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Dispute Settlement Body
18 December 2019

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 18 DECEMBER 2019

Acting Chairperson: H.E. Ms. Sunanta KANGVALKULKIJ (Thailand)

Prior to the adoption of the Agenda, the Chairperson of the General Council, Ambassador Sunanta welcomed delegations and said that she had the pleasure of chairing the present DSB meeting in the absence of Ambassador David Walker, the Chairman of the DSB. She said that this was in accordance with the Rules of Procedure for meetings of the DSB, which provided that: "If the DSB Chairperson was absent from any meeting or part thereof, the Chairperson of the General Council, or in the latter's absence, the Chairperson of the Trade Policy Review Body, shall perform the functions of the DSB Chairperson".

Also prior to the adoption of the Agenda, the item concerning the adoption of the Panel Report in the dispute on: "United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India: Recourse to Article 21.5 of the DSU by India" (DS436) was removed from the proposed Agenda following the US decision to appeal the Panel Report.

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1.1. The Chairperson noted that there were eight sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. She recalled that Article 21.6 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, she invited delegations to provide up to date information about their compliance efforts. She also reminded delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "[r]epresentatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record". She then turned to the first status report under this Agenda item.

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.202)

1.2. The Chairperson drew attention to document WT/DS184/15/Add.202, 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 5 December 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 DSB's recommendations and rulings 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 Japan wished to thank 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.177)

1.6. The Chairperson drew attention to document WT/DS160/24/Add.177, 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 5 December 2019, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

1.8. The representative of the European Union said that his delegation wished to thank the United States for its status report and its statement made at the present meeting. The EU wished to refer to its previous statements and 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 thus far provided 178 status reports in this dispute. However, none of these reports indicated any progress on implementation. 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 with WTO rules. Prompt compliance, a fundamental legal obligation of Members Article 21.1 of the DSU, was essential in order to ensure the positive resolution of disputes. By not complying with its implementation obligations, the United States had been continuously failing to accord the minimum standard of protection required by the TRIPS Agreement and had become the only WTO Member who failed to implement the DSB's recommendations and rulings under the TRIPS Agreement. 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.140)

1.11. The Chairperson drew attention to document WT/DS291/37/Add.140, 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. On 28 November 2019, the European Commission had adopted eight authorizations for GMOs for food and feed use: four new GM maize[1] and the renewals of 2 GM soybean[2], one GM cotton[3] and one GM oilseed rape.[4] On 9 December 2019, a draft authorization for new GM soybean[5] had been presented for a vote in a Member States Committee with a "no opinion" result. This measure would now be submitted for a vote in the Appeal Committee in January 2020. As the EU had repeatedly explained, and as confirmed by the United States 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 at all stages of the authorization procedure. This had resulted in a clear improvement of the situation. During 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 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 2015/412, 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 the 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 the European Union said that the WTO Agreement did not require full international harmonization and left some regulatory space or autonomy to individual WTO Members. The European Union had different regulatory approaches to non-GMOs and GMOs but, in all cases, such regulations did not discriminate between imported and domestic like products. No EU member State had imposed any "ban". Under the terms of the Directive, an EU member State could adopt measures restricting or prohibiting cultivation only when such measures were in line with EU law and were reasoned, proportional, non-discriminatory and based on compelling grounds. The free movement of seeds was embedded in Article 22 of Directive 2001/18/EC 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 (Article 26b, point 8), the measures adopted under the Directive "shall not affect the free circulation of authorized GMOs" in the EU. Currently the EU Common Catalogue of varieties of agricultural species included 150 varieties of maize MON-810, which were allowed to be marketed in the EU. Thus far, the European Commission had never received

[1] Maize MZHG0JG; maize MON 89034 x 1507 x NK603 x DAS-40278-9; maize MON 89034 x 1507 x MON 88017 x 59122 x DAS-40278-9; maize Bt11 x MIR162 x MIR604 x 1507 x 5307 x GA21.
[2] Renewals of soybean MON 89788 and of soybean A2704-12.
[3] Renewal of cotton LLCotton25.
[4] Renewal of oilseed rape T45.
[5] Soybean MON 87708 x MON 89788 x A5547-127.

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 of MON-810 seeds. The EU wished to invite the United States to provide any evidence they might have at their disposal substantiating the disruption of the free movement of MON-810 seeds in the EU.

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.24)

1.16. The Chairperson drew attention to document WT/DS464/17/Add.24, 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 5 December 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 his country wished to thank the United States for its status report. Korea, once again, strongly 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" ("DPM") was "as such" WTO-inconsistent. It 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. The reasonable period of time to implement the DSB's recommendations relating to the "as such" WTO-inconsistency of the DPM had expired two years ago. However, in its status report of 5 December 2019, the United States merely stated that it continued to consult with interested parties. Moreover, the continued use by the United States of the DPM had forced Members to resort to several dispute settlement proceedings concerning this measure. This was an inefficient and unnecessary use of WTO dispute settlement resources. Canada remained deeply concerned with the continued failure by the United States 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 representative of the United States recalled that Canada had commenced a dispute settlement proceeding against the United States concerning the use of a differential pricing analysis and zeroing. Canada had lost that dispute before the Panel. The United States was willing, of course, to discuss Canada's concerns on a bilateral basis.

