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Dispute Settlement Body
29 July 2020

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 29 JULY 2020

Chairman: H.E. Mr. Dacio Castillo (Honduras)

Prior to the adoption of the Agenda[1]

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Prior to the adoption of the Agenda: (i) the Chairman welcomed all delegations that were participating in person as well as those delegations that were listening-in remotely. He recalled that, as had been done at the 29 June 2020 DSB meeting, he would not be offering the floor to delegations participating remotely; (ii) the item concerning the adoption of the Panel Report in the dispute on: "Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights" (DS567) was removed from the proposed Agenda following the Kingdom of Saudi Arabia's decision to appeal the Panel Report; and (iii) the representative of the United States noted that item 11, entitled: "China – Domestic Support for Agricultural Producers. Recourse to Article 22.2 of the DSU by the United States, may be removed from the Agenda pursuant to China's objection to that request. On 16 July 2020, the United States had requested DSB authorization to take countermeasures in relation to the dispute "China – Agricultural Producers" (DS511). On 27 July 2020, China had objected to the level of concessions and related obligations proposed by the United States, automatically referring the matter to arbitration under Article 22.6. As the DSB could not take action on the US request, and as previously discussed with China, the United States no longer proposed that the item be considered at the present meeting. The representative of China took note of the US withdrawal of item 11 from the Agenda of the present meeting. That was without prejudice to China's position

in relation to Article 22 of the DSU. China disagreed with the US allegation that China had failed to bring its measures into compliance with its WTO obligations. As detailed in its communication dated 18 June 2020, China had brought its relevant measures into full compliance with the DSB's rulings and recommendations in this dispute. China maintained that any disagreement on the consistency of its measures taken to comply with the DSB's rulings and recommendations had to be resolved pursuant to proceedings under Article 21.5 of the DSU before any level of suspension of concessions or obligations could be assessed under Article 22 of the DSU. Under these circumstances, and pursuant to Article 22.6 of the DSU, China had objected to the level of suspension of concessions or related obligations under the GATT 1994 and other agreements listed in Annex 1A of the WTO Agreement as proposed by the United States in document WT/DS511/17. Accordingly, and pursuant to Article 22.6 of the DSU: "the matter shall be referred to arbitration". The representative of Japan said that his country wished to make the following observations regarding the referral to arbitration under Article 22.6 of the DSU from a systemic point of view. As Japan had previously stated on several occasions, the text of Article 22.6 of the DSU was crystal clear. If certain conditions were met, i.e., if the Member concerned objected to the proposed level of suspension or claimed that cross-retaliation rules were not followed, "the matter shall be referred to arbitration". In other words, if an objection to the level of suspension was made, the matter shall be automatically referred to arbitration. This was not subject to any action by the DSB.

The DSB took note of the statements and adopted the Agenda, as amended.

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.206)

B. United States – Section 110(5) of the US copyright act: Status report by the United States (WT/DS160/24/Add.181)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.144)

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.28)

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States (WT/DS471/17/Add.20)

F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.15 – WT/DS478/22/Add.15)

1.1. The Chairman noted that there were six 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.206)

1.2. The Chairman drew attention to document WT/DS184/15/Add.206, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.3. The representative of the United States said that the United States had provided a status report in this dispute on 16 July 2020, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that his country wished to thank the United States for its most recent status report and for 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.181)

1.6. The Chairman drew attention to document WT/DS160/24/Add.181, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.7. The representative of the United States said that the United States had provided a status report in this dispute on 16 July 2020, 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 thanked the United States for its status report and its statement made at the present meeting. His delegation wished to refer to the EU's statements made at previous DSB meetings under this Agenda item. The EU wished to resolve this case as soon as possible.

1.9. The representative of China said that his country noted that the United States had provided 182 status reports in this dispute. However, those reports were not different from one another and none of them indicated any progress on implementation. China expressed regret that nearly two decades after the DSB had adopted recommendations and rulings, this dispute remained unresolved. As a result of a lack of concrete implementation action, the United States continued to fail to accord the minimum standard of protection required by the TRIPS Agreement. The United States had become the only WTO Member who failed to implement the DSB's recommendations and rulings under the TRIPS Agreement. Article 21.1 of the DSU required Members to promptly address its WTO-inconsistent measures so as "to ensure effective resolution of disputes to the benefit of all Members". Therefore, China urged the United States to achieve full compliance 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.144)

1.11. The Chairman drew attention to document WT/DS291/37/Add.144, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

1.12. The representative of the European Union said that his delegation continued to progress with the authorizations where the European Food Safety Authority (EFSA) had finalized its scientific opinion and concluded that there were no safety concerns. The EU had a solid record on the authorization of GMO requests: In 2019, 18 decisions had been adopted to authorize 65 new GMOs for feed and food, six GMOs had been renewed and one GM cut flower had been authorized. 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 at all stages of the authorization procedure. 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". At the 29 June 2020 DSB meeting, the United States had claimed that 13 applications were awaiting risk management decisions. This figure needed to be put into perspective. With regard to three of these applications, the EFSA had recently published opinions which were not fully conclusive. At the moment, no full scope authorization could be granted regarding these three applications. More specifically, regarding one of these applications, the European Commission intended to discuss further with member States the feasibility of implementation and controls in the event of a partial authorization. Regarding the second application, the applicant still had to provide a mandatory study that complied with the relevant legal requirements. Regarding the third application, the applicant had requested the European Commission to wait until the EFSA had finalized the risk assessment of the corresponding stack. Moreover, nine applications that had received a positive opinion from the EFSA were undergoing internal procedures and would be presented for a vote as soon as these procedures were finalized. The next Standing Committee on genetically modified food and feed would take place on 15 September 2020. The United States seemed to refer to the cancellation of meetings of the Standing Committee as deliberate delays. Therefore, it was important to understand that for logistical reasons meetings of the different sections of the Standing Committee were scheduled a year in advance. However, these meetings were confirmed only closer to their planned dates. The effect of COVID-19 restrictions should not be underestimated. In spite of the current context and related priorities and of the challenging working conditions, the EU continued working on authorization files. The EU acted in line with its WTO obligations. 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; the 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. Currently, 13 applications were pending risk management decisions in the standing committee on biotech and two awaited final approval by the European Commission. Two of these applications had been going through the EU approval system for over 10 years. The EU also had suggested that the United States "appears" to acknowledge that there was no ban on genetically engineered products in the EU. The EU was incorrect. Rather, the EU had failed to lift all of the WTO-inconsistent member-State bans covered by the DSB recommendation. The DSB had adopted findings that, even where the EU had approved a particular product, in many instances EU member States had banned those products for certain uses without a scientific basis. This included not only the two member States subject to panel findings – Austria and Italy. There were seven additional member States that previously maintained bans on cultivation and had since opted out of cultivation under the EU's legislation: Bulgaria, France, Germany, Greece, Hungary, Luxembourg, and Poland. There were also eight member States that had not previously banned cultivation of MON-810 but had since opted out of cultivation under the EU's legislation: Croatia, Cyprus, Denmark, Latvia, Lithuania, Malta, the Netherlands, and Slovenia. Further, Austria and Italy appeared to maintain bans on other products subject to specific panel findings. 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. Furthermore, despite the assertions of the EU during the 29 June 2020 DSB meeting, this situation existed regardless of whether or not the European Commission received "complaints" from seed operators or stakeholders. 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 Agreements did not require full international harmonization and left some regulatory space or autonomy to individual WTO Members. The European Union had different regulatory approaches to non-GMOs and GMOs but, in all cases,

such regulations did not discriminate between imported and domestic like products. No EU member State had imposed any "ban". Under the terms of Directive 2001/18/EC, 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: "[m]ember States may not prohibit, restrict or impede the placing on the market of GMOs, as or in products, which comply with the requirements of this Directive". The EU also noted that according to the provisions of the opt-out Directive (Article 26b, point 8) the measures adopted under the Directive "shall not affect the free circulation of authorised GMOs" in the EU. Currently, the EU Common Catalogue of varieties of agricultural species included 150 varieties of maize MON-810, which were allowed to be marketed in the EU. As of the present meeting, 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 of MON-810 seeds. The EU invited the United States to provide any evidence it might have at its disposal that would substantiate 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.28)

1.16. The Chairman drew attention to document WT/DS464/17/Add.28, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning anti-dumping and countervailing measures on large residential washers from Korea.

1.17. The representative of the United States said that the United States had provided a status report in this dispute on 16 July 2020, 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 recommendations concerning those anti-dumping and countervailing duty orders. The United States continued to consult with interested parties on options to address the recommendations of the DSB 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. Once again, Korea urged the United States to take prompt and appropriate steps to implement the DSB's recommendations for the "as such" measure at issue in this dispute.

1.19. 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. 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. The reasonable period of time to implement the recommendations relating to the "as such" WTO-inconsistency of the DPM had expired more than two years ago. However, in its most recent status report, the United States 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 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.20)

1.21. The Chairman drew attention to document WT/DS471/17/Add.20, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning certain methodologies and their application to anti-dumping proceedings involving China.

1.22. The representative of the United States said that the United States had provided a status report in this dispute on 16 July 2020, 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 recommendations of the DSB.

1.23. 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, in this dispute 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 incompatible 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. On 19 June 2017, the United States had stated its intention to implement the DSB's recommendations and rulings in this dispute. The arbitration pursuant to Article 21.3(c) of the DSU had decided that the reasonable period of time (RPT) would be 15 months, expiring on 22 August 2018. Given that the United States had failed to bring its WTO-inconsistent measure into conformity, China had had no other choice but to pursue retaliation in accordance with Article 22.2 of the DSU. The United States had objected to China's proposed level of suspension and the matter had therefore been referred to arbitration under Article 22.6 of the DSU. On 1 November 2019, the arbitrator had determined that the level of nullification or impairment incurred by China was USD 3.579 billion, the third largest retaliation amount in WTO history. Nearly two years after the expiry of the RPT, the United States continued to fail to implement the DSB's recommendations and rulings in this dispute. None of the US status reports provided thus far indicated any concrete implementation action. What made it worse was that implementation of DSB recommendations and rulings by the United States, especially in trade remedy disputes, had increasingly become a systemic problem over the past decade. More than half of the cases under the DSB's surveillance related to implementation by the United States. Some of these disputes had remained under the DSB's surveillance for more than 20 years. The US unwillingness to achieve compliance had already seriously undermined the authority and effectiveness of the dispute settlement system. The Appellate Body paralysis would further worsen this problem. This should alert the entire Membership. The resolution of disputes did not end with the DSB's recommendations and rulings. It was prompt implementation that kept the rules-based multilateral trading system afloat. Article 21.1 of the DSU stated that: "[p]rompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members". Therefore, China urged the United States to faithfully honour its implementation obligation and adopt concrete actions to achieve full compliance in this dispute.

1.24. 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.15 – WT/DS478/22/Add.15)

1.25. The Chairman drew attention to document WT/DS477/21/Add.15 – WT/DS478/22/Add.15, which contained the status report by Indonesia on progress in the implementation of the DSB's recommendations in the case concerning importation of horticultural products, animals and animal products.

