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16 September 2021

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Dispute Settlement Body
26 July 2021

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 26 JULY 2021[1]

Chairman: H.E. Mr Didier Chambovey (Switzerland)

Prior to the adoption of the Agenda: (i) the Chairman welcomed all delegations participating in the meeting of the Dispute Settlement Body (DSB) both in-person and remotely. He first recalled a few technical instructions regarding the virtual participation of delegations. He said that if a Member was unable to take the floor during the meeting because of a technical issue, the delegation could inform himself or the Secretariat and that Agenda item would remain open until the delegation could take the floor. Hopefully any technical issue would be quickly resolved. In the alternative, the item would remain open temporarily, the meeting would proceed to the next Agenda item, and the DSB would revert to the open item after the technical issue had been resolved. If a technical issue remained unresolved, the delegation had the option to send the statement to the Secretariat with the request that it be read out by the Secretariat on behalf of that delegation during the meeting so that the statement could be reflected in the minutes of the meeting; (ii) the Chairman made a short statement regarding item 4 of the proposed Agenda of the 28 April DSB meeting pertaining to the DS574 dispute. He said that as Members recalled, this matter had been removed from the proposed Agenda to allow time for the Chairman's consultations with each interested party regarding this Agenda item. At the present meeting, the Chairman informed delegations that he continued to consult with each interested party on this matter and that those consultations were ongoing; (iii) the representative of the United States noted that item 5 of the proposed Agenda, regarding 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, referring the matter to arbitration. On 15 July 2021, the United States had requested DSB authorization to take countermeasures in relation to the dispute: "China - Tariff Rate Quotas for Certain Agricultural Products" (DS517). On 23 July, 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 may not take action on the US request and the matter had been referred to arbitration, and as previously agreed with China, the United States no longer considered that the item need be considered at the present meeting. The representative of China said that China took note of the request of the United States to remove item 5 from the Agenda. China wished to make it clear that it objected to the level of suspension of concessions or other obligations proposed by the United States, and disagreed with the US allegation that China had failed to bring its measures into compliance with its WTO obligations. Details would be provided under item 6 at the present meeting. China maintained that any disagreement on the consistency of its measures taken to comply with the DSB's recommendations and rulings had to be resolved in proceedings under Article 21.5 of the DSU before any level of suspension of concessions or other obligations could be assessed under Article 22 of the DSU; and (iv) the Chairman informed Members that, under "Other Business", in accordance with paragraph 5 of the 21 December 2020 Understanding between the Philippines and Thailand on the DS371 Facilitator-Assisted discussions contained in document WT/DS371/44, and subsequent report of the Facilitator contained in document WT/DS371/45, dated 31 March 2021, Ambassador George Mina of Australia, the Facilitator in the DS371 dispute, would make a short report on progress in this dispute.

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

[1] The proceedings of this meeting were held in a hybrid format.

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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. As Members recalled, Article 21.6 requires that: "Unless 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 wished to invite delegations to provide up-to-date information about their compliance efforts. He also wished to remind delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "Representatives 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."

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.217)

1.2. The Chairman drew attention to document WT/DS184/15/Add.217, 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 15 July 2021, 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 of the DSB that had yet to be addressed, the US Administration would confer with the US Congress with respect to the appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that Japan thanked the United States for its latest status report and statement at the present meeting. Japan once again called on the United States to fully implement the DSB 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.192)

1.6. The Chairman drew attention to document WT/DS160/24/Add.192, 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 15 July 2021, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and 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 at the present meeting. The European Union referred to its previous statements. The European Union wished to resolve this case as soon as possible.

1.9. 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.155)

1.10. The Chairman drew attention to document WT/DS291/37/Add.155, 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.