1.21. 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.16)

1.22. The Chairperson drew attention to document WT/DS471/17/Add.16, 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.

1.23. The representative of the United States said that the United States had provided a status report in this dispute on 5 December 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.

1.24. The representative of China said that, on 22 May 2017, the DSB had adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, which had found that certain measures taken by the United States were inconsistent with the requirements of the Anti-Dumping Agreement, which included: (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. China wished to recall that, at the 19 June 2017 DSB meeting, which had been held two and a half years ago, the United States had stated its intention to implement the DSB's recommendations and rulings in this dispute. However, the sincerity of that statement was under serious doubt. Nearly 16 months after the expiry of the reasonable period of time, the implementation of the United States was at a standstill. None of its status reports provided thus far could indicate any concrete implementation action. The WTO-incompatible US measures had remained intact and continued to infringe China's legitimate interests provided for in relevant covered agreements. This situation was totally unacceptable. On 1 November 2019, the Arbitrator appointed pursuant to Article 22.6 of the DSU had finally determined that the level of nullification or impairment incurred was US$ 3.579 billion. This number, which was the third largest in history of the WTO, revealed the level of nullification and impairment of China's benefits as a result of the WTO-inconsistent methodologies used by the United States. While China awaited to hear concrete implementations from the United States, China stood ready to take appropriate and proportionate actions to safeguard its legitimate interests. As a matter of fact, the failure of the United States to fulfil its implementation obligation, especially with respect to various trade remedy disputes, had become a systemic issue. Over the years, the United States had chosen to ignore the DSB's recommendations and rulings which adversely impacted its interests. The United States had either left its WTO-inconsistent measures intact or had applied certain cosmetic changes which had not fundamentally removed such non-conformity. This left WTO Members with no other choice but to repeatedly bring those issues which had already been decided before panels and before the Appellate Body. Article 21.1 of the DSU was clear: "prompt compliance with the DSB's recommendations or rulings is essential in order to ensure effective resolution of disputes to the benefit of all Members". China, therefore, urged the United States to faithfully honour its implementation obligation and to fully comply with the DSB's recommendations and rulings in this dispute without further delay.

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

1.26. 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.11 – WT/DS478/22/Add.11)

1.27. The Chairperson drew attention to document WT/DS477/21/Add.11 – WT/DS478/22/Add.11, 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.

1.28. The representative of Indonesia said that his country had submitted this report pursuant to Article 21.6 of the DSU. As reported at the 22 November 2019 DSB meeting, Indonesia had made significant changes or adjustments to the Ministry of Agriculture (MoA) regulation as well as the Ministry of Trade (MoT) regulation that were relevant to this dispute. Those changes or adjustments included the removal *inter alia* of the disputed measures regarding: (i) harvest period restrictions; (ii) import realization requirements; (iii) six-months harvest requirements; and (iv) reference prices. Indonesia reaffirmed its commitment to implementing the DSB's recommendations and rulings in these disputes. With regard to Measure 18, the Indonesian Government had incorporated the amendments to relevant laws into the list of the national legislation programme to be discussed with Parliament. Indonesia committed itself to continuing the process of amending its relevant laws in conformity with 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.

1.29. The representative of New Zealand said that his country acknowledged the steps that had been taken by Indonesia and Indonesia's commitment to comply fully with the WTO decision. Both 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 those measures into compliance and 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.

1.30. 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 the United States 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.

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

G/H. Brazil – Certain measures concerning taxation and charges: Status reports by Brazil (WT/DS472/16/Add.1 - WT/DS497/14/Add.1)

1.32. The Chairperson drew attention to document WT/DS472/16/Add.1, which contained the status report by Brazil on progress in the implementation of the DSB's recommendations in the dispute with regard to certain measures concerning taxation and charges.

1.33. The representative of Brazil requested that the two sub-items under this Agenda item be considered together because they pertained to the same matter. He said that Brazil had submitted status reports in these disputes on 5 December 2019, in accordance with Article 21.6 of the DSU. In this regard, Brazil wished to address certain questions formulated by the EU and Japan on the steps which it had taken towards the implementation of the DSB's rulings and recommendations in these disputes. With regard to prohibited subsidies, Brazil had revised 14 implementing orders found to be WTO-inconsistent. These implementing orders corresponded to products accounting for around 95% of the revenue stemming from the "Basic Production Processes" ("*Processos Produtivos Básicos*" (PPBs)) that had been found to be inconsistent with the SCM Agreement. Furthermore, an implementing order revoking an additional 27 orders was currently undergoing public consultations and would be adopted before the end of 2019. The revision of the implementing orders had to follow

specific procedures and timelines and required significant human resources from the relevant ministries. Brazil had chosen to prioritize the implementing orders which had the greatest economic impact. With regard to the Informatics Law and the PADIS programme, an amendment to these programmes aimed at adjusting them in line with the findings of the Panel and of the Appellate Body was in the final stages of the legislative process in the Brazilian Congress, on track to meet the 31 December 2019 deadline agreed by the parties.