1.26. The representative of Indonesia said that his country had provided a status report pursuant to Article 21.6 of the DSU. Indonesia wished to reiterate its commitment to implementing the DSB's recommendations and rulings in these disputes. This commitment had been demonstrated by carrying out the necessary adjustments to its relevant Ministry of Agriculture (MoA) and Ministry of Trade (MoT) regulations. Indonesia had reported regularly on these adjustments to the DSB. Indonesia noted the ongoing concerns regarding specific measures that New Zealand and the

United States had raised at prior DSB meetings. Regarding Measure 18, as Indonesia had reported at prior DSB meetings, a draft amendment of the relevant laws had been transmitted by the Government to Parliament. Ongoing discussions between the Government and Parliament had been taking place, despite the implementation of large-scale social restrictions due to the COVID–19 pandemic. 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.

1.27. The representative of New Zealand said that his country wished to thank Indonesia for its status report. New Zealand acknowledged Indonesia's commitment to comply fully with the DSB's recommendations and rulings in this dispute, as well as the steps that Indonesia had taken towards compliance. It was disappointing that there continued to be a need to have this item on the Agenda of the present meeting. Both of the compliance deadlines that had been agreed between the parties had expired. As stated at previous DSB meetings, New Zealand was concerned that a number of measures remained non-compliant. New Zealand was very concerned that difficulties continued to be experienced in obtaining import recommendations and approvals. There was a significant delay in the issuing of import recommendations this year and only a small fraction of the approvals applied for had been issued. If this issue was not resolved promptly, it could undermine the progress made towards compliance. New Zealand strongly encouraged Indonesia to take appropriate steps, swiftly, to achieve full compliance with the DSB's recommendations and rulings in this dispute.

1.28. 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 46/2019 on Strategic Horticultural Commodities.

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

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

A. Statement by the European Union

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

2.2. The representative of the European Union said that on 1 May 2020, the EU had adjusted the level of suspension to the nullification or impairment caused by the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) to the EU. The adjustment maintained unchanged the list of products subjected to retaliation while increasing the rate of additional duty to which those products were subjected to 0.012% in order to adjust to the level of retaliation. The letter informing of the adjustment, together with the Commission Delegated Regulation (EU) 2020/578 of 21 February 2020, had been notified to the DSB on 26 June 2020. The EU 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 latest CDSOA report 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 in this dispute. As long as the United States did not fully stop transferring collected duties, this item was rightly under the DSB's surveillance. Due to the long-standing nature of this breach, the EU would continue to insist on placing this item on the Agenda of DSB meetings, as a matter of principle, and independently from 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 Agenda of DSB meetings as long as the United States had not fully implemented the DSB's recommendations and rulings. Once the transfers of anti-dumping and countervailing duties ceased, so would the EU measures.

2.3. The representative of Canada said that his country wished to thank the European Union for placing this item on the Agenda of the present meeting. Canada 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.

2.4. 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 14 years ago 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. On 26 June 2020, the EU had announced that it would apply an additional duty of 0.012 % on certain imports of the United States, which, remarkably, reflected an *increase* in the additional duty of 0.001 %. 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. The EU referred to the "clear obligation" under Article 21.6 for the United States to submit a status report in this dispute. As the United States had explained repeatedly, there was no obligation under the DSU for a Member to provide further status reports on the progress of its implementation once that Member announced that it *has implemented* the DSB's recommendations. The widespread practice of Members – including the European Union as a responding party – confirmed this understanding of Article 21.6. Indeed, at recent meetings, two Members (Brazil and China) had informed the DSB that they had come into compliance with the DSB recommendations in three disputes (DS472, DS497, and DS517), and the complaining parties had not accepted the claims of compliance. Those Members had not provided a status report for the present meeting, consistent with the understanding that there was no obligation for a Member to provide further status reports once that Member announced that it had implemented the DSB recommendations. The United States questioned whether the European Union believed that the "clear obligation" that existed under the EU's understanding of Article 21.6 to submit a status report applied to other Members, including itself. 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 report in a status report.

2.5. 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" 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 appears 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 DSU

Article 21.6 to contain this limitation. 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 that the EU's principles varied depending on its status as complaining or responding party. In sum, the US position on status reports had been consistent and clear: under Article 21.6 of the DSU, once a responding Member announced to the DSB that it had complied, there was no further "progress" on which it could report, and therefore no further obligation to provide a status 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).

3.3. The representative of the European Union said that, as during previous DSB meetings, the United States had again mentioned 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 United States had also referred to the EU's appeal filed against the report of the second compliance panel as an example of the EU's "misguided" approach. Both US assertions were without merit. As the EU had repeatedly explained at 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" case (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 recalled that in that case the EU had notified a new set of compliance measures to the DSB. That new set of compliance measures were a clear demonstration that the EU – contrary to the United States in the parallel "US — Large Civil Aircraft (2nd complaint)" case (DS353) – was serious about and committed to achieving compliance. That new set of compliance measures had been subject to an assessment by a compliance panel and that panel's report had been issued on 2 December 2019. As noted in the statement made by the EU at the 18 December 2019 DSB meeting, 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 when it came to assessing compliance with the subsidy disciplines of the WTO Agreements. It was in order to have these legal errors corrected, and not – as the United States seemed to imply – to continue litigation for the sake of litigation, that the EU had filed an appeal against the compliance panel's report on 6 December 2019.

3.4. The EU was concerned that with the current blockage of the two-step multilateral dispute settlement system, the EU was losing the possibility of a proper appellate review of the serious flaws contained in the panel report. While the blockage continued, the EU stood ready to discuss with the United States alternative ways to deal with this appeal. The EU was also committed to finding a balanced negotiated solution with the United States that would allow leaving both aircraft disputes behind. These considerations 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 such 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 view 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. Pursuant to Article 21.6 DSU, the issue of implementation had to remain on the Agenda of DSB meetings until the issue was resolved. In the "US – Offset Act (Byrd Amendment)" case (DS217), 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 CDSOA measure had been repealed in line with the relevant findings, just like the EU was doing in the "EC – Large Civil Aircraft" case (DS316).

3.5. The representative of the United States said that the EU validated many criticisms of the WTO dispute settlement system with its assertion that the EU was serious about bringing its launch aid subsidies into WTO compliance, while the United States was not. The dispute settlement system had been turned into a tool to delay finding a solution between the parties. The EU's massive launch aid

subsidies had been found to breach the EU's obligations in an uninterrupted string of reports going back a decade. At every turn, not only had the EU not made a serious attempt to withdraw these subsidies or remove their pernicious effects, it had made them worse – both by altering the terms of existing subsidies to make them larger and longer lasting, and by providing still more and larger subsidies. No Member making a genuine effort to comply could get it so wrong, so frequently, and for so long. The EU had recently announced that France and Spain had agreed with Airbus to amend the terms of two launch aid financing packages found to be WTO-inconsistent. The EU had publicly suggested that this action had brought the EU into compliance. But the EU had not provided any details of these supposed amendments to the WTO or directly to the United States. Normally, a party claiming compliance could and did explain why. Nor did the EU even address the remaining six WTO-inconsistent launch aid measures. With this new compliance announcement, the EU had effectively conceded that the United States had been correct that the EU was out of compliance previously. And given the limited measures covered by the announcement, and the lack of any details on the supposed changes made, no one could take seriously that these changes actually addressed the full scope of massive, WTO-inconsistent subsidies and brought a resolution to this long-standing dispute. The contrast with US actions could not be any sharper. The United States had withdrawn the sole measure found to cause adverse effects in the adopted compliance reports – the Washington State B & O tax rate reduction. The text of the measure was public, and its terms had been notified to the WTO and the EU. No one could deny that the Washington State tax break had ended. And yet, with no basis in reality, the EU suggested that it was serious about compliance, while the United States was not. It was regrettable that the EU continued to refuse to seriously address its massive, WTO-inconsistent subsidies and therefore appeared to want this dispute to go on.

3.6. The representative of the European Union said that his delegation did not agree with the unilateral US assertion that it had fully implemented the DSB's recommendations and rulings in the "US – Large Civil Aircraft (2nd complaint)" dispute (DS353). While it was still examining the impact of the legislative action concerning the Washington State B & O tax, the EU noted that the rulings in that dispute covered a number of additional measures in respect of which the United States remained non-compliant (including NASA and Department of Defense Research and Development measures, as well as certain State and local measures). As already referred to in statements made at previous DSB meetings on the matter, following the Appellate Body report on compliance in the "EC – Large Civil Aircraft" case (DS316), the EU had notified a set of compliance measures to the WTO that had brought the EU into compliance with the DSB's ruling. The United States had disagreed. On the basis of its disagreement, the United States continued to apply countermeasures against products from the EU. At the same time, the United States was blocking the two-step multilateral dispute settlement system, thus preventing the EU from seeking a multilateral determination of compliance regarding its measures.

3.7. The DSB took note of the statements.

4 INDIA – TARIFF TREATMENT ON CERTAIN GOODS

A. Request for the establishment of a panel by Japan (WT/DS584/9)

4.1. The Chairman recalled that the DSB had considered this matter at the 29 June 2020 DSB meeting and had agreed to revert to it, should a requesting Member wish to do so. He then drew attention to the communication from the Japan contained in document WT/DS584/9 and invited the representative of Japan to speak.

4.2. The representative of Japan said that his country would not repeat its position and claims in this dispute at the present meeting, as they were explained in detail in its panel request and in its statement made at the 29 June 2020 DSB meeting. To summarize: India had raised its customs duties on certain products in the information and communications technology (ICT) sector since 2014, in excess of the bound rates set forth in its Schedules of Concessions and Commitments annexed to the GATT 1994. As Japan had explained in its panel request, India's measures were clearly inconsistent with India's obligations under the GATT 1994 and specifically Article II. Japan's panel request had appeared as an item on the Agenda of the 29 June 2020 DSB meeting. As Japan continued to see that the inconsistency was not being removed, Japan requested, once again and pursuant to Article 6 of the DSU, that a panel be established with standard terms of reference in accordance with Article 7.1 of the DSU to examine the matter as set out in its panel request. Japan also requested the establishment of a single panel pursuant to Article 9.1 of the DSU to examine the

same matter raised in the DS582, DS584 and DS588 disputes for the same reasons as the ones Japan had set forth at the 29 June 2020 DSB meeting.

4.3. The representative of India said that his country was deeply disappointed with Japan's decision to move forward with its second request for the establishment of a panel in this dispute. As India had explained in its statement made at the 29 June 2020 DSB meeting, Japan essentially requested that India implement a declaration made by select Members, namely, the Declaration on the Expansion of Trade in Information Technology Products (ITA-2), to which India was not a party. This dispute also sought to take advantage of an inadvertent error in the transposition of HS2002 to HS2007, of a purely formal character, committed while transposing the tariff lines and the description of the products recommended by the World Customs Organization (WCO). India reiterated that the measures identified by Japan were consistent with India's WTO obligations. India understood that a panel would be established at the present meeting. India stood ready to defend its legitimate rights and interests in future proceedings. India noted that Japan had requested for the establishment of a single panel to examine its claims along with certain other matters that were on the Agenda of the present meeting. For a single panel to be established to examine multiple complaints, the DSB had to decide to establish a single panel. This would be a decision taken by the DSB by consensus pursuant to Article 9.1 of the DSU. India did not agree with this request. India was of the *prima facie* view that the panel requests did not relate to the same matter. Consequently, in order to safeguard its procedural rights, India maintained that separate panels had to be established at this stage.