1.11. The representative of the European Union said that the Standing Committee meeting was held online on 17 May 2021. The Commission presented three authorisations and one renewal authorisation. The Standing Committee did not reach an opinion. The Commission presented the four authorisation decisions at the online meeting of the Appeal Committee on 6 July, resulting in a "no opinion" vote. It was subsequently for the Commission to decide on those authorisations. In addition, a Standing Committee meeting was held online on 8 June 2021, where the Commission presented one authorisation and one renewal authorisation. The Standing Committee did not reach an opinion. The two draft decisions would be submitted to the Appeal Committee on 22 July 2021 where a vote would be taken by written procedure. The United States frequently referred to member States' justifications issued during the meetings of the Standing Committee and Appeal Committee as being "political" and "not science-based". The European Union wished to stress that the comitology procedure (including when measures were referred to the Appeal Committee) was an intrinsic and important part of the European Union's decision-making process, and its application was not limited to the authorisation procedure of GMOs. In addition, the European Union wished to underline that the final decision taken on the authorisation was clearly science-based as those GMOs were authorised where the European Food Safety Authority (EFSA) had finalised its scientific opinion and concluded that there were no safety concerns. Efforts to reduce delays in authorisation procedures were constantly maintained at a high level at all stages of the authorisation procedure. It was worth noting, however, that when applicants did not act expeditiously in certain applications, this had a knock-on effect on the overall average time needed for risk assessment. It was important to recognise the increased transparency in the EFSA's scientific assessment of GMOs, resulting from the new Transparency Regulation[2], which should help to reinforce trust in the safety of the authorised GMOs. The European Union acted in line with its WTO obligations. The European Union recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.12. The representative of the United States thanked the European Union for its status report and its statement at the present meeting. The European Union continued to impose undue delays on the approval of biotech products. The United States had described these problems in detail, at nearly every monthly meeting of the DSB since the European Union began submitting status reports more than thirteen years ago. The United States had also discussed these concerns in the recent EU-US

[2] Regulation (EU) 2019/1381 of the European Parliament and of the Council of 20 June 2019 on the transparency and sustainability of the EU risk assessment in the food chain and amending Regulations (EC) No 178/2002, (EC) No 1829/2003, (EC) No 1831/2003, (EC) No 2065/2003, (EC) No 1935/2004, (EC) No 1331/2008, (EC) No 1107/2009, (EU) 2015/2283 and Directive 2001/18/EC (OJ L 231, 6.9.2019, p. 1-28).

Biotechnology Consultations on Friday 18 June 2021, a venue intended to normalize trade in biotech products. The United States continued to engage in good faith in those Consultations, and had provided recommendations on several occasions as to how the European Union could address the undue delays in its approval procedures. While the United States appreciated the European Union's comments in the June DSB meeting regarding the intent of its new Transparency Regulation, the United States failed to see how raising that initiative addressed the undue delays within the European Union's approval process. The United States also believed it was inaccurate to imply that the delays in the European Union's approval process were unrelated to the DSB's findings. To date, there were still approximately fifteen products for which the European Food Safety Authority (EFSA) had successfully completed a risk assessment. Four of those products had been under evaluation since at least 2008. Despite receiving positive opinions in EFSA's risk assessment process, all of those products remained stalled in the European Union's comitology process and had not received final approval. Thus, the United States asked the European Union for further information. When would the European Union move to issue final approvals for all products that had completed science-based risk assessments at EFSA, including those products that were with the Standing Committee and Appeals Committee? And on what date could the United States expect the College of Commissioners to vote on those products?

1.13. 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.39)

1.14. The Chairman drew attention to document WT/DS464/17/Add.39, 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.

1.15. The representative of the United States said that the United States had provided a status report in this dispute on 15 July 2021, in accordance with Article 21.6 of the DSU. On 6 May 2019, the US Department of Commerce published a notice in the U.S. 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 (May 6, 2019)). With that action, the United States had completed implementation of the DSB recommendations concerning those anti-dumping and countervailing duty orders. The United States would consult with interested parties on options to address the recommendations of the DSB relating to other measures challenged in this dispute.

1.16. The representative of Korea said that Korea thanked the United States for its status report and its statement at the present meeting. Korea wished to put on record its repeated request for the United States to take prompt and appropriate steps to implement the DSB recommendations for the "as such" measures in this dispute

1.17. 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 WTO-inconsistent methodology. The reasonable period of time to implement the recommendations relating to the "as such" WTO-inconsistency of the DPM expired more than three years prior. 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 about the continued US failure to comply with the DSB's recommendations and rulings in this dispute. That failure seriously undermined the security and stability of the multilateral trading system.

1.18. 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.31)

1.19. The Chairman drew attention to document WT/DS471/17/Add.31, 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.

1.20. The representative of the United States said that the United States had provided a status report in this dispute on 15 July 2021, in accordance with Article 21.6 of the DSU. As explained in that report, the United States would consult with interested parties on options to address the recommendations of the DSB.

1.21. The representative of China said that China thanked the United States for its latest status report. However, China wished to register once again its deep disappointment and strong concern on the United States' persistent failure to implement the adopted rulings and recommendations in this dispute, almost 3 years after the expiry of the reasonable period of time. China urged the United States to honor its obligation in line with Article 21.1 of the DSU by coming into full compliance in this dispute without further delay.

1.22. 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.26 – WT/DS478/22/Add.26)

1.23. The Chairman drew attention to document WT/DS477/21/Add.26 – WT/DS478/22/Add.26, which contained the status report by Indonesia on progress in the implementation of the DSB's recommendations in the case concerning the importation of horticultural products, animals and animal products.