1.34. The representative of the European Union said that his delegation wished to thank Brazil for its status report and its statement made at the present meeting. The European Union wished to resolve this case as soon as possible and was following Brazil's implementation efforts very closely. The EU recalled that the reasonable period of time 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 European Union took note of the steps taken by Brazil towards compliance in this dispute, as set out in its status report. The EU wished to reiterate the questions that it had raised at the 22 November 2019 DSB meeting and looked forward to receiving Brazil's reply to these questions. First, with regard to 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, i.e. Implementing Orders, and that some new measures had been enacted in substitution. The EU asked whether Brazil could confirm that all Implementing Orders concerned had been revoked. The EU believed that many of these measures remained in force. It would, therefore, be useful for the EU 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 was doing to address this issue. In addition, the UE wished to express its concerns about many of the substitute Implementing Orders that had been enacted. The EU wished to recall 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 a detailed list of the substitute Implementing Orders so that the EU could ascertain that the matter was satisfactorily resolved. With respect to the removal of the other discriminatory elements covered by the reasonable period of time, the EU understood that Brazil was preparing to enact legislation and 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 do its utmost to comply with the 31 December 2019 deadline, as Brazil had indicated in its status report. The EU looked forward to finding a good outcome with Brazil and remained available to discuss this matter bilaterally.

1.35. The representative of Japan said that his country wished to thank Brazil for its status report and its statement made at the present meeting. As Japan had stated at the 22 November 2019 DSB meeting, Japan continued to seek a full and prompt implementation of the DSB's recommendations and rulings in this dispute, as agreed between the parties. Japan took note of the clarifications made by Brazil on some of the points that Japan had raised at the 22 November 2019 DSB meeting and would certainly look into them. However, Japan still had concerns regarding the status of implementation of the DSB's recommendations and rulings in this dispute. As the expiry, on 31 December 2019, of the reasonable period of time was fast approaching, Japan looked forward to full responses from Brazil with respect to the following points. First, regarding the prohibited subsidies at issue, Brazil had informed Japan that all the prohibited subsidies had been revoked. However, it appeared that more than half of the "nested PPBs" which had been found to constitute prohibited subsidies remained in force. Brazil had explained at the present meeting that it had prioritized the implementation of the DSB's recommendations and rulings based on economic impacts. However, that would also suggest that certain PPBs remained in force. Bearing in mind that the agreed time period for the withdrawal of the prohibited subsidies had expired on 21 June 2019, Japan would be grateful if Brazil could explain how it planned to address PPBs that remained in force, including the timeline of implementation for these measures. Second, Japan considered that the Implementing Orders that amended or replaced the prohibited subsidies appeared to be inconsistent with the covered agreements. Japan asked Brazil, once again, to provide a list of these substitute measures so as to allow Japan to verify that they were all WTO-consistent. Additionally, Japan asked whether Brazil could confirm that the new orders that were in force did not contain any WTO-inconsistent aspects such as local manufacturing obligations or other discriminatory treatments. Third, as Brazil was preparing to bring the Informatics and PADIS programmes into compliance, Japan expected that Brazil would achieve full compliance with respect to these programmes within

the reasonable period of time. In this regard, Japan took note of Brazil's explanation that the implementation of these measures was in its final stages. Japan was closely monitoring all actions taken by Brazil to bring the measures at issue into conformity, as well as any substitute measures that had been or would be in effect. Japan looked forward to consulting this matter with Brazil.

1.36. The DSB took note of the statements and agreed to revert to these matters 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 Chairperson said that this item was on the Agenda of the present meeting at the request of the European Union. She then invited the representative of the European Union to speak.

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 disbursed in practice. 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 and 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 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 pre-October 2007 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% on certain imports of the United States. These minuscule tariffs vividly demonstrated what had been evident for years – it was not common sense that was driving the EU's approach to this Agenda item. While the EU suggested it had requested the DSB's consideration of this Agenda item "as a matter of principle", the EU's principles shifted depending on its status as the complaining or responding party. 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.

2.4. The representative of Brazil said that his country wished to thank the European Union for placing this item on the DSB's Agenda. As an original party to the Byrd Amendment dispute, Brazil called on the United States to comply fully with the DSB's recommendations and rulings in this dispute.