4.4. The representative of Japan said that his country regretted that India had not agreed to the establishment of a single panel pursuant to Article 9.1 of the DSU in the DS582, DS584 and DS588 disputes. Japan recalled that a panel in DS582 had already been established at the 29 June 2020 DSB meeting, and Chinese Taipei would request the establishment of a panel in the DS588 dispute for the second time at the present meeting. In these circumstances, and in light of Article 9.3 of the DSU, Japan requested that to the greatest extent possible the same persons should serve as panelists on each of the separate panels in the DS582, DS584 and DS588 disputes, and that the time-tables for the panel proceedings in these disputes be harmonized.

4.5. The representative of European Union said that his delegation wished to support the proposal of establishing a single panel in respect of the three panel requests filed by Japan, Chinese Taipei and the EU, as it had already done so a the 29 June 2020 DSB meeting when a panel in the DS582 dispute had been established. All three cases were "related to the same matter" pursuant to Article 9.1 of the DSU: (i) they identified the same tariff treatment by India of mostly identical ICT products, which were specified in the form of tariff lines in their respective panel requests, and (ii) they provided the same legal basis of complaint, i.e., a violation of tariff concessions that India had committed to within the legal framework of the WTO on these ICT products, under Article II of the GATT 1994. The EU believed that the establishment of a single panel to examine the complaints in these three cases was feasible, as consultation meetings had already taken place in the three cases, and as it would in no way impair India's rights under the DSU. Indeed, establishing a single panel would be desirable in these disputes as a way to organize the examination of this matter in an orderly and efficient manner, since this would save both time and human resources for India and each complainant. Such consideration was more pertinent than ever in the current circumstances that the COVID-19 pandemic had brought upon Members.

4.6. The representative of India said that his country believed that it was not feasible to have the same panel for the respective matters because India's rights that were normally available to every Member under the DSU would face the real risk of being infringed based on the respective Members' assertions at the present meeting. Moreover, there were significant differences between the measures and claims identified by each of the three complainants in their respective panel requests. For instance, Japan had identified 39 distinct measures at issue, whereas the EU and Chinese Taipei had merely identified six measures at issue. The differences between the measures identified in their respective panel requests were significant and revealed the distinct nature and scope of each complaint. Therefore, India maintained that having a separate panel established in respect of each panel request was appropriate at this stage.

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

4.8. The representatives of Brazil, Canada, China, the European Union, Indonesia, Korea, Norway, Russia, Singapore, Chinese Taipei, Thailand, Turkey, the United Kingdom and the United States reserved their third-party rights to participate in the Panel's proceedings.

5 INDIA – TARIFF TREATMENT ON CERTAIN GOODS IN THE INFORMATION AND COMMUNICATIONS TECHNOLOGY SECTOR

A. Request for the establishment of a panel by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (WT/DS588/7)

5.1. The Chairman recalled that the DSB had considered this matter at the 29 June 2020 DSB meeting and had agreed to revert to it, should a requesting Member wish to do so. He then drew attention to the communication from Chinese Taipei contained in document WT/DS588/7 and invited the representative of Chinese Taipei to speak.

5.2. The representative of Chinese Taipei said that his delegation had already raised this issue at the 29 June 2020 DSB meeting. Chinese Taipei recalled that India had increased the rate of customs duties imposed on imports of certain goods in the information and communications technology (ICT) sector. Some of these duties exceeded the bound rates set forth in India's Schedule of Concessions annexed to the GATT 1994 and were therefore inconsistent with India's obligations under Article II:1(a) and (b) of the GATT 1994. By exceeding its bound rates, India accorded to certain ICT goods coming from Chinese Taipei treatment less favourable than that provided for in India's WTO Schedule. On 2 September 2019, Chinese Taipei had requested consultations with India pursuant to Article 4 of the DSU. Bilateral consultations had been held on 21 November 2019. The consultations had served to clarify certain issues. However, they had failed to resolve the dispute. At the 29 June 2020 DSB meeting, Chinese Taipei had requested the establishment of a panel pursuant to Article 7.1 of the DSU, with standard terms of reference, to examine India's measures concerning certain ICT goods as described in its panel request contained in document WT/DS588/7. India had opposed Chinese Taipei's panel request at the 29 June 2020 DSB meeting. Thus, for the second time, Chinese Taipei was requesting the establishment of a panel pursuant to Article 7.1 of the DSU to examine India's measures. Chinese Taipei noted that at the 29 June 2020 DSB meeting, Chinese Taipei had also requested that a single panel be established to jointly examine the complaints of Chinese Taipei, the European Union and Japan. This request had also been opposed by India. Once again, Chinese Taipei requested that a single panel be established to jointly examine the complaints of Chinese Taipei, the European Union and Japan under Article 9.1 of the DSU. The three cases were "related to the same matter", as they all related to India's tariff treatment of certain ICT products, and the establishment of a single panel would ensure the efficiency of proceedings, saving resources for all parties involved.

5.3. The representative of India said that his country was deeply disappointed with Chinese Taipei's decision to move forward with its second request for the establishment of a panel in this dispute. As India had explained in its statement made at the 29 June 2020 DSB meeting, this dispute sought to take advantage of an inadvertent error in the transposition of HS2002 to HS2007, of a purely formal character, committed while transposing the tariff lines and the description of the products recommended by the World Customs Organization (WCO). The outcome desired by Chinese Taipei would force India to implement a declaration by select Members, namely, the Declaration on the Expansion of Trade in Information Technology Products (ITA-2), to which India was not a party. India reiterated that the measures identified by Chinese Taipei were consistent with India's WTO obligations. India understood that a panel would be established at the present meeting. India stood ready to defend its legitimate rights and interests in future proceedings. India noted that Chinese Taipei had requested the establishment of a single panel to examine its claims along with certain other matters that were on the Agenda of the present meeting. For a single panel to be established to examine multiple complaints, the DSB had to decide to establish a single panel. This would be a decision taken by the DSB by consensus pursuant to Article 9.1 of the DSU. India did not agree with this request. India was of the *prima facie* view that the panel requests did not relate to the same matter. Consequently, in order to safeguard its procedural rights, India maintained that separate panels had to be established at this stage.

5.4. The representative of Japan said that his country shared Chinese Taipei's concerns regarding the matter raised in its panel request, and that it supported the establishment of a panel as requested by Chinese Taipei. Japan would not repeat its position on this matter and simply wished to refer to its statement made under Agenda item 4 at the present meeting. Chinese Taipei requested the establishment of a single panel pursuant to Article 9.1 of the DSU to examine the same matter raised by the complainants in the DS582, DS584 and DS588 disputes. Japan supported the establishment of a single panel for the reasons that Japan had set forth under Agenda item 4 of the present meeting. In this respect, Japan expressed regret that India had refused the establishment of a single panel, which would have benefitted all.

5.5. The representative of European Union said that his delegation expressed regret that India had not accepted the establishment of a single panel and wished to reiterate its support for the proposal to establish a single panel in the three cases filed by Japan, Chinese Taipei and the EU for the reasons mentioned under Agenda item 4 of the present meeting.

5.6. The representative of India said that his country believed that it was not feasible to have the same panel for the respective matters because India's rights that were normally available to every Member under the DSU would face the real risk of being infringed based on the respective Members' assertions at the present meeting. Moreover, there were significant differences between the measures and claims identified by each of the three complainants in their respective panel requests. For instance, Japan had identified 39 distinct measures at issue, whereas the EU and Chinese Taipei had merely identified six measures at issue. The differences between the measures identified in their respective panel requests were significant and revealed the distinct nature and scope of each complaint. Therefore, India maintained that having a separate panel established in respect of each panel request was appropriate at this stage.

5.7. The representative of Chinese Taipei said that his delegation regretted that India had opposed its request for the establishment of a single panel. Should there be no single panel, Chinese Taipei agreed with Japan that, to the greatest extent possible, the three cases (DS582, DS584 and DS588) should be served by the same panelists.

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

5.9. The representatives of Brazil, Canada, China, the European Union, Indonesia, Japan, Korea, Norway, Russia, Singapore, Thailand, Turkey, the United Kingdom and the United States reserved their third-party rights to participate in the Panel's proceedings.

6 JAPAN – MEASURES RELATED TO THE EXPORTATION OF PRODUCTS AND TECHNOLOGY TO KOREA

A. Request for the establishment of a panel by the Republic of Korea (WT/DS590/4)

6.1. The Chairman recalled that the DSB had considered this matter at the 29 June 2020 DSB meeting and had agreed to revert to it, should a requesting Member wish to do so. He then drew attention to the communication from the Republic of Korea contained in document WT/DS590/4 and invited the representative of Korea to speak.

6.2. The representative of Korea said that at the 29 June 2020 DSB meeting, his country had requested the establishment of a panel to examine Japan's amendments to its export licensing requirements for the exports of fluorinated polyimide, resist polymers, and hydrogen fluoride, as well as related technologies, when destined for Korea (Amended Export Licensing Requirements). Japan had not agreed to establish a panel at that meeting. However, Korea remained concerned about the Amended Export Licensing Requirements that related to essential inputs for its electronics industry. Korea had explained, at the 29 June 2020 DSB meeting, that exports of the three products to Korea were being seriously restricted as a result of the Amended Export Licensing Requirements. As stated in Korea's panel request, Korea considered the imposition of such restrictions to be contrary to Japan's WTO commitments under the GATT 1994, the Agreement on Trade Facilitation, the TRIMs Agreement, the GATS and the TRIPS Agreement. Therefore, pursuant to Article 6 of the DSU, Korea requested that the DSB establish a panel with standard terms of reference to examine this matter.

6.3. The representative of Japan said that his country was deeply disappointed that Korea had chosen to request for, the second time, the establishment of a panel at the present meeting. Japan's measures at issue were in line with internationally established practices aimed at enhancing appropriate export controls over dual-use items. WTO rules, including clauses such as Article XXI of the GATT, fully recognized WTO Members' right to adopt export control policies. Japan also wished to reiterate that it had granted and would grant export licenses for applications on the three items at issue, once it had been confirmed that these goods and related technologies were exported for civilian use. Korea had stated on various occasions outside this forum that no direct damage to Korean companies, such as disruptions in production, had been caused. Yet, Korea was challenging the fundamental premises that underlay the internationally established export control frameworks, as well as international efforts on non-proliferation of weapons and sensitive military technologies, including weapons of mass destruction. Japan expressed regret that Korea had not resumed the dialogue between their respective export control authorities, even though Japan had repeatedly called on Korea to do so at various levels, including at the ministerial level, after the 29 June 2020 DSB meeting. Japan was deeply concerned about the difficulties that the establishment of a panel would impose on the dialogue between their respective export control authorities. While Japan was fully prepared to defend the legitimacy of its measures before a panel, Japan believed that dialogue, not WTO dispute settlement proceedings, was the best and only way to resolve this matter. Japan continued to hope that Korea would choose a path conducive to the resolution of this matter.