1.24. The representative of Indonesia said that Indonesia submitted this report pursuant to Article 21.6 of the DSU. Indonesia wished to reiterate its commitment to implementing the recommendations and ruling of the DSB in these disputes. With regard to measure 18, as reported in previous DSB meetings, Indonesia had removed the existence of all Articles in the relevant Laws that were found to be inconsistent with WTO rules through the enactment of Law No. 11/2020 on Job Creation. With respect to measures 1-17, Indonesia wished to reassure that significant adjustments with the purpose to be consistent with the recommendations and rulings of the DSB had been caried out through amendments of the relevant Ministry of Agriculture and Ministry of Trade Regulations. Those adjustments also included the removal of disputed measures, *inter alia*; harvest period restrictions; import realization requirements; six-months harvest requirement; and reference price. Indonesia was committed to engaging with New Zealand and the United States and reaffirmed its commitment to implementing the recommendations and rulings of the DSB in these disputes.

1.25. The representative of the United States thanked Indonesia for its overview the previous month of the adjustments it had made to the laws and regulations that were the subject of the DSB's recommendation. The United States was reviewing Indonesia's new laws and regulations in light of Indonesia's statements last month and in its status report of 15 July. It seemed, however, that Indonesia was presently in the process of issuing new regulations implementing Law No. 11/2020 on Job Creation that would affect Indonesia's import licensing regimes. In particular, the United States understood that Indonesia was developing a Presidential Regulation on Commodity Balances, as well as new Ministry of Agriculture and Ministry of Trade regulations. He said that the United States would appreciate further clarity on which regulations presently comprised Indonesia's import licensing regimes and on forthcoming regulations that would affect those regimes. To that end, the United States would engage bilaterally with Indonesia with its questions in order to enable the United States to better understand Indonesia's efforts to implement the DSB's recommendations. The United States remained willing to work with Indonesia to fully resolve this dispute.

1.26. The representative of New Zealand said that New Zealand thanked Indonesia for its status report, and acknowledged Indonesia's commitment to comply fully with the WTO decision. Both compliance deadlines had, however, long since expired and a number of measures remained non-compliant. New Zealand understood that Indonesia's Parliament had enacted Law No. 11/2020 on Job Creation, but New Zealand did not yet have the information necessary to assess what impact this would have on Indonesia's compliance with the WTO decision, in particular in respect of Measure 18. New Zealand invited Indonesia to provide further details as soon as possible, and looked forward to further bilateral engagement to that end.

1.27. 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 at the request of the European Union and he invited the representative of the European Union to speak.

2.2. The representative of the European Union said that despite long-standing reassurances of the United States that the DSB's recommendations and rulings were fully implemented by adopting the Deficit Reduction Act, disbursements under the CDSOA had been made every year since then. Every disbursement that still took place under that legal basis was clearly an act of non-compliance with DSB recommendations and rulings. For the item to be considered resolved and removed from the DSB's surveillance, the United States had to fully stop transferring collected duties. The European Union maintained that such full compliance is needed, independently of the cost resulting from the application of such limited duties. The European Union renewed its call on the United States to abide by its obligation under Article 21.6 of the DSU to submit implementation reports in this dispute, as the issue remained unresolved. If the United States disagreed that the issue remained unresolved, nothing prevented it from seeking a multilateral determination through a compliance procedure.

2.3. The representative of the United States said that, as the United States had noted at previous DSB meetings, the Deficit Reduction Act – which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 – was enacted into law more than 15 years prior in February 2006. The Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, more than 13 years prior. Accordingly, the United States had long ago implemented the DSB's recommendations and informed WTO Members of its implementation. Even aside from that, it was evidently not a trade rationale or cooperation that was driving the European Union's approach to inscribing this Agenda item month after month. Based on the US independent review of the applicable EU regulation, it appeared that the European Union currently applied a tiny additional duty of 0.1% on certain imports of the United States. At the previous DSB meeting, the European Union had once again called on the United States to abide by its "clear obligation" under Article 21.6 to submit a status report in this dispute. Notably, the European Union had not called on any other Member in any other dispute to abide by this so-called "clear obligation," despite the fact that several Members – including the European Union – were in the same situation as the United States. As the United States had explained repeatedly, there was no obligation under the DSU for a Member to provide further status reports once that Member informed the DSB that it *has implemented* the DSB's recommendations.