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

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

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" dispute (DS316). As the United States had noted at several recent DSB meetings, the EU had argued – under a different Agenda item – that where the EU as a complaining party did not *agree* with another responding party Member's "*assertion* that it has implemented the DSB ruling", "the issue remains unresolved for the purposes of Article 21.6 DSU". Under this Agenda item, however, the EU argued that by submitting a compliance communication, the EU no longer needed to file a status report, *even though* the United States as the complaining party did not agree with the EU's *assertion* that it 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". 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 of approximately US$ 7.5 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 was not providing a status report because of its assertion that it had complied, demonstrating the EU's principles varied depending on its status as complaining or responding party. Moreover, the EU's inconsistent views appeared convenient because, rather than actually attempting to achieve compliance in this dispute, the EU had pursued a strategy of endless and meritless litigation. The most recent reminder of this misguided approach had been the recently circulated report of the second compliance panel. This compliance panel, like the prior one, had rejected the EU's claim of compliance. But, despite yet another finding of non-compliance, the EU had chosen to appeal the panel report just days ago, seeking yet more litigation in this 15-year dispute. The representative of the United States asked whether it would not be more productive for the EU and its member States to focus on resolving this dispute. In sum, the US position on status reports 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 "EC – Large Civil Aircraft" dispute (DS316), in which no adjudicator had ever agreed that the EU and its Member States were complying with WTO rules.

3.3. The representative of the European Union said that, as in previous DSB meetings, the United States had, once again, implied that the EU was taking inconsistent positions under Article 21.6 of the DSU, depending on whether the EU was a complaining party or a defending party in a dispute. The US assertion remained without merit. As the EU had repeatedly explained in past DSB meetings, the crucial point for the defending party's obligation to provide status reports to the DSB was the stage of the dispute. In the "EC – Large Civil Aircraft" dispute (DS316), the dispute was at a stage where the defending party did not have an obligation to submit status reports to the DSB. The EU wished to remind Members that in the "EC – Large Civil Aircraft" dispute (DS316), a new set of compliance measures had been notified by the EU to the DSB and had been subject to an assessment by a compliance panel. As the United States had recalled, the compliance panel's report had been issued on 2 December 2019. The EU believed that significant aspects of the compliance panel's report could not be regarded as legally correct and were very problematic from a systemic perspective. It was in order to have these legal errors corrected, that the EU had filed an appeal against the compliance panel's report on 6 December 2019, as recalled by the United States. The EU was concerned that, with the current blockage of the two-step multilateral dispute settlement system, the EU would be losing the possibility of benefitting from a proper appellate review of the

serious flaws contained in the panel report. This did not, however, alter the fact that the compliance proceeding in this dispute had not been concluded. Whether or not the matter was "resolved" in the sense of Article 21.6 of the DSU remained the very subject matter of this ongoing 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 ongoing. The EU noted that its reading of the provision was supported by other WTO Members. The EU's argument 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 of the DSU, the issue of implementation had to remain on the DSB's Agenda until the issue was resolved. In the "US — Offset Act (Byrd Amendment)" dispute, the EU did not agree with the US assertion that it had implemented the DSB's recommendations and rulings. This meant that the issue remained unresolved for the purposes of Article 21.6 of the DSU. If the United States did not agree that the issue remained unresolved, nothing prevented it from seeking a multilateral determination through a compliance procedure, asking for a confirmation of its assertion that the Continued Dumping and Subsidy Offset Act of 2000 had been repealed in line with WTO findings, just like the EU was trying to do in this dispute.

3.4. The DSB took note of the statements.

4 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/657)

4.1. The Chairperson drew attention to document WT/DSB/W/657 which contained additional names proposed by Argentina and Pakistan for inclusion on the Indicative List of Governmental and non-governmental Panelists, in accordance with Article 8.4 of the DSU. She then proposed that the DSB approve the names contained in document WT/DSB/W/657.

4.2. The DSB so agreed.

5 APPELLATE BODY APPOINTMENTS: PROPOSAL BY AFGHANISTAN; 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; MALDIVES; 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.15)

5.1. The Chairperson said that this item was on the Agenda of the present meeting at the request of Mexico, on behalf of a number of delegations. She drew attention to the proposal contained in document WT/DSB/W/609/Rev.15. She then invited the representative of Mexico to speak.

5.2. The representative of Mexico, speaking on behalf of the co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.15, said that the delegations in question had agreed to submit the joint proposal dated 5 December 2019 to launch the AB selection processes. She welcomed Afghanistan and the Maldives as new co-sponsors, as well as Moldova who had expressed its intention to co-sponsor this proposal. Her delegation, on behalf of the 119 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 workings and the overall dispute settlement system against the best interest of its Members. WTO Members had a responsibility to safeguard and preserve the Appellate Body, the dispute settlement system and the multilateral trading system. Thus, it was the Members' duty to launch the AB selection processes, as set out 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 had 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 had expired on 11 December 2017; a fourth process to replace Mr. Shree Baboo Chekitan Servansing, whose four-year term of office had expired on 30 September 2018; a fifth process to replace Mr. Ujal Singh Bhatia, whose second term had expired on 10 December 2019; and a sixth process to replace Mr. Thomas R. Graham, whose second term had expired on 10 December 2019; (ii) to establish a Selection Committee; (iii) to set a deadline of 30 days for the submission of candidacies; and (iv) to request that the Selection Committee 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. However, they 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 on February 2017 onward, and to its statements made in the General Council meetings, including the statement made at the 9 December 2019 meeting. From 11 December 2019 onward, the WTO no longer guaranteed access to a binding, two-tier, independent and impartial resolution of trade disputes. This was in clear breach of the WTO Agreements. As the EU had 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. The EU wished to thank all Members that had co-sponsored the proposal contained in document WT/DSB/W/609/Rev.15 to launch the AB selection processes and invited all other Members to endorse this proposal.

