heard out would need to await the resumption of a functioning Appellate Body.

6.3. The representative of the European Union said that, unfortunately, Members were approaching a very unique situation where there would be only one AB member left after 10 December 2019. Unlike under normal circumstances, there would be no replacement for outgoing AB members, and no possibility to re-assign the pending appeals to other members. This was because new appointments had been blocked since 2017 by one WTO Member. Under the current rules, the Appellate Body was competent to apply Rule 15 of its Working Procedures. In the recent past, the Appellate Body had explained that it had been left with "no option but to apply Rule 15", in particular "[i]n order to maintain the stability of the dispute settlement system, to deal with the unprecedented workload of appeals, and to preserve the rights of participants and third participants in pending appeals" (Background Note on Rule 15 of the Working Procedures for Appellate Review, circulated on 24 November 2017, Document JOB/AB/3). Similarly, and for the very same reasons, ahead of the expiry of the terms of office of two of the three remaining members, the Appellate Body could decide to apply Rule 15 in relation to all appeals pending on 10 December 2019. This obviously presupposed that the Appellate Body members concerned were available to continue their work beyond 10 December 2019. The EU understood that, under the present circumstances, specific questions had arisen in relation to such Appellate Body decision under Rule 15. As explained by the Chairman of the DSB, the DSB had envisaged a specific action in order to allow the pending appeals to be completed. The EU would have supported such action by the DSB in these specific circumstances. However, it was EU's understanding that, through the Chairman's consultations with WTO Members, the Chairman was not able to ascertain the existence of a consensus on this matter. Specifically, the EU understood that the Member that had been blocking new appointments was also opposed to the continued service of any former member of the Appellate Body beyond the end of their term of office. The EU was puzzled by such a position. The EU recalled that, at the 31 August 2017 DSB meeting, the United States had stated that: "it appreciated that the approach of Rule 15 could contribute to efficient completion of appeals". As a party in two appeals pending at the time, the United States had said that: "it would welcome Mr. Ramírez's continued service on the appeals to which he had been assigned". The United States had said, however, that: "[u]nder the DSU […] the DSB had a responsibility to decide whether a person whose term of appointment had

expired, should continue serving, as if a member of the Appellate Body, on any pending appeals" (WT/DSB/M/400, para. 5.5). At the present meeting, however, the EU understood that the United States was standing in the way of the DSB discharging what the United States thought, at that time, was the DSB's responsibility. The EU believed that this undermined the stability of the dispute settlement system and frustrated the rights of participants in these appeals. The EU was ready to continue working with all Members to preserve the proper operation of the dispute settlement system, including in relation to appeals pending on 10 December 2019.

6.4. The representative of Turkey said that, for nearly two years, Members had been continuing their discussions in order to overcome the current stalemate with regard to the AB selection processes and to craft a new understanding on the DSU. As a responsible and concerned Member of the multilateral trading system, Turkey had engaged in all constructive discussions on these matters and had contributed to the efforts and initiatives for remedying current problems concerning the Appellate Body. However, at the present meeting, Members could see that their efforts had not yielded any workable outcome. That was also the case with regard to currently pending appeals. As Members were told at the present meeting, the Appellate Body would only deal with some of these pending appeals, i.e. the ones for which a hearing had already been held. Thus, the Appellate Body would not consider all of the pending appeals in the same manner. Turkey believed that this meant that a certain form of discrimination among appeals would take place. For transitional rules, Turkey agreed that it was important for outgoing AB members to complete the disposition of appeals assigned to them prior to the expiry of their term of office. Turkey considered that this would ensure predictability and would help avoid procedural disruption. Rule 15 of the Working Procedures for Appellate Review, which had been adopted in 1996 by the Appellate Body in accordance with Article 17.9 of the DSU, was the only rule which the Appellate Body had resorted to thus far for transitional arrangements. But, as Members knew and understood, the current rule in its wording, and as it was applied by the Appellate Body, did not differentiate between appeals depending on whether oral hearings had been held or not. Rule 15 provided that a person who ceased to be a Member could "complete the disposition of any appeal to which that person was assigned". As Members might recall, since 2013 the Appellate Body had shared with Members its views regarding Rule 15 through communications it had issued, most recently in 2017. In its communication of 2017, the Appellate Body had explained the reasons for its increased application of Rule 15 in recent years. In addition, the Appellate Body had said that the "transitional provision has worked well for more than twenty years as it has ensured the efficient functioning of the Appellate Body whenever its composition changed". Turkey valued such explanations. However, nothing had changed in the current situation and the AB was now proposing to follow a path which was not set out in its own rules of procedures. If Rule 15 had a value for AB members, then they should respect it and review all pending appeals. If Rule 15 were not a rule, as one Member had voiced, then Turkey wondered how AB members would select the appeals to be reviewed. In this respect, it was clear that the way forward that had been suggested was inconsistent with the practice that had guided the AB until now. Members, including, Turkey, recognized the challenges ahead including the heavy workload of the Appellate Body and how the volume and complexity of appeals had become increasingly important. However, Turkey wished to see greater certainty in the current system, and for principles to be respected. That was why Turkey supported the informal process on AB matters facilitated by Amb. Walker. As provided for under Article 3.2 of the DSU, Turkey believed that all components of the dispute settlement system were central elements in providing security and predictability to the multilateral trading system. In line with this, Turkey expected that the system would continue its review of all current appeals, as had been the case in the past.