2.4. The widespread practice of Members – including the European Union as a responding party – confirmed this understanding of Article 21.6. At recent meetings, three Members – China, Brazil, and Australia – had acted consistently with this systemic position. Each Member had informed the DSB that they had come into compliance with DSB recommendations in four disputes (DS472, DS497, DS517, and DS529), and the complaining parties had not accepted the claims of compliance. Those Members had not provided a status report since announcing compliance – just like the United States. The European Union was the complaining party in one of those disputes (DS472). If the European Union believed status reports were "required" under the DSU, it would have insisted that the responding Member provide a status report in that dispute, or the European Union would have inscribed that dispute as an item on the Agenda of the present meeting. The European Union had taken neither action. At the most recent DSB meeting, the European Union argued once again that

the circumstances between DS472 and the present dispute were "entirely different," but the United States had heard no articulation based in the DSU text that would justify the inconsistent positions. Through its actions, the European Union once again demonstrated that it did not truly believe that there was a "clear obligation" under Article 21.6 to submit a status report after a party had claimed compliance. The European Union had simply invented a rule for this dispute, involving the United States, that it did not apply to other disputes involving other Members. Under the next item, the United States would raise another such dispute.

2.5. The representative of the European Union said that the European Union recalled that the CDSOA was found to be in breach of WTO rules for transferring anti-dumping and countervailing duties to US industry, and that the DSB authorized sanctions, on the basis of the US failure to comply with the recommendations and rulings. That situation persisted as long as the redistribution of collected duties continued, as most recently shown by the report of US Customs and Border Protection for the financial year 2020. The circumstances of this case with regard to relevant DSU provisions and procedures were therefore entirely different from those in DS472. Once the transfers of anti-dumping and countervailing duties ceased, so would the EU measures.

2.6. The DSB took note of the statements.

3 EUROPEAN COMMUNITIES AND CERTAIN MEMBER STATES – MEASURES AFFECTING TRADE IN LARGE CIVIL AIRCRAFT: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

A. Statement by the United States

3.1. The Chairman said that this item was on the Agenda at the request of the United States, and he invited the representative of the United States to speak.

3.2. The representative of the United States said that the United States had placed this item on the Agenda of the present meeting to highlight that the European Union had once again not provided Members with a status report concerning the dispute *EC – Large Civil Aircraft* (DS316). As Members were aware, on 15 June 2021, the United States and the European Union reached an "Understanding on a cooperative framework for Large Civil Aircraft." That agreement sought to forge a more cooperative future by suspending the tariffs related to this dispute for five years, agreeing to clear principles that any financing for the production or development of large civil aircraft would be on market terms, and committing to joint collaboration to address non-market practices in this sector. Those efforts would help the US and EU companies and workers compete fairly, and the United States welcomed the collaboration with its European partners. As part of that significant effort to enhance cooperation, the United States intended to discuss its concerns relating to outstanding EU support measures with the European Union bilaterally. The United States was therefore disappointed to again see the European Union inscribe the preceding Agenda item for DS217, and call for a US status report, while not submitting an EU status report for DS316.

3.3. The United States had put this item on the Agenda as an opportunity for the European Union to explain its contradictory approach to the application of Article 21.6 of the DSU. In both disputes, the responding party had claimed that it had implemented the DSB recommendation. In both disputes, the complaining party did not agree with that claim. But the European Union persisted in calling for a status report and Agenda item for DS217 – where it was the complaining party – while not providing such a report to the DSB in DS316 – where it was the responding party. The US position on status reports had been consistent across disputes: 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. As noted under the previous item, the United States considered this understanding to be based on the text of the DSU and reflected in every responding Member's behavior in other WTO disputes – including the European Union's own behavior. The United States would continue to engage bilaterally with the European Union on the tension created by its position under those two items. The United States wished to reinforce their more cooperative relationship and focus their attention on bilateral challenges and opportunities.

3.4. The representative of the European Union said that the European Union welcomed the fact that the parties had reached an Understanding on a Cooperative Framework for Large Civil Aircraft that

allowed the parties to suspend their respective retaliation measures for five years. The European Union noted that, in the Airbus case, the European Union had notified a new set of compliance measures to the DSB. That new set of compliance measures was subject to an assessment by a compliance panel and that panel report had been issued on 2 December 2019. As noted in its statement at the December 2020 meeting of the DSB, the European Union was of the view that significant aspects of the compliance panel 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. In order to have those legal errors corrected, the European Union had filed an appeal against the compliance panel report on 6 December 2019. Whether or not the matter was "resolved" in the sense of Article 21.6 was the very subject matter of that ongoing litigation. The defending party was not required to submit "status reports" to the DSB in those circumstances. The European Union hoped that the Understanding on a Cooperative Framework for Large Civil Aircraft would allow the parties to resolve their disagreement also in relation to the provision of status reports to the DSB in the Airbus case.