5.4. The representative of Brazil said that Brazil wished to refer to its statements made at previous DSB meetings on this matter. This was the first DSB meeting where Members were faced with the situation that the Appellate Body could no longer function. Members needed to resolve this impasse as soon as possible. Therefore, Brazil welcomed the consultations launched by the Director General in order to address the Appellate Body impasse and stood ready to engage constructively in these procedures.

5.5. 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 express their serious disappointment the current AB impasse. The Appellate Body was a fundamental pillar of the WTO and of the multilateral trading system. Since the moment when this issue was first raised, the majority of WTO Members, including GRULAC Members, had contributed in a constructive fashion to seeking a solution which would enable Members to launch the AB selection processes. However, despite Members' efforts, and despite the efforts of DSB Chairman Ambassador Walker as Facilitator in the informal process on AB matters, Members found themselves with an Appellate Body that could no longer function in accordance with WTO rules. All Members had access to the Appellate Body. However, Ecuador believed that this was not the time to be frustrated or discouraged. The Director-General had stated that he would undertake high-level intensive consultations with a view to resolving the AB impasse. GRULAC Members would continue to support these efforts. The countries in question had paid close attention to the concerns that had been raised regarding the functioning of the Appellate Body and had taken an active part in the discussions on these matters. It should be highlighted that, pursuant to Article 17.2 of the DSU, Members had the obligation to fill AB vacancies as they arose. The countries in question reaffirmed their support for the efforts undertaken by the DSB Chairman Ambassador Walker, the GC Chair Ambassador Sunanta and the WTO Director-General. They wished to reiterate that they stood ready to continue to contribute to Members' efforts to achieve the priority objective, namely, to launch the selection processes to appoint new AB members.

5.6. The representative of New Zealand said that his country wished to reiterate its support for the co-sponsored proposal contained in document WT/DSB/W/609/Rev.15 and wished to refer to its statements made at previous DSB meetings. New Zealand was deeply disappointed that the

Appellate Body was no longer able to perform its full functions. New Zealand continued to encourage all Members to engage constructively with a view to urgently addressing the situation.

5.7. 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 Ambassador Walker as Facilitator in the informal process on AB matters, including the report provided to Members at the December 2019 General Council meeting. 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. 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. The United States had not posed this question as part of an academic exercise. Rather, this question was critical in the context of any "solution-focused discussion". Without an accurate diagnosis, Members could not assess the likely effectiveness of any potential solution. And the United States was determined to bring about real WTO reform, including to ensure that the WTO dispute settlement system reinforced the WTO's critical negotiating and monitoring functions, and did not undermine those functions by overreaching and gap-filling. As discussions among Members continued, the dispute settlement system continued to function. The central objective of that system remained unchanged: to assist the parties in the resolution of a dispute. As before, Members had many methods to resolve a dispute, including through bilateral engagement and mutually agreed solutions. For instance, on 18 December 2019, the United States had appealed the compliance Panel's report in the "US — Carbon Steel (India)" dispute (DS436). While no division could be established to hear this appeal at this time, the United States would confer with India so that the parties could determine the way forward in this dispute, including whether the matters at issue might be resolved at this stage or to consider alternatives to the appellate process. Consistent with the aim of the WTO dispute settlement system, the parties should make efforts to find a positive solution to their dispute, and this remained the US preference. And the United States would continue to insist that WTO rules be followed by the WTO dispute settlement system. The United States would continue its efforts and its discussions with Members to seek a solution on these important issues.

5.8. The representative of Canada said that his country supported the statement made by Mexico and shared the concerns expressed by many Members on this matter. Canada welcomed Afghanistan and the Maldives on the growing list of co-sponsors that sought the launch of the AB selection process. Canada invited WTO Members that had not yet sponsored the proposal contained in document WT/DSB/W/609/Rev.15 to consider joining the 118 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, therefore, called on the United States to act in accordance with Article 17.2 of the DSU and unblock the AB selection processes. The fact that the Appellate Body could not hear new appeals was of great concern. However, Members' reliance on WTO panels continued to be high, which demonstrated the value that Members accorded to independent third-party adjudication through the WTO dispute settlement system. The WTO rules remained in force and binding. The Membership's commitment to their observance in good faith was at the core of the multilateral rules-based trading system that benefitted all Members. It was paradoxical and unfortunate that on 18 December 2019 the United States, which had been blocking the AB selection processes for more than two years, had filed an appeal in the "US – Carbon Steel (India)" dispute (DS436) that could not be heard because of the blockage. Canada invited disputing parties to respect each other's existing rights to binding adjudication and to identify a path forward to resolve their dispute in that spirit. Canada wished to reiterate that it was fully committed to discussions on matters related to the functioning of the Appellate Body. Canada's priority remained to find a multilateral resolution to the impasse that covered all Members, including the United States. To that effect, Canada called on the United States to engage, constructively, in solution-focused discussions. In the meantime, Canada would continue its work on interim approaches to safeguard its rights to binding adjudication and access to appellate review, such as the Canada-EU Appeal-Arbitration Arrangement.