6.4. The representative of the United States said that as the United States had explained at the 29 June 2020 DSB meeting, and as it had consistently maintained for more than 70 years, national security matters were not to be judged under the WTO dispute settlement system. Every Member of the WTO retained the authority to determine for itself those matters that it considered necessary to the protection of its essential security interests. This was reflected in the text of GATT 1994 Article XXI,[2] as well as in the GATS and the TRIPS Agreement. It was a key component of the agreement of Members to enter into the WTO. Therefore, if Japan formally invoked an essential security exception in defence of the challenged measures, only Japan, and not the WTO, could judge for the Japanese people what was necessary to protect Japan's national security interests. Accordingly, a WTO panel would lack the authority to review that invocation and to make findings on the claims raised in the dispute. The United States observed that since the erroneous panel findings in "Russia – Measures Concerning Traffic in Transit" (DS512), several WTO Members had rushed to challenge national security measures. This surge in litigation posed serious risks to the WTO and threatened to enmesh this Organization in national security matters it had wisely avoided for over 70 years.

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

6.6. The representatives of Brazil, Canada, China, the European Union, India, Norway, Russia, Singapore, Chinese Taipei, Turkey, Ukraine, the United Kingdom and the United States reserved their third-party rights to participate in the Panel's proceedings.

7 EUROPEAN UNION – CERTAIN MEASURES CONCERNING PALM OIL AND OIL PALM CROP-BASED BIOFUELS

A. Request for the establishment of a panel by Indonesia (WT/DS593/9)

7.1. The Chairman recalled that the DSB had considered this matter at the 29 June 2020 DSB meeting and had agreed to revert to it, should a requesting Member wish to do so. He then drew attention to the communication from Indonesia contained in document WT/DS593/9 and invited the representative of Indonesia to speak.

7.2. The representative of Indonesia said that at the 29 June 2020 DSB meeting, his country had requested, for the first time, that the DSB establish a panel regarding certain measures of the European Union and its member States affecting trade in palm oil and oil palm crop-based biofuels. At that meeting, the DSB had deferred the establishment of a panel pursuant to the position taken by the European Union. The European Union had stated that it was not ready to accept Indonesia's

[2] Article XXI(b) of the GATT 1994: "[n]othing in this Agreement shall be construed … (b) to prevent any contracting party from taking any action *which it considers necessary* for the protection of *its essential security interests* …" (emphasis added).

panel request, and that it was certain that its measures were fully justified under WTO law. At the present meeting, Indonesia wished to reiterate its clear position that not only did the measures at issue discriminate against palm oil but also, more importantly, that they were inconsistent with the European Union's obligations under the GATT 1994, the TBT Agreement and the SCM Agreement. Therefore, Indonesia requested, for the second time, that pursuant to Article 6 of the DSU the DSB establish a panel with standard terms of reference as set out in Article 7.1 of the DSU to examine this matter.

7.3. The representative of European Union said that his delegation regretted that Indonesia had decided to request the establishment of a panel on certain measures imposed by the European Union and its member States concerning palm oil and oil palm crop-based biofuels from Indonesia. The EU respected the right of Indonesia to bring this matter to WTO dispute settlement but firmly believed that its measures were fully justified. For these reasons, the European Union was confident that it would prevail in this dispute, and that its actions would be declared in line with WTO law. The EU also stood ready to discuss with Indonesia reciprocal interim arrangements that would preserve the availability of appeal review in this and other disputes on the basis of Article 25 of the DSU, either through an arbitration agreement as set forth in Annex 1 of the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) or through such an agreement concluded on an *ad hoc* basis.

7.4. The representative of Malaysia said that his country strongly believed that the EU's Delegated Regulation 2019/807 supplementing EU Directive 2018/2001 constituted a prohibition on imports of biofuels and bioliquids produced from palm oil. Malaysia firmly believed that this EU measure was an arbitrary prohibition on the international trading of palm oil and its products. Malaysia took into consideration the fact that the EU Delegated Regulation created unnecessary obstacles which were more trade restrictive than necessary and more burdensome for producers of palm oil-based biofuels and bioliquids. Malaysia wished to reiterate its statement made at the 29 June 2020 DSB meeting. Malaysia expressed hope that a favourable solution would be found before the EU's Renewable Energy measures left an indelible mark on the global trade of palm oil. Malaysia firmly supported Indonesia in this dispute, as well as its panel request. Malaysia looked forward to participating as a third party in this dispute.

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

7.6. The representatives of Argentina, Brazil, Canada, China, Colombia, Costa Rica, Guatemala, Honduras, India, Japan, Korea, Malaysia, Norway, Russia, Singapore, Thailand, Turkey and the United States reserved their third-party rights to participate in the Panel's proceedings.

8 EUROPEAN UNION – SAFEGUARD MEASURES ON CERTAIN STEEL PRODUCTS

A. Request for the establishment of a panel by Turkey (WT/DS595/3)

8.1. The Chairman drew attention to the communication from Turkey contained in document WT/DS595/3 and invited the representative of Turkey to speak.

8.2. The representative of Turkey said that on 26 March 2018, the European Commission had initiated *ex officio* an investigation with a view to imposing safeguard measures on imports of certain steel products. The European Commission had initially included 26 categories of products in its investigation. On 28 June 2018, the investigation had been expanded to include two additional product categories. The European Union had imposed provisional safeguard measures on 17 July 2018 and definitive safeguard measures on 31 January 2019. The definitive safeguard measures had been imposed on 26 out of the 28 product categories. Those measures had since been reviewed several times, including recently through a Regulation published on 30 June 2020. As a result of these reviews, the safeguard measures had been made even more trade restrictive. His country wished to express deep concern over the safeguard measures imposed by the European Union on imports of certain steel products, as well as over the underlying investigations that had led to the imposition of those measures. According to Article 11.1(a) of the Agreement on Safeguards, a Member could not take or seek a safeguard action unless such action conformed with the provisions of Article XIX of the GATT 1994 applied in accordance with the Agreement on Safeguards. The EU's actions had failed to uphold its obligations in this regard. Specifically, the EU had not made reasoned and adequate determinations regarding the products under investigation,

which it had failed to define in a consistent manner throughout the investigation. The EU had also failed to make reasoned and adequate determinations regarding *inter alia*: (i) the existence of unforeseen developments and how they had resulted in increased imports of the products concerned; (ii) the existence of an alleged threat of serious injury to the domestic industry; (iii) the causal relationship between the increased imports and the alleged threat of serious injury to the domestic industry; (iv) the exclusion from the scope of the measures of certain countries with whom the EU had concluded Free Trade Agreements; and (v) the EU's reduction of the pace of liberalization of the definitive safeguard measures which had made the safeguard measures *more* trade restrictive over time. The EU measures at issue were clearly inconsistent with several provisions of the GATT 1994 and the Agreement on Safeguards. Therefore, Turkey had initiated these dispute settlement proceedings. On 13 March 2020, Turkey had requested consultations with the EU. These consultations had been held on 29 April 2020, but unfortunately had failed to resolve the dispute. For these reasons, Turkey requested, pursuant to Article 6 of the DSU, that a panel be established with standard of terms of reference in accordance with Article 7.1 of the DSU to examine the matter as set out in its panel request.

8.3. The representative of European Union said that his delegation regretted that the consultations held with Turkey in April 2020 had not led to the settlement of this dispute. The EU believed that its safeguard measures on steel complied with WTO law. For this reason, the European Union did not agree to the establishment of a panel in this dispute.

8.4. The DSB took note of the statements and agreed to revert to this matter, should a requesting Member wish to do so.

9 STATEMENT BY QATAR REGARDING THE PANEL REPORT IN "SAUDI ARABIA – MEASURES CONCERNING THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS"

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

9.2. The representative of Qatar said that in its Report in the "Saudi Arabia – Protection of IPRs" dispute (DS567), the Panel had found that Saudi Arabia had breached its obligations under the TRIPS Agreement by failing to take action against, and instead actively promoting, Saudi-based broadcast pirate "beoutQ". Therefore, the Panel had called on Saudi Arabia to remedy the serious matters addressed in its Report. Saudi Arabia had indicated that it had appealed the Panel Report. However, as all Members knew, the Appellate Body currently could not hear any appeals. Qatar recalled that the aim of the WTO dispute settlement system was the prompt and positive settlement of disputes. While Qatar recognized the right to appeal a panel report, an appeal "into the void" would in no way facilitate the prompt settlement of this dispute. If Saudi Arabia genuinely sought appellate review, it should, in good faith, explore alternative ways to submit its appeal to a mutually agreed adjudicator that was able to make binding decisions. Doing so would demonstrate that Saudi Arabia genuinely sought appellate review and was not, in reality, simply trying to delay the resolution of this dispute. Qatar was confident that any appellate review of the Panel Report would result only in further confirmation of the following: that Saudi Arabia had breached multiple obligations under the TRIPS Agreement; that such violations were not shielded by the security exception; and that settlement of this dispute would require significant improvements to Saudi Arabia's protection of intellectual property rights. Qatar recalled that in this dispute, Qatar had raised serious matters of concern to the WTO Membership broadly. The dispute had arisen against the backdrop of the worst case of broadcast piracy that the world had ever seen. The cynically named "beoutQ" had, for several years, stolen and rebroadcast copyrighted material owned by or licensed to Qatari-headquartered media company beIN Media Group, as well as content from other international right holders, including the world's most famous sports leagues and organizations. Qatar wished to take this opportunity to briefly recall some of the Panel's key factual findings. The Panel had found, at paragraph 7.155 of its Report, that: "beoutQ is operated by individuals or entities subject to the criminal jurisdiction of Saudi Arabia". The Panel had also found, at paragraph 7.219 of its Report, that: "while taking no action to apply criminal procedures and penalties to beoutQ, Saudi authorities engaged in the promotion of public gatherings with screenings of beoutQ's unauthorized broadcasts of 2018 World Cup matches" (emphasis added). In addition, the Panel had concluded, at paragraph 7.199 of its Report, that Saudi Arabia had taken measures that "have had the result of preventing beIN from obtaining Saudi legal counsel to enforce its IP rights through civil enforcement procedures before Saudi courts and tribunals".

9.3. Qatar said that these factual findings could not properly be appealed because appeals were limited to issues of law and legal interpretation. These findings had led the Panel to conclude – correctly – that Saudi Arabia had violated Article 61 of the TRIPS Agreement. The Panel had also found – again, correctly – that Saudi Arabia's violation of Article 61 could not be excused by its invocation of certain security interests under Article 73(b) of the TRIPS Agreement. The Panel's interpretation of Article 61 was of particular importance to any WTO Member with nationals that suffered from commercial scale copyright piracy or trademark counterfeiting while government authorities of other WTO Members failed to initiate any criminal action against those in their jurisdictions who were responsible. The Panel's findings under Articles 41.1 and 42 of the TRIPS Agreement were likewise important for WTO Members with nationals facing obstacles to pursuing civil infringement actions in other WTO Members with respect to any type of intellectual property right covered by the TRIPS Agreement. Those findings evidenced that right holders had been denied access to Saudi courts or tribunals, solely on the ground that they were Qataris or associated with Qataris. Qatar considered, like most other Members, that the right to access independent and impartial judicial bodies, and equality before law, was important not just as a tool to protect intellectual property rights, but as a fundamental human right. As Qatar had noted in its statement made at the 29 June 2020 DSB meeting following the circulation of the Panel Report, Saudi Arabia, and individuals that spoke on its behalf, had made public statements that falsely asserted that Saudi Arabia's position had been "fully vindicated" by the Panel. The truth was that Saudi Arabia's measures had been found to violate the TRIPS Agreement, and that Saudi Arabia sought to escape the consequences of that finding. That fact became even more plainly visible following Saudi Arabia's appeal of the Panel Report "into the void", despite its claim that the Panel Report had "vindicated" its position. Saudi Arabia had lost this case not because of some legal error on the part of the Panel but because of its WTO-inconsistent conduct. Saudi Arabia should now take the responsibility for its mistakes and heed the Panel's call to bring its measures into conformity with its obligations under the TRIPS Agreement.