6.5. The representative of China said that his country took note of the statement made by the Chairman at the present meeting. China also noted that the uncertainty regarding current pending appeals had raised a series of systemic concerns for the entire Membership. Without prejudice to its position, China wished to share the following observations. First, China noted that the Chairman's statement was factual in nature and outlined his efforts made towards the completion of all pending appeals. However, this statement should not be interpreted to reflect, suggest or imply the position of the DSB, nor should it, in any way, prejudge WTO Members' positions on this matter. Currently, 14 appeals had not been withdrawn from appellate review by the parties, and the Appellate Body should conclude the work in accordance with the current rules. Second, over the past two years, the ability of the Appellate Body to accomplish its mission had been severely undermined by the illegal US blockage of the AB selection processes. The fact that the number of notifications of appeal to the DSB had stayed at a high level, and that AB resources had been subject to constraints, entailed that the current and unprecedented number of pending appeals was inevitable. Third, Rule 15 of the Working Procedures for Appellate Review was in conformity with Articles 17.1, 17.2 and 17.9 of the DSU. Article 17.1 of the DSU and Rule 6 of the Working Procedures provided that regulating the

rotation of Appellate Body members currently serving on appeals was within the domain of the Appellate Body, as provided by the Working Procedures and the DSB Decision Establishing the Appellate Body (WT/DSB/1). Rule 15 of the Working Procedures had been applied on a number of occasions for over twenty years. These precedents had established a routine and customary practice which had been agreed by all WTO Members and to which, prior to the end of August 2017, the United States had never objected. Also, even after August 2017, it appeared that applying Rule 15 would not be a problem for the United States so long as the final adjudications were in favour of US interests. By challenging Rule 15, the United States had repudiated its previous commitment and had risked undermining the entire dispute settlement system. Fourth, an AB member, by taking an oath on the first day of his or her term of office, was expected to preserve his or her professional ethics, independence and impartiality. AB members had to fully comply with relevant rules, including the Working Procedures. They should be unaffiliated with any government and abstain from any involvement in political matters, which might compromise the integrity and authority of the Appellate Body. According to Article 17.3 of the DSU, all persons serving on the Appellate Body had to be available at all times and on short notice, so as to ensure the proper functioning of the Appellate Body. In that regard, an AB member could not pick and choose to serve, or not serve, on a particular dispute. Finally, the solution to curb the uncertainty regarding all pending appeals was already available. Rule 15 had to be equally and automatically applied to all submitted pending appeals after 10 December 2019. No DSB decision was required on this matter. Any deviation, including differential treatment regarding some pending appeals, had no basis in the existing rule. The fact that Members were conducting discussions elsewhere and might in the future adjust this particular rule did not invalidate its current legal status.

6.6. The representative of the United States said that the United States had significant concerns with the statements made by several Members that the Appellate Body should continue to breach the clear rules of the DSU and to "deem" as an Appellate Body member someone whose term of appointment had expired and was thus no longer an Appellate Body member. For nearly one year, Members had engaged in regular discussions on Rule 15 in the Informal Process. Repeatedly, the United States had posed to Members a key question: the United States had asked whether Members agreed that the Appellate Body did *not* have the authority to "deem" a person who was no longer an Appellate Body member to, nonetheless, continue to be a member and to decide appeals. At the present meeting, the United States had heard that the answer to that question was "no" – that is, Members were not in agreement on this fundamental question. Rather, the United States had heard statements at the present meeting which actively encouraged the Appellate Body to continue to break the rules set out in the DSU. The United States strongly disagreed with such an approach and did not consider it to be constructive. It appeared there would be no consensus between Members on how to proceed on the Appellate Body by 10 December 2019. That was disappointing given the tremendous efforts the United States had made over the past year to explain its concerns with persistent rule breaking by the Appellate Body. Some Members had engaged with those concerns, and the United States was grateful for that. But many others had simply denied that any problems existed. In the absence of any shared understanding of the underlying causes and of appropriate solutions, it would be for the parties to each dispute to engage with each other to determine an appropriate way forward, as some already had.

6.7. The Chairman thanked all delegations for their statements. As had been pointed out, what he had reported to Members at the present meeting was a matter of fact. He was not seeking any decision from the DSB. The DSB would, therefore, take note of the statements expressing respective positions, which would be reflected in the minutes of the present DSB meetin. It was his understanding that for those appeals in respect of which hearings had already been concluded – that is, for the following disputes: "Australia – Tobacco Plain Packaging (Honduras)" (DS435); "Australia – Tobacco Plain Packaging (Dominican Republic)" (DS441); "Russia – Railway Equipment" (DS499); and "US – Supercalendered Paper" (DS505) – the Division which had conducted those hearings would complete the appeals. For all other pending appeals in the pipeline, i.e. those cases for which a notice of appeal had been lodged ahead of 10 December 2019, it appeared that any appellant wanting their appeal heard out would need to await the resumption of a functioning Appellate Body.

6.8. The DSB took note of the statements.