5.9. The representative of India said that his country was deeply disappointed with the state of affairs at the WTO with the dysfunctional Appellate Body. The Appellate Body had issued over 350 rulings since its inception. In fact, the Appellate Body, which had been the most successful international court in history, was no longer available to review panel reports from 11 December 2019 onward. India believed that the WTO dispute settlement mechanism was an indispensable pillar of the multilateral trading system and that the Appellate Body was essential for the proper and effective functioning of the WTO. India had a deep interest in a stable and predictable dispute resolution system within the WTO, and was committed to the preservation of a functioning, two-stage, binding adjudication system. India deeply regretted that the DSB was unable to fulfil its legal obligation to appoint AB members. India called upon all WTO Members to fulfil their obligations under Articles 17.1 and 17.2 of the DSU to start the AB selection processes as a matter of priority. Otherwise, appeals would go into the void, which would be contrary to the right to access a two-stage dispute settlement system that Members cherished.

5.10. The representative of Switzerland said that over the last 25 years, the WTO dispute settlement system had greatly contributed to the peaceful settlement of trade disputes, not only to the benefit of the parties in these disputes, but also to the benefit of all Members. In doing so, the WTO dispute settlement system had fully played its role as a central element in providing security and predictability to the multilateral trading system. Members had been witnessing, for more than two years, the gradual dismantling of the Appellate Body which was an essential part of the dispute settlement system. As Members were aware, since 11 December 2019, the Appellate Body could no longer hear new appeals. Like the majority of Members, Switzerland deeply regretted that, despite Members' efforts, the DSB had remained unable to launch the AB selection processes. There was a period of uncertainty ahead. Switzerland hoped that this period would end soon, and that solutions could quickly be found in order to fully restore the two-tier dispute settlement system, while preserving its fundamental features, notably its binding nature. In this context, Switzerland wished to call on each Member to act in a manner conducive to the prompt and final settlement of disputes and, therefore, to avoid so-called "appeals into the void". Switzerland also called on each Member to engage constructively, with a sense of urgency, in order to find concrete solutions under the auspices of the WTO's General Council. Switzerland remained strongly committed to working towards that goal. Switzerland wished to close this statement by thanking General Council Chair Ambassador Sunanta and DSB Chairman Ambassador Walker for their efforts and engagement.

5.11. The representative of the Republic of Moldova said that her country wished to express its support towards a well-functioning, rules-based multilateral trading system and a fully functional dispute settlement system. Such a system was imperative for the enforcement of the WTO legal framework and represented a core legal guarantee. In this context, Moldova supported and thanked the 118 co-sponsors of the proposal put forward by Mexico to launch the AB selection processes as soon as possible so as to overcome this unprecedented impasse in the Appellate Body. Moldova urged all Members to work together towards a speedy resolution that would reinforce the authority and the proper functioning of the WTO dispute settlement system. As a relatively small economy, Moldova was deeply concerned with developments regarding the WTO. Moldova believed that the determination of Members to work together with the aim of preserving the centrality of the multilateral trading system, and with it a viable dispute settlement mechanism, was essential. In this context, Moldova was pleased to join the co-sponsors in supporting the proposal contained in document WT/DSB/W/609/Rev.15 and commended Mexico for this initiative.

5.12. The representative of Chinese Taipei said that his delegation believed that, to preserve the rules-based multilateral trading system and a well-functioning dispute settlement mechanism was indispensable. This was vital to resolving the current impasse and further open-minded discussions among Members were required. Chinese Taipei agreed with the Director-General that there might be some missing pieces in the current discussions. It was time for Members to table all concerns in order to identify the basic principles on which they all needed to agree. His delegation looked forward to seeing the present item removed from the DSB's Agenda in the coming year.

5.13. The representative of Singapore said that, even though the Appellate Body was no longer fully functional, Singapore wished to reiterate its strong systemic interest in the maintenance of the two-tier, binding WTO dispute settlement system that was underpinned by negative consensus. Although some discussions on interim arrangements were ongoing, the unblocking of the AB selection processes had to remain the paramount priority for all Members. Singapore was fully supportive of all efforts made towards this goal, bearing in mind that a multilateral dispute settlement mechanism

had to include all Members and could not be short of one Member. Singapore urged all Members, especially the United States, to actively engage in finding concrete solutions. Singapore wished to take this opportunity to welcome Afghanistan and the Maldives as co-sponsors and to thank General Council Chair Ambassador Sunanta and DSB Chairman Ambassador Walker for their efforts regarding the AB matters.

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 with the inability of the DSB to launch the AB selection processes. His delegation urged Members that had concerns with the dispute settlement system to lift the current blockage without further delay, and to constructively engage in separate discussions to find solutions on this matter.