9.4. The representative of the Kingdom of Saudi Arabia said that for several years, a sensitive national security situation had existed between several WTO Members, including Saudi Arabia, and Qatar due to that country's support for terrorism and extremism. Since June 2017, Saudi Arabia and other Members had severed all diplomatic and consular relations with Qatar in response to the Qatar's continuing support for terrorism and extremism. In the "Saudi Arabia – Protection of IPRs" dispute (DS567), the Panel had explicitly agreed with Saudi Arabia that a Member's severance of all relations with another Member was "the ultimate State expression of the existence of an emergency in international relations". Consistent with its approach throughout the proceedings in this dispute, Saudi Arabia would not engage with Qatar or respond to its provocations at the present meeting or in any setting. For Saudi Arabia, protecting the security of its country and its citizens had been the main goal in this dispute. His country wished to recall that in its Report, the Panel had ruled that Saudi Arabia's severance of all diplomatic, consular and economic ties with Qatar, viewed in the context of similar actions taken by several other nations and the relevant history recounted in this Report, fell into the category of cases in which such action could be characterized in terms of an exceptional and serious crisis in the relations between two or more States. The Panel had rejected Qatar's attempts to down-play the seriousness of the situation and had ruled that: "in the light of the reasons advanced by Saudi Arabia for its actions, the Panel does not accept Qatar's view that the events culminating in the severance of relations can be characterized as a 'mere political or economic' dispute". Based on the prevailing emergency in international relations, the Panel had found that Saudi Arabia's invocation of the security exception under Article 73 of the TRIPS Agreement in this dispute had been justified where it was invoked by Saudi Arabia. The Panel had clearly acknowledged Saudi Arabia's confirmation that it had *not* invoked the security exception with respect to its protection of intellectual property rights. To be clear, Saudi Arabia had not argued that violations of intellectual property rights should be justified under the security exception. Therefore, the Panel should not have ruled on whether the non-application of criminal procedures and penalties by Saudi Arabia satisfied the requirements for justification under the security exception. This issue was currently under appeal, therefore, Saudi Arabia wished to limit itself, as noted in its Notice of Appeal, to stating that Saudi Arabia considered that the appeal of this issue relating to the invocation of security exceptions under the WTO Agreements was of particular systemic importance in the context of this and other pending disputes. In particular, WTO panels had no basis to ignore Members' explicit definition of their scope of invocation of WTO security exceptions. Saudi Arabia wished to note, once again, that the full background to the real dispute could be found in the Executive Summary of its submissions, which was attached to the Panel Report and was entirely dedicated to the defence of its national security interests. Paragraphs 1 through 48 of the Executive Summary provided details of the national security situation that Saudi Arabia had summarized at

the present meeting, including details on Qatar's support for terrorism and extremism. Paragraphs 49 through 93 of the Executive Summary provided information in response to questions from the Panel on Saudi Arabia's good faith invocation of the security exception – but not to justify alleged violations of the TRIPS Agreement. Saudi Arabia wished to assure all Members that it remained committed to full compliance with WTO rules, and had held many bilateral discussions with friendly WTO Members to discuss its WTO-consistent regime for protecting intellectual property. Although the restrictions on interactions with Qatar obviously limited its ability to respond and provide full information in this context, Saudi Arabia welcomed all opportunities for further bilateral discussion with friendly trading partners regarding the facts of this dispute and the protection of intellectual property rights in Saudi Arabia.

9.5. The representative of the United States said that as the United States had stated at previous DSB meetings, issues of national security were political in nature and were not matters appropriate for adjudication in the WTO dispute settlement system. Every Member of the WTO retained the authority to determine for itself those matters that it considered necessary for the protection of its essential security interests, as was reflected in the text of GATT 1994 Article XXI, for example, and in TRIPS Article 73. The Panel in "Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights" had erred in assessing Saudi Arabia's invocation of its essential security interests. Saudi Arabia had invoked the essential security exception under TRIPS Article 73 in response to the claims raised by Qatar in this dispute, and as the terms of Article 73 made clear, only Saudi Arabia could judge for itself what action was necessary for the protection of its essential security interests. The United States observed that, in assessing Saudi Arabia's invocation of its essential security interests in this dispute, the Panel had simply "transposed" the approach of the "Russia – Traffic in Transit" panel based on agreement of the parties (para. 7.243). Simply transposing the approach of a prior panel – even if based on the agreement of the parties – was not consistent with the function of panels as set out in the DSU and made the approach of the Panel advisory. Furthermore, the analysis of the essential security exception in the "Russia – Traffic in Transit" panel's report was seriously flawed. As the United States had explained previously,[3] that panel's interpretation of the essential security exception at Article XXI of the GATT 1994 was not consistent with the customary rules of interpretation set forth in the Vienna Convention. In addition to being inconsistent with the ordinary meaning of the terms of Article XXI, the panel had failed to interpret that provision as a whole. Furthermore, in its examination of the negotiating history of the treaty, the "Russia – Traffic in Transit" panel had misconstrued certain statements by negotiating parties and had relied on materials not properly considered to be part of the negotiating history. WTO Members had understood, from the very beginning of the international trading system, that each Member could judge for itself what actions it considered necessary to protect its essential security interests. This had been the position of the United States for over 70 years, since the negotiation of the GATT. That position had been shared by every WTO Member whose national security action had previously been the subject of complaint, including the European Union, Australia, Canada, Russia, and others. And this was the position reflected in the text of Article XXI of the GATT 1994 and Article 73 of the TRIPS Agreement. Consistent with a proper interpretation of these articles, therefore, any findings in the Panel's report should have been limited to a recognition that Article 73 had been invoked, as there were no other findings that could assist the DSB in making the recommendations provided for in DSU Article 19.1.[4]

9.6. The representative of the United Arab Emirates said that the United Arab Emirates (UAE) wished to comment briefly on the findings of the Panel in the "Saudi Arabia – Protection of IPRs" dispute (DS567) regarding the security exception. First, his delegation wished to note that, in its analysis of the security exceptions in Article 73 of the TRIPS Agreement, the Panel had adopted the legal framework that was developed by the Panel in the "Russia – Traffic in Transit" dispute (DS512). The UAE agreed with this approach. The interpretation of the security exceptions that the UAE had put forward in the "UAE – Goods, Services and IP rights" dispute (DS526) closely mirrored the legal framework developed by the Panel in the "Russia – Traffic in Transit" dispute (DS512). Second, the UAE welcomed the Panel's finding that an "emergency in international relations" existed in the Gulf region and that it had persisted since at least 5 June 2017.[5] As the Panel had found, the situation

[3] See Statements by the United States at the Meeting of the WTO Dispute Settlement Body, Geneva, April 26, 2019, available at https://geneva.usmission.gov/wp-content/uploads/sites/290/Apr26.DSB_.Stmt_.as-deliv.fin_.public.pdf.

[4] Article 19.1 of the DSU: "[w]here a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned bring the measure into conformity with that agreement".

[5] Panel Report, para. 7.257.

was one "of heightened tension or crisis" and it was related to "'defence or military interests, or maintenance of law and public order interests' (i.e. essential security interests)".[6] The existence of an "emergency in international relations" was well documented and was confirmed by the fact that Saudi Arabia, the UAE, and several other countries had severed diplomatic relations with Qatar on 5 June 2017, and had imposed comprehensive measures putting an end to all economic and trade relations between themselves and Qatar.[7] The Panel had correctly considered that "Saudi Arabia's severance of all diplomatic, consular and economic ties with Qatar, viewed in the context of similar actions taken by several other nations and the relevant history … falls into the category of cases in which such action can be characterized in terms of an exceptional and serious crisis in the relations between two or more States".[8] The Panel had also correctly identified the context in which the severance of relations with Qatar had occurred. As the Panel had observed, Saudi Arabia had alleged that Qatar had, *inter alia*, repudiated the Riyadh Agreements designed to address regional concerns of security and stability, supported terrorism and extremism, and interfered in the internal affairs of other countries.[9] The UAE had the same concerns as Saudi Arabia about Qatar's conduct, and it was those concerns that had compelled the UAE to sever diplomatic and economic relations with Qatar. The Panel had correctly found that the nature of the allegations against Qatar was evidence of "the grave and serious nature of the deterioration and rupture in relations between these Members", and that it was also explicitly related to security interests. Moreover, the UAE shared the Panel's view that: "when a group of States repeatedly accuses another of supporting terrorism and extremism … that in and of itself reflects and contributes to a 'situation … of heightened tension or crisis' between them that relates to their security interests".[10] The Panel had thus correctly rejected "Qatar's view that the events culminating in the severance of relations can be characterized as a 'mere political or economic' dispute".[11] Finally, the Panel had correctly found that the so-called cooperation in international fora highlighted by Qatar had not called into question the fact that the "emergency in international relations" persisted.[12] For all of these reasons, the UAE agreed with the Panel's analysis and its conclusion that an emergency in international relations existed in the Gulf region.

9.7. The DSB took note of the statements.

10 THAILAND – CUSTOMS AND FISCAL MEASURES ON CIGARETTES FROM THE PHILIPPINES

A. Statement by the Chairman on consultations with Thailand and the Philippines with regard to the Recourse to Article 22.2 of the DSU (WT/DS371/32)

B. Statement by the Philippines

C. Statement by Thailand

10.1. The Chairman said that under the first sub-item, he wished to make a statement under his own responsibility in order to report to delegations on his consultations with Thailand and the Philippines in the "Thailand – Cigarettes (Philippines)" dispute (DS371) following the 29 June 2020 DSB meeting. His statement was without prejudice to the rights and obligations of the parties to this dispute or of any other Member. He recalled that these consultations had first been conducted by the previous DSB Chair, Amb. Walker, prior to the 5 March 2020 DSB meeting. At that meeting, the matter had been suspended in order to allow more time for consultations. Following his appointment as DSB Chair on 20 May 2020, the Chairman had been consulting with Thailand and the Philippines on this matter. He had held virtual intensive consultations with the parties in preparation for the 29 June 2020 DSB meeting. Following the 29 June 2020 DSB meeting, he had continued his intensive consultations with the parties to this dispute and had held three meetings in the interim to

[6] Ibid.
[7] Panel Report, para. 7.258.
[8] Panel Report, para. 7.262.
[9] Panel Report, para. 7.264.
[10] Panel Report, para. 7.263.
[11] Ibid.
[12] Panel Report, para. 7.266.

discuss this matter. Since his consultations were ongoing, it was not his intention to have a discussion on this matter at the present meeting. He hoped that this was agreeable to all Members.