5.15. The representative of Ukraine said that her country wished to refer to its previous statements made on this matter and to reiterate its willingness to work towards finding a solution to the issue of launching the AB selection processes. Ukraine did not wish to disregard the current system or negotiation history that had led to the adoption of the DSU. Rather, Ukraine wished to draw Members' attention to the fact that the world had changed and that patterns of world trade had also changed. Therefore, the dispute settlement mechanism needed to respond to contemporary challenges. Both this fact and the fact that one Member might have concerns about the functioning of the Appellate Body should not impair the work of the Appellate Body. Since 10 December 2019, the WTO dispute settlement system had been disrupted. Blocking the AB selection processes would lead to the accumulation of unresolved disputes. Such a development dealt a serious blow to the rules-based international trading system. Consequently, Members could lose a valuable dispute settlement system that had been an independent guarantor of impartiality in the application of WTO rules. Thus, Ukraine called upon Members to launch the AB selection processes and welcomed Afghanistan, the Maldives and Moldova as new co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.15. Ukraine expressed gratitude for this opportunity to express its views on this matter and stood ready to engage constructively to help resolve the AB impasse.

5.16. The representative of China said that his country wished to echo the statements made by Mexico at the present meeting on behalf of 118 WTO Members. China also wished to welcome Afghanistan and Maldives as new co-sponsors of the joint proposal contained in contained in document WT/DSB/W/609/Rev.15. China encouraged Members who had not joined as co-sponsors of this proposal to do so in order to demonstrate their firm support and strong commitment to the two-tier dispute settlement system within the rules-based multilateral trading system. China deeply regretted the current paralysis of the Appellate Body due to the illegal blockage by the United States. Article 17.2 of the DSU could not be clearer: Members had the obligation of filling AB vacancies. Nevertheless, the United States had not shown a willingness to fulfil this obligation. Over the past two years, Members had made various efforts to address US concerns on this issue. In particular, 12 proposals and a draft General Council decision had been tabled and vigorously discussed in different configurations. In spite of these efforts, the United States continued to fail to constructively engage in these discussions. This had prevented any meaningful discussions on the issue of unblocking the AB selection processes and on how to improve the functioning of the Appellate Body. The United States had repeatedly raised the "why" question. Thus far, the United States had not tabled a single concrete proposal to address its concerns. The vital importance of the Appellate Body could not be overstated and its paralysis had devastating consequences. At present, at least 10 pending appeals had to be suspended until the resumption of a functioning Appellate Body. If the paralysis continued, another 33 pending panel disputes would face a potential legal limbo if disputing parties could not agree on an interim arrangement to settle such disputes. In the meantime, China encouraged parties to quickly reach transitional arrangements that would promote the continuation of pending cases so as to avoid an important backlog of unresolved appeals and potential obstacles to the restoration of the Appellate Body in the future. As some Members had mentioned at the present meeting, the United States had appealed the Panel Report in the "US – Carbon Steel (India)" dispute (DS436). It seemed that the United States was either seeking a correction of possible errors in the Panel Report from the Appellate Body, or intentionally delaying or mooting the resolution of this case in bad faith. China encouraged the United States to promptly unblock the AB selection processes so as to show to the public its genuine and sincere good faith in this appeal. The Appellate Body crisis was also the crisis of the rules-based multilateral trading system. When the rule of law were to be replaced by the rule of the jungle, each and every Member would take a hit in the long term. Concrete and prompt actions needed to be taken in order to resolve this matter. China renewed its commitment to the informal process on AB matters and strongly encouraged Ambassador Walker

to continue his various efforts as Facilitator and the Director-General to continue his coordination efforts as head of the Organization. China also encouraged Members to discuss various interim arrangements, while preserving the essential feature of the current dispute settlement system, as the stop-gap solution before the full restoration of the Appellate Body. China stood ready to further exchange views with relevant parties in this regard. As had emphasized at the 9-10 December 2019 General Council meeting, institutional memory was extremely important to ensure the integrity of the rules-based multilateral trading system. China wished to thank the Appellate Body Secretariat for its outstanding performance and long-term contribution in this respect. China requested that the Appellate Body Secretariat should remain stable during this period and its structure should be maintained according to the Decision on the Establishment of the Appellate Body (WT/DSB/1). The staff of the Appellate Body Secretariat should also remain on standby so that, at any given time, it could be ready to return to work on new cases in a timely manner.

5.17. The representative of the Russian Federation said that her delegation wished to welcome the new Members who had joined the proposal contained in WT/DSB/W/609/Rev.15 on the AB selection processes. Russia wished to thank all Members who supported the letter and spirit of this proposal. The number of co-sponsors had continued to increase, which demonstrated the Membership's position regarding the current situation in the Appellate Body. Russia wished to echo the statements made by other Members under this Agenda item and urged Members to fulfil their commitments as provided by Article 17 of the DSU by launch the AB selection processes immediately.

5.18. The representative of Korea said that Korea wished to welcome the new co-sponsors and supported the statement made by Mexico based on the joint proposal contained in document WT/DSB/W/609/Rev.15. Korea deeply regretted that Members had not been able to reach an agreement at the 9-10 December 2019 General Council meeting. However, Korea believed that all Members should make serious efforts to resolve the Appellate Body impasse as soon as possible. Korea urged all Members to engage constructively in the relevant discussions.

5.19. The representative of Australia said that her country was deeply concerned that the Appellate Body was not able to fulfil its functions at this point in time. Australia wished to thank Ambassador Sunanta and Ambassador Walker for their considerable efforts in seeking to resolve this impasse. Australia remained strongly committed to the hard work required in the new year to advance reform and revive a properly functioning Appellate Body in the interests of all Members. Australia fully supported the Director-General's efforts toward this goal.

5.20. The representative of Norway said that his country wished to refer to its statements made at previous DSB meetings on this matter. Norway deeply regretted that the Appellate Body was no longer able to perform its functions fully. This was damaging for the multilateral trading system. As Members knew, this situation could have been avoided. However, the system was not broken. Members would do everything they could to safeguard what they had: their agreements, their panel processes and, hopefully, their interim arrangements that might secure the survival of the rule of law. Above all, Members had their engagement. Despite suggestions to the contrary, Norway and many other Members had, and would continue to, engage forcefully to find a solution to the AB crisis. Norway's message to the United States was to do the same. In this way, Members would succeed together. Norway wished to be associated with the words expressed by William Webster, the former Director of the CIA and FBI: "order protects liberty and liberty protects order".

5.21. The representative of Japan said that his country wished to refer to its statements made at previous DSB meetings. Japan regretted that, at the 9-10 December 2019 General Council meeting, Members had been unable to adopt the draft decision proposed by Ambassador Walker and, therefore, were unable to launch the AB selection processes. The Appellate Body would effectively cease to function, at least for now. Members recognized the urgent need for restoring a properly functioning dispute settlement system, which would serve the ultimate goal of securing a positive solution to a dispute. Thanks to the informal process on AB matters and its outcome thus far, Members had a good amount of groundwork on which they could build in their future work. As a matter of priority, Members had to continue their serious discussions, including on difficult outstanding issues in order to find a long-lasting solution to the Appellate Body impasse. Although Members were entering a realm of uncertainty, such uncertainty would also provide Members with a rare opportunity to experiment a variety of means to resolve disputes. This could, in turn, provide Members with the necessary tools to rebuild a viable and sustainable dispute settlement system that would work to the benefit of all WTO Members. In this respect, Japan wished to note that serious

discussions were taking place on various ideas relating to temporary or interim means to secure a positive and prompt solution to pending disputes and Japan stood ready to engage in such discussions. Members owned the system, not vice versa. Through their continued efforts, Members needed to make tangible progress to find a lasting solution to this matter and restore a properly functioning dispute settlement system as quickly as possible.

5.22. The representative of Mexico speaking on behalf of the 119 co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.15, regretted that for the thirtieth 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 its work. 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 the Members' continued failure to act at the present meeting meant that the Appellate Body would continue to be unable to perform its functions, against the best interest of all Members.

5.23. The representative of Mexico said that her country deeply regretted the fact that Members were in an unprecedented situation where there was no longer an appellate mechanism in the WTO dispute settlement system, given that the Appellate Body was incomplete and inoperative. A total of 119 co-sponsors, which included the representatives of cross-section of the Membership, underlined Members' interest in fulfilling their obligation to fill AB vacancies as they arose, in accordance with Article 17.2 of the DSU, in resolving the deadlock that had existed for over two years, and also in highlighting Members' interest in the dispute settlement system. The situation had become extremely worrisome. Nine disputes involving appeal proceedings had been suspended, and all ongoing disputes were being affected by the lack of a fully-functioning dispute settlement system. This undermined the right of all Members to engage in appeal proceedings. The confidence that Members had placed in the dispute settlement system since the creation of the WTO was undeniable. Moreover, the Membership had shown its serious commitment to finding a result-oriented process to address one Member's concerns, and this should have been sufficient to enable Members to launch the AB selection processes. Mexico regretted that 164 Members were deprived of their right of appeal. Mexico reiterated its readiness to work toward a solution and called for an end to the current impasse which affected the functioning of one of the central pillars of the multilateral trading system.

5.24. The Chairperson thanked all delegations for their statements. She said that, as in the past, the DSB would take note of the statements expressing the respective positions, which would be reflected in the minutes of the present meeting. She further stated that Amb. Walker, the Chairman of the DSB, and herself, as the Chair of the General Council, would be looking to assist Members in their efforts going forward in order to find a workable and agreeable solution to improve the functioning of the Appellate Body. As Members were aware, at the General Council meeting on 9 December 2019, the WTO Director-General had made a statement regarding the AB matters. In his statement, the Director-General informed Members that he would be undertaking more intensive high-level consultations on how to resolve the AB situation.

5.25. The DSB took note of the statements.