10.2. The DSB took note of the statement.

10.3. The Chairman invited the representative of the Philippines to speak.

10.4. The representative of the Philippines said that at the outset, his country wished to thank the Chairman for his time and effort in holding, since the 29 June 2020 DSB meeting, three virtual meetings as part of Chair-led efforts to assist the Philippines and Thailand resolve these important and urgent concerns that had systemic implications for the rights of Members under the DSU. At the third such meeting which had been held on 24 July 2020, and further to the Philippines' 9 March 2020 letter, the Philippines had presented legal examples and a range of constructive options that could fill the void that had resulted from the Appellate Body's formal letter advice of 10 December 2019 on its cessation of operations. A copy of this letter was annexed for reference to the Philippines' statement, along with a non-exhaustive list of various alternative arrangements that WTO Members had used in the past, both very recent and not so recent. Thailand had not yet responded to the ideas contained in the Philippines' 9 March 2020 letter. The Philippines understood from the 24 July 2020 meeting that Thailand was still reviewing the ideas contained in its 24 July and 9 March 2020 letters on potential ways forward. While the Philippines had always been open to a constructive solution to the issue at hand, the Philippines had been consistent in asserting that it was fully within its rights to seek recourse under Article 22.2 of the DSU. Article 22.6 of the DSU was clear: "[t]he DSB, upon request, *shall* grant authorization to suspend concessions or other obligations … unless the DSB decides by consensus to reject the request"; and "[i]f the Member concerned objects to the level of suspension proposed … the matter *shall* be referred to arbitration" (emphasis added). Therefore, there were only two options under the reverse-consensus rule of Article 22.6 of the DSU: (i) the DSB granting authorization to suspend concessions; or (ii) the DSB referring the matter to arbitration. At the present meeting, the Philippines asked once again that the DSB grant the Philippines the authority it sought.

10.5. The DSB took note of the statement made by the Philippines.

10.6. The Chairman invited the representative of Thailand to speak.

10.7. The representative of Thailand said that her country wished to refer to its statements made at the 5 March 2020 and 29 June 2020 DSB meetings. The circumstances of this dispute had not changed since the 29 June 2020 DSB meeting. As previously explained by Thailand, the appeals filed by Thailand in the two compliance proceedings under Article 21.5 of the DSU had not been completed due to the Appellate Body impasse. Consequently, Thailand's position also remained the same as that expressed at previous DSB meetings, which was that any request for suspension of concessions under Article 22.2 of the DSU in this dispute would be improper as the two compliance proceedings under Article 21.5 of the DSU had not concluded. As these appeals were ongoing, the DSB had not adopted any panel or Appellate Body report that could serve as the basis for the Philippines' request for suspension of concessions. The Philippines' request for suspension of concessions was also contrary to the sequencing agreement signed by the parties in this dispute. The sequencing agreement stated that the Philippines could request retaliation *only after* the completion of proceedings under Article 21.5 of the DSU, which included proceedings before the Appellate Body in the event of an appeal. Given that Thailand's appeals had not been completed, the Philippines could not, at this stage, request the suspension of concessions or other obligations under Article 22.2 of the DSU. Furthermore, should the Philippines, for whatever reason, take the position that the rules contained in the sequencing agreement were no longer applicable, this would release Thailand from its commitment to not object to the Philippines' request as being outside the 30-day deadline under Article 22.6 of the DSU. As acknowledged by the Philippines in its intervention at the 29 June 2020 DSB meeting, it was clear from Article 22.6 of the DSU that any request for suspension of concessions had to be authorized by the DSB "within 30 days of the expiry of the reasonable period of time".[13] As the reasonable period of time in this dispute had expired on 15 May 2012, the deadline under Article 22.6 for authorizing the suspension of concessions had expired on 15 June 2012.

[13] Communication from the Philippines, WT/DS371/38, dated 2 July 2020, paragraph 5.

10.8. As Thailand had also previously indicated, Thailand disagreed with the Philippines' opinion that the current Appellate Body crisis constituted a "procedural aspect" related to the procedures established in the sequencing agreement. As the Philippines itself had recognized, *inter alia* in its communication contained in document WT/DS371/32, dated 12 February 2020, the Appellate Body had suspended its work due to "institutional constraints" as a result of an insufficient number of Appellate Body members. Without prejudice to Thailand's position, however, her delegation had entered into discussions in a constructive spirit as requested by the Philippines in its letter dated 9 March 2020. Thailand stood ready to continue these discussions with the Chairman and the Philippines with the aim of finding a means of resolving these institutional constraints, including how to move forward with the AB selection processes. Thailand took this opportunity to remind WTO Members of the urgency of resolving the problems affecting the Appellate Body. The Appellate Body crisis had imposed significant challenges on the rules-based system, including with respect to all pending appeals. Resolving the Appellate Body crisis was a matter of priority so as to avoid unilateral actions that were contrary to Article 23 of the DSU. Finally, as indicated during previous meetings with the Philippines, Thailand remained open to a bilateral dialogue with the aim of identifying a possible solution to the substantive issues in this dispute that was acceptable to both parties.

10.9. The DSB took note of the statement made by Thailand.

10.10. The representative of the European Union said that this dispute illustrated the disruptive effects of the paralysis of the Appellate Body on the functioning of the WTO dispute settlement system and on the rights of disputing parties. On the one hand, the Philippines was entitled, under the DSU, to a binding resolution of this dispute and it was also entitled to ultimately suspend concessions or other obligations if the inconsistency persisted. On the other hand, Thailand was entitled, under the DSU, to an appellate review of compliance panel reports. In these extraordinary circumstances, his delegation called on the parties concerned to seek an agreed solution that would preserve the above rights for both parties in a balanced manner. The EU wished to point out that the parties could decide to submit the suspended appeal for completion under an appeal arbitration procedure pursuant to Article 25 of the DSU. Such an appeal arbitration procedure could, for all practical purposes, replicate all substantive and procedural aspects of appellate review. The EU trusted that the Chairman could assist the parties in reaching such a solution.

10.11. The representative of Japan said that his country wished to make the following observations regarding the sequencing issue. First, a so-called "sequencing agreement" was not a covered agreement, and as such could not (and was not intended to) modify the provisions of the DSU. It was an expression of disputing Members' joint commitment to cooperate for the exclusive purpose of a particular dispute between them and with a view to facilitating the resolution of that dispute and reducing the scope of procedural disputes. As such, it was not the DSB's role to decide what the provisions of the sequencing agreement meant and whether the request for authorization was made properly under the agreement. To Japan's knowledge, disputing Members had always respected and abided by the terms of the agreements they had concluded. Second, regarding the referral to arbitration under Article 22.6 of the DSU, the text was crystal clear. If certain conditions were met, i.e., if the Member concerned objected to the proposed level of suspension, "the matter shall be referred to arbitration". In other words, if an objection to the level of suspension was made, the matter shall be automatically referred to arbitration. This was not subject to any action by the DSB. Third, with respect to the 30-day time period and its relationship with the DSB's decision taking rules, Article 22.6 of the DSU could be read to mean that the negative consensus rule applied only to authorization requests made within 30 days of the expiry of the reasonable period of time. WTO Members could dispute this reading. However, the uncertainty regarding the applicable decision taking rules existed and this uncertainty was exactly the reason why Members had more than 20 years of experience and practice concluding sequencing arrangements. Indeed, the language of previous sequencing agreements reflected Members' common understanding of this uncertainty. In other words, sequencing agreements were meant to avoid the situation that currently existed. Under these circumstances, Japan strongly urged the parties to cooperate and find a pragmatic way forward to resolve their procedural difference.

10.12. The DSB took note of the statements.

10.13. The Chairman said that in light of the importance and the sensitivity of this matter, he would be calling for a meeting with the parties to this dispute as soon as possible after the present meeting.

10.14. The DSB took note of the statement.

11 PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/665)

11.1. The Chairman drew attention to document WT/DSB/W/665 which contained an additional name proposed by Japan for inclusion on the Indicative List of Governmental and Non-Governmental Panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the name contained in document WT/DSB/W/665.

11.2. The DSB so agreed.

12 APPELLATE BODY APPOINTMENTS: PROPOSAL BY AFGHANISTAN; ANGOLA; ARGENTINA; AUSTRALIA; BANGLADESH; 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; REPUBLIC OF MOLDOVA; MOROCCO; MOZAMBIQUE; NAMIBIA; NEPAL; 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; UNITED KINGDOM; URUGUAY; THE BOLIVARIAN REPUBLIC OF VENEZUELA; VIET NAM; ZAMBIA AND ZIMBABWE (WT/DSB/W/609/REV.18)

12.1. 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 then drew attention to the proposal contained in document WT/DSB/W/609/Rev.18 and invited the representative of Mexico to speak.

12.2. The representative of Mexico, speaking on behalf of the co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.18, said that the delegations in question had agreed to submit the joint proposal dated 18 June 2020 to launch the AB selection processes. Her delegation, on behalf of these 121 Members, wished to make the following statement. The extensive number of Members submitting this joint proposal reflected a common concern with the current situation of the Appellate Body that was seriously affecting its workings and the overall dispute settlement system against the best interest of WTO Members. 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 without further delay as set out in the joint proposal, which 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 that had occurred following 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. They continued to urge all Members to support this proposal in the interest of the multilateral trading system and the dispute settlement system.

12.3. The representative of the United States said that 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. Instead, what Members should be considering was how to achieve a meaningful reform of the dispute settlement system. The US view across multiple US Administrations had been clear and consistent: When the Appellate Body overreached and itself broke WTO rules, it undermined the rules-based trading system. The

Appellate Body's abuse of the limited authority that Members had given it damaged the interests of all WTO Members who cared about a WTO in which the agreements were respected as they had been negotiated and agreed. Earlier in 2020, the Office of the US Trade Representative had published a Report on the Appellate Body of the World Trade Organization, detailing how the Appellate Body had failed to apply WTO rules as agreed by WTO Members, imposing new obligations and violating Members' rights.[14] The United States encouraged Members to review the Report. As the United States had explained repeatedly, the fundamental problem was that the Appellate Body had not respected 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. The United States had actively sought engagement from Members on these issues. Yet, some Members had remained unwilling to admit that there was even a problem, much less engage in a deeper discussion of the Appellate Body's failures. And rather than seeking to understand why the Appellate Body had departed from what Members had agreed, these Members and others had redirected the focus and energies of the Membership to pursue an arrangement that would, at best, perpetuate the failings of the Appellate Body.[15]

12.4. Nevertheless, the United States was determined to bring about real WTO reform. The representative of the United States said that Members must 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 to find a solution to their dispute. As before, Members had many methods to resolve a dispute, including through bilateral engagement, alternative dispute procedures, and third-party adjudication. Members were experimenting and deciding what made the most sense for their own disputes. For instance, in "Indonesia – Safeguard on Certain Iron or Steel Products" (DS490, DS496), Chinese Taipei, Indonesia and Vietnam had reached a procedural understanding that included an agreement not to appeal any compliance panel report.[16] Similarly, in the dispute "United States – Anti-Dumping Measures on Certain Oil Country Tubular Goods from Korea" (DS488), Korea and the United States had agreed not to appeal the report of any compliance panel.[17] Australia and Indonesia had informed the DSB that they had agreed not to appeal the panel report in the dispute "Australia – Anti-Dumping Measures on A4 Copy Paper" (DS529).[18] And parties should make efforts to find a positive solution to their dispute, consistent with the aim of the WTO dispute settlement system. In this regard, the United States noted recent announcements that Canada and Australia would notify a solution in the dispute "Canada – Measures Governing the Sale of Wine" (DS537), without circulation of a panel report.[19] This example illustrated that Members could and should continue to seek positive solutions to their disputes, and WTO dispute settlement

[14] US Trade Representative, Report on the Appellate Body of the World Trade Organization (February 2020), available at https://geneva.usmission.gov/wp-content/uploads/sites/290/AB-Report_02.11.20.pdf.

[15] See US Statement at the 29 June 2020 DSB meeting, available at: https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun29.DSB_.Stmt_.as-deliv.fin_.public13218.pdf.

[16] "Understanding between Indonesia and Chinese Taipei regarding Procedures under Articles 21 and 22 of the DSU", (WT/DS490/3) (11 April 2019), para. 7 ("[t]he parties agree that if, on the date of the circulation of the panel report under Article 21.5 of the DSU, the Appellate Body is composed of fewer than three Members available to serve on a division in an appeal in these proceedings, they will not appeal that report under Articles 16.4 and 17 of the DSU") and "Understanding between Indonesia and Viet Nam regarding Procedures under Articles 21 and 22 of the DSU", WT/DS496/14 (March 22, 2019), para. 7 ("[t]he parties agree that if, on the date of the circulation of the panel report under Article 21.5 of the DSU, the Appellate Body is composed of fewer than three Members available to serve on a division in an appeal in these proceedings, they will not appeal that report under Articles 16.4 and 17 of the DSU").

[17] "Understanding between the Republic of Korea and the United States regarding Procedures under Articles 21 and 22 of the DSU", (WT/DS488/16) (6 February 2020), para. 4 ("[f]ollowing circulation of the report of the Article 21.5 panel, either party may request adoption of the Article 21.5 panel report at a meeting of the DSB within 60 days of circulation of the report. Each party to the dispute agrees not to appeal the report of the Article 21.5 panel pursuant to Article 16.4 of the DSU").

[18] Minutes of the 27 January 2020 DSB meeting (WT/DSB/M/440), paras. 4.2 ("Indonesia also wished to thank Australia for working together with Indonesia in a spirit of cooperation in order to reach an agreement not to appeal the Panel Report" and 4.3 ("Australia and Indonesia had agreed not to appeal the Panel Report and to engage in good faith negotiations of a reasonable period of time for Australia to bring its measures into conformity with the DSB's recommendations and rulings, in accordance with Article 21.3(b) of the DSU").

[19] See, e.g., Summary of understanding between Australia and Canada regarding certain measures related to the sale of wine maintained by the Government of Canada, available at https://www.canada.ca/en/global-affairs/news/2020/07/summary-of-understanding-between-australia-and-canada-regarding-certain-measures-related-to-the-sale-of-wine-maintained-by-the-government-of-canada.html.

continued to function while discussions about WTO reform were ongoing. 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 and with the Chairman to seek a solution on these important issues.

12.5. The representative of the European Union said that his delegation wished to refer to the EU statements made on this issue made at previous DSB meetings, starting in February 2017, as well as to its statements made at General Council meetings, including at the 9 December 2019 GC meeting. Since 11 December 2019, 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 repeatedly, 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 thanked all Members that had co-sponsored the proposal to launch the AB selection processes. The EU invited all other Members to endorse this proposal. The EU noted that the United States had referred to the Appellate Body breaking the rules. The EU wished to reiterate that Members should be having a forward-looking discussion and not continuously re-litigate their differences as to the reading of the current rules. The draft GC decision presented by Amb. Walker could have been the right basis for unblocking the appointments. However, it had not been accepted by the United States who had not made any proposal or counterproposals The EU stood ready to continue a forward-looking discussion. On substance, the EU wished to refer to its previous statements on the respective issues. The EU's views were well known, but the EU would happy to explain its position again as appropriate. Finally, the EU noted that the United States had referred to the MPIA. It was not clear on what basis the United States asserted that the MPIA at best perpetuated the worst aspects of the Appellate Body's practices, in particular at a time when not a single arbitration award had yet been issued under the MPIA. The EU wished to make clear that that the MPIA was a stopgap interim arrangement and not a means to reform the dispute settlement process, something which the EU had consistently tried to do over the past few years. Pending a multilaterally agreed reform of the dispute settlement system, the participants in the MPIA had devised this interim, stopgap arrangement based on the core features of appellate review pursuant to Article 17 of the DSU. These features had been agreed multilaterally by all WTO Members. In addition, the MPIA also contained a number of elements designed to enhance the procedural efficiency of appellate proceedings in the specific context of appeal arbitration under Article 25 of the DSU.

12.6. The representative of the United Kingdom said that his country continued to support the proposal for the launch of the AB selection processes. The United Kingdom wished to refer to its statements made at previous DSB meetings under this Agenda item. The United Kingdom also supported the statement made by Mexico on behalf of all co-sponsors. The United Kingdom was a strong supporter of the WTO dispute settlement system as a central pillar of the rules-based multilateral trading system. An effective and binding dispute settlement mechanism ensured that Members could enforce the rules that they had negotiated, preserving the rights and obligations of all Members. The United Kingdom continued to be concerned that the WTO Membership had not been able to launch the AB selection processes, with the result that the Appellate Body was unable to hear new appeals. At a time when the broader multilateral trading system was under stain, Members were starting to see the concrete impairments of rights arising from this situation. The United Kingdom remained committed to finding a permanent resolution to the impasse with the Appellate Body which carried the support of all WTO Members. A fully functioning, two-stage dispute settlement system was key to providing the predictability and stability that businesses needed to trade internationally. The United Kingdom understood the long-standing concerns that had been raised, and recognized that in a consensus-based organization, any dispute resolution mechanism had to carry the trust of all Members. The United Kingdom stood ready to play a full role in future discussions on dispute settlement reform. However, finding a solution should not stand in the way of Members accessing their rights to two-stage dispute settlement under the Agreements and the launch of the AB selection processes. Therefore, the United Kingdom called on all Members to act urgently to restore the system to full functioning, while Members prioritized discussions on a permanent solution.

12.7. The representative of Korea said that his country supported the statement made by Mexico regarding the joint proposal contained in document WT/DSB/W/609/Rev.18. Korea urged all Members to engage constructively in the relevant discussions to resolve this important issue as soon as possible.

12.8. The representative of Japan said that his country wished to refer to its statements made at previous DSB meetings under this Agenda item. Japan supported the proposal contained in document WT/DSB/W/609/Rev.18. Japan fully shared the sense of urgency of other WTO Members regarding the need for expeditious WTO reform. However, beyond the current impasse, Japan's priority remained to reform the WTO dispute settlement system in a manner that would serve to achieve a long-lasting solution to the Appellate Body matter.

12.9. The representative of Canada said that his country supported the statement made by Mexico and shared the concerns expressed by other Members at the present meeting. Canada invited WTO Members that had not yet sponsored the proposal contained in document WT/DSB/W/609/Rev.18 to consider joining the 121 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 all Members accorded to a fully functioning Appellate Body as an integral part of the dispute settlement system. Therefore, Canada 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. Canada reiterated that it was fully committed to discussions on matters related to the functioning of the Appellate Body. Canada's priority remained to find a long-lasting 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-oriented discussions. In the meantime, Canada would continue its work on the Multi-Party Interim Appeal-Arbitration Arrangement (MPIA) as a contingency measure. The MPIA was open to all WTO Members. Canada invited all Members to seriously consider joining. The MPIA provided the opportunity for willing Members to safeguard their right to binding, two-stage, dispute settlement in disputes amongst themselves. The MPIA would remain in place until a long-lasting multilateral solution was found.

12.10. The representative of China said that his country supported the statement made by Mexico on behalf of 121 co-sponsors on this important matter. That represented approximately three quarters of all WTO Members. The paralysis of the Appellate Body posed an existential threat to the two-tier, independent and effective dispute settlement system. Unblocking the AB selection processes should remain the top priority of all WTO Members. Therefore, China encouraged more Members to join the proposal and side with the majority of the Membership so as to show their support for and commitment to the rules-based multilateral trading system. Ensuring the functioning of a standing Appellate Body was a collective legal obligation borne by the entire Membership. Article 17.2 of the DSU made it very clear that vacancies of the Appellate Body had to be filled as they arose. Regrettably, the United States, by blocking the launch of the AB selection processes, continued to disregard the clear text of the DSU. As China had stated on a number of occasions at previous DSB meetings, most of the so-called systemic concerns of the United States were not warranted. Nevertheless, WTO Members had made tremendous efforts to try to accommodate US concerns over the functioning of the Appellate Body. However, the United States continued to fail to constructively and meaningfully engage in any reform discussion. Although a convergence in reform efforts had been detected, Members were still far from reaching a lasting solution to the crisis. Given the dire prospect of finding a short-term reform solution, China believed that it was time for Members to seriously consider joining a stopgap solution before the Appellate Body could resume its operations. Currently, 23 WTO Members, including China, had agreed on the Multi-Party Interim Appeal Arbitration Arrangement based on Article 25 of the DSU. This interim arrangement was not aimed at replacing the Appellate Body. Rather, it was a contingent plan aimed at maintaining the binding nature of the dispute settlement system before convergence on Appellate Body reform could be reached. Therefore, China encouraged more Members to join this arrangement and stood ready to engage with other Members in further discussions on Appellate Body reform.

12.11. The representative of Singapore said that his country wished to refer to its statements made at previous DSB meetings and reiterated its strong systemic interest in the maintenance of the two-tier binding WTO dispute settlement mechanism that was underpinned by negative consensus. The unblocking of the AB selection processes had to remain the paramount priority for all Members. Singapore urged all Members, including the United States, to constructively engage in finding a lasting multilateral solution.

12.12. The representative of Indonesia said that his country wished to refer to its statements made at previous DSB meetings under this Agenda item. Indonesia also wished to reiterate its serious concern over the inability of this Organization to launch the AB selection processes. Notwithstanding the fact that the world demanded that this Organization play a significant role and be more relevant

in driving global economic stability amid this difficult situation, it was unfortunate that the entire Membership was entangled with this issue. Indonesia believed that solving this issue should be the utmost priority of the Membership. Therefore, Indonesia called for all Members' commitment and willingness toward preserving the dispute settlement pillar of this Organization.

12.13. The representative of Brazil said that his country wished to thank Mexico for its statement made on behalf of the co-sponsors. Brazil wished to refer to its statements made at previous DSB meetings under this Agenda item. Brazil looked forward to its continued engagement with all Members in order to find a long-term, multilateral solution to the AB impasse.

12.14. The representative of Thailand said that as a co-sponsor, her country supported Mexico's proposal to fill the vacancies of the Appellate Body. Thailand concurred with other Members that the two-tier binding WTO dispute settlement system was an integral part of the core elements of the WTO. The current inability of the Appellate Body to function affected the ability of Members to secure a positive solution to their disputes. This kind of uncertainty in dispute settlement undermined the security and predictability of the multilateral trading system. As one of the Members with pending appeals, Thailand's rights under the DSU were at risk. Accordingly, Thailand had already felt the impact of this impasse. Thailand believed that restoring a fully functioning dispute settlement system was a top priority for Members. Indeed, the dispute settlement system guaranteed and preserved the rights and obligations of all WTO Members. Thailand strongly urged all Members to show the needed flexibility to find a solution to the Appellate Body impasse expeditiously.

12.15. The representative of Hong Kong, China said that his delegation supported the statement made by Mexico on behalf of the co-sponsors. Hong Kong, China wished to reiterate its concerns with the lack of progress in resolving the Appellate Body impasse. The AB selection processes should start without any delay. Hong Kong, China urged Members to continue with their efforts and to engage constructively until a solution was found.

12.16. The representative of New Zealand reiterated his country's support for the co-sponsored proposal contained in document WT/DSB/W/609/Rev.18. New Zealand also wished to refer to its statements made at previous DSB meetings under this Agenda item. New Zealand continued to urge all Members to engage on the issues constructively with a view to urgently addressing this serious situation.

12.17. The representative of India said that his country was deeply disappointed with the state of affairs at the WTO with respect to the dysfunctional Appellate Body. Unfortunately, the Appellate Body was no longer available to review panel reports since 11 December 2019. The WTO dispute settlement system was a central element in providing security and predictability to the multilateral trading system as set out in Article 3.2 of the DSU. India had a strong interest in a stable and predictable dispute resolution system within the WTO. India was committed to the preservation of a functioning, two-stage, binding adjudication system. India believed that the Appellate Body was essential for the proper and effective functioning of the WTO. India expressed deep regret that the DSB was unable to fulfil its legal obligation to appoint Appellate Body members. India, once again, called upon all WTO Members to fulfil their treaty obligations under Articles 17.1 and 17.2 of the DSU and to start the AB selection processes as a matter of priority.

12.18. The representative of Turkey said that her country supported the statement made by Mexico on behalf of the co-sponsors. As Turkey had reiterated at previous DSB meetings, a functioning Appellate Body was at the core of a well-functioning dispute settlement mechanism. It provided security and predictability to the multilateral trading system. Therefore, it was important that the two-stage and binding nature of the dispute settlement system were safeguarded. To this end, Turkey was committed to doing its part to resolve this issue as soon as possible and stood ready to engage with Members to launch the AB selection processes.

12.19. The representative of Switzerland said that her country wished to refer to its statements made at previous DSB meetings under this Agenda item. Once again, Switzerland urged all Members to engage constructively in order to solve this impasse without further delay. The restoration of the Appellate Body remained Switzerland's priority. Switzerland wished to call on each Member to act in a matter conducive to the prompt and final settlement of disputes and to avoid so-called appeals into the void.

12.20. The representative of South Africa said that his country thanked Mexico for its statement that conveyed the views of 121 Members. South Africa supported the call for a decision by the DSB in line with the proposal contained in document WT/DSB/609/Rev.18. A functional dispute settlement mechanism was the cornerstone of the multilateral trading system and was essential for the functioning of the WTO. The immediate priority, as Members moved towards MC12, should be the resolution of the Appellate Body impasse and the restoration of a two-stage, binding dispute settlement system. South Africa wished to emphasize that in the absence of an Appellate Body, Members were left with sub-optimal options, having to give up their right of appeal and having to be bound by outcomes of panel proceedings or having to pursue alternative mechanisms. The biggest risk of a dysfunctional Appellate Body was borne by smaller Members who were more likely to be subject to unilateral action. Clearly, however, this was but one of the consequences of a dysfunctional Appellate Body. A more general feature of the landscape going forward was that Members were likely to see that a country that lost a trade dispute could easily appeal a panel report into the void so as to block its adoption. The systemic blocking of adoption of panel reports was present in the pre-WTO era. The creation of the Appellate Body had been meant to remedy this particular situation. Without the Appellate Body, the WTO dispute settlement system would lose much of its predictability and credibility and would eventually collapse. The pending cases awaiting appellate review had already created an incredible amount of pressure on Members, as was evident from items on the Agenda of the present meeting. This, in turn, also had serious consequences for future rule-making efforts in the WTO, as the value of negotiated outcomes depended on the ability of signatories to enforce them. The priority must remain to find a multilateral solution that would facilitate the reactivation of the Appellate Body in a manner that addressed all concerns of Members, including the African Group's concerns about accessibility to the dispute settlement system. Therefore, South Africa called on all Members to ensure that they discharged their collective duty to select and appoint AB members as soon as possible and in line with this proposal. As an additional mechanism, Members should use every opportunity to discuss the issues that had been raised by one Member. The informal "Walker process" on AB matters had been invaluable as a mechanism to facilitate such discussion. In this respect, South Africa would be in favour of a continuation of this process. South Africa would welcome any consultation that the Chairman might call on this matter on his own initiative or in consultation with the GC Chair. This would be without prejudice to the joint proposal contained in document WT/DSB/609/Rev.18.

12.21. The representative of Nigeria, speaking on behalf of the African Group, thanked Mexico for its statement regarding the proposal contained in document WT/DSB/609/Rev.18. The African Group noted that the DSB continued to fail in its performance of its function under Article 17.2 of the DSU which clearly stated that: "[v]acancies shall be filled as they arise". Nigeria recognized the fact that the WTO dispute settlement system was a central element in providing security and predictability to the multilateral trading system. Therefore, Nigeria underscored the importance of tasking Members with guaranteeing and preserving the effective functioning of the Appellate Body, as it was the fundamental pillar of the WTO and the multilateral trading system. All Members recognized its importance and this was evidenced by the undertaking under the DSU. The extensive number of Members that submitted this joint proposal reflected a common concern over the current Appellate Body impasse that was seriously affecting its functioning, as well as that of the dispute settlement system, against the best interests of WTO Members. Members had a responsibility to safeguard and preserve the Appellate Body, the dispute settlement system and the multilateral trading system. Thus, it was the duty of Members to launch the AB selection processes without further delay as set out in the joint proposal which sought to: (i) start six selection processes; (ii) establish a selection committee; (iii) set a deadline of 30 days for the submission of candidates; and (iv) to request that the selection committee issue its recommendations within 60 days after the deadline for nomination of candidates. At this point, there was a need for all Members to consider the urgency of the situation in the interest of the multilateral trading system and the dispute settlement system. 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. WTO Members had a shared responsibility to resolve this matter as soon as possible and to fill the outstanding vacancies as required by Article 17.2 of the DSU. Nigeria reaffirmed the African Group's proposals on DSU reform which sought to address the structural issues within the dispute settlement system that undermined the participation of African countries. Therefore, Nigeria underscored the need for any DSU reform to incorporate the developmental needs of developing countries in line with the Doha Development Agenda to address capacity and accessibility challenges faced by African countries. However, Nigeria emphasized that the priority was for the impasse to be resolved. Nigeria urged the DSB to urgently adopt a decision that would commence the AB selection processes in respect of the six positions in the Appellate Body which remained vacant. The African Group wished to thank all Members that had co-sponsored this

proposal to launch the AB selection processes. Nigeria encouraged all other Members to endorse this proposal. The African Group urged the DSB to fulfil its obligation under the DSU which was to fill vacancies as they arose so as to ensure that the Appellate Body and indeed the dispute settlement system did not collapse permanently. Nigeria remained concerned that this might result in undesirable consequences for all Members within the multilateral trading system. The African Group stood ready to engage constructively with Members on this matter in order to find an amicable solution while taking into consideration the valid concerns raised by Members. However, Nigeria wished to reiterate that finding a solution should not stand in the way of launching the AB selection processes.

12.22. The representative of Norway said that he wished to recall a statement made at the 29 June 2020 DSB meeting by Mexico under this Agenda item to the effect that Members should not get used to the current situation. His country believed that this was an important point. While Norway also agreed with the statement made by the European Union about the need to have a forward-looking discussion, however, it wished to underline that the United States could not deliberately bring down the Appellate Body and then expect the Membership to gradually and implicitly accept the status quo. Norway wished to refer to its statements made at previous DSB meetings. Norway urged the United States, once again, to unblock the AB selection processes. There was a danger of getting used to the current situation. At every DSB meeting, Members knew what would happen under this Agenda item. Previous statements would be repeated until, inevitably, words would lose their meaning. The ongoing repetition of previous statements, as well as the lack of substantial discussions or progress were rather painful and at least below basic expectations. Members were obviously bound by strong national positions on such a sensitive issue. Nevertheless, great potential was going to be wasted. He believed that Members could do better. He, on his part, had tried, from time to time, to seek to inspire real conversations under this Agenda item. Real conversations, discussions and progress should be possible. The remarkable cooperation between Members participating in the Multi-Party Interim Appeal Arbitration Agreement (MPIA) provided an example of what was possible. MPIA participants were not Members involved in a fight against a common adversary. They held different views and expectations and had had to give and take. They had been willing to discuss and show considerable flexibility. At the same time, they had also shown responsibility. Members needed to solve the Appellate Body crisis. The spirit of the MPIA negotiations had provided positive energy and grounds for renewed trust in international cooperation.

12.23. The representative of Chinese Taipei said that his delegation supported Mexico's proposal and wished to refer to its statements made at previous DSB meetings under this Agenda item. Chinese Taipei urged Members to jointly overcome the AB impasse and to find a long-term solution.

12.24. The representative of Mexico, speaking on behalf of the 121 co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.18, regretted that for the thirty-fourth 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 should not serve as a pretext to undermine and disrupt its work as well as the work of the dispute settlement system. There was no legal justification for the current blockage 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 due to the continued failure to act at the present meeting, the Appellate Body would continue to be unable to perform its functions, against the best interest of all Members.

12.25. The representative of Mexico said that her country wished to refer to its statements made at previous DSB meetings under this Agenda item. Mexico expressed grave concern over the fact that Members were in an unprecedented situation whereby the Appellate Body was dysfunctional. All ongoing disputes were being affected by the lack of a fully functioning dispute settlement system. This undermined the right of Members to appellate review and imperilled the prompt issuance and adoption of panel reports. The proposal contained in document WT/DSB/W/609/Rev.18 was supported by 121 Members. This was a clear demonstration of the shared concern among Members of fulfilling their obligation to fill AB vacancies as they arose in line with Article 17.2 of the DSU. As Mexico had stated at previous DSB meetings, and as Norway had stated under this Agenda item at the present meeting, Members should not become accustomed to the current situation. Therefore,

Mexico called on all Members to support this proposal and to work constructively with concrete proposals aimed at finding a solution.

12.26. The Chairman thanked all delegations for their statements. He said that, as in the past, the DSB would take note of the statements expressing the respective positions, which would be reflected in the minutes of the present meeting.

12.27. The DSB took note of the statements.