3.5. The DSB took note of the statements.

4 CHINA – MEASURES CONCERNING THE IMPORTATION OF CANOLA SEEDS FROM CANADA

A. Request for the establishment of a panel by Canada (WT/DS589/4)

4.1. The Chairman recalled that the DSB had considered this matter at its meeting on 28 June 2021 and had agreed to revert to it should a requesting Member wish to do so. He then drew attention to the communication from Canada contained in document WT/DS589/4 and invited the representative of Canada to speak.

4.2. The representative of Canada said that on 9 September 2019, Canada had requested WTO consultations with China concerning China's March 2019 suspension of canola seed imports from two Canadian companies, Richardson International Limited and Viterra Incorporated, and imposition of enhanced inspection procedures, including increased testing, on all imports of Canadian canola seed. Consultations were held on 28 October 2019, but failed to resolve the matter. At the 28 June 2021 DSB meeting, Canada had requested that a WTO panel be established to examine the matter. China blocked that request. As Canada had stated at the June DSB meeting, it was disappointed and concerned that sufficient scientific evidence to justify China's canola measures had not been provided. China was an important export market for Canadian canola seed, and China's restrictive canola measures continued to have a serious, negative impact on Canadian producers. As Canada had seen no concrete steps from China to address its concerns, Canada again at the present meeting requested the establishment of a WTO panel to examine this matter, with standard terms of reference. Canada remained open to continuing its dialogue with China in a manner that would address its concerns and fully restore market access for Canadian canola seed in a timely fashion.

4.3. The representative of China said that China regretted that Canada had decided to proceed with its panel request with regard to this dispute. As stated in its statement made at the DSB meeting on 28 June 2021, China had constructively engaged with Canada on this matter, and had diligently responded to Canada's requests for information. China still believed, at the present meeting, that Canada's request for a panel was premature. China had intercepted diseases, insects, and weeds from canola seed from Canada for a long time. To date, China's concern remained with respect to the imported canola seeds from Canada. The WTO Agreement provided that Members were entitled to take measures necessary to protect human, animal or plant life or health. China adopted and implemented its measures in a transparent and non-discriminatory manner, which was in full compliance with WTO rules. China would vigorously defend itself in the following proceedings and remained open to engage faithfully with Canada on this matter.

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

4.5. The representatives of Australia, Brazil, the European Union, India, Japan, Norway, the Russian Federation, Singapore, Chinese Taipei, and the United States reserved their third-party rights to participate in the Panel's proceedings.

5 CHINA – TARIFF RATE QUOTAS FOR CERTAIN AGRICULTURAL PRODUCTS

A. Recourse to Article 21.5 of the DSU by China: Request for the establishment of a panel

5.1. The Chairman drew attention to the communication from China contained in document WT/DS517/20 and he invited the representative of China to speak.

5.2. The representative of China said that on 15 July 2021 China had submitted its request for the establishment of a compliance panel in "China – Tariff Rate Quotas for Certain Agricultural Products" (DS517), pursuant to Article 21.5 of the DSU. As the original respondent, China had been reluctant to take that unusual action. China did so in light of the United States' failure to initiate compliance proceedings under Article 21.5 of the DSU to review China's implementation of the recommendations and rulings of the DSB in this dispute. As set out in its status report to the DSB of 17 February 2020, and as detailed in its request for the establishment of a compliance panel, China had fully implemented the recommendations and rulings of the DSB concerning the administration of its TRQs for wheat, corn, and rice. On 29 September 2019, the National Development and Reform Commission promulgated the *Detailed Rules for Application and Allocation of Import Tariff-Rate Quota for Grains in 2020*, and on 30 November 2019, the Ministry of Commerce promulgated the *MOFCOM Decision to Abolish and Modify Some Rules*, which modified the *Provisional Measures on the Administration of Import Tariff Rate Quotas for Agricultural Products*. These measures and related modifications ensured China's full compliance with the recommendations and rulings of the DSB in DS517. China was confident that the compliance panel would reach the same conclusion.

5.3. China said that Article 21.5 of the DSU explicitly stated that "where there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings such dispute shall be decided through recourse to these dispute settlement procedures, including wherever possible resort to the original panel". In this dispute, China had fully implemented the recommendations and rulings of the DSU within the reasonable period of time originally agreed by the parties, and submitted status reports in accordance with Article 21.6 of the DSB. Nevertheless, on 15 July 2021, the United States had proceeded with filing a request under Article 22.2 of the DSU requesting authorization to suspend concessions or other obligations with respect to China in an amount to be determined via a formula "that relates to the value of the unfilled portion of any tariff-rate quota (TRQ) for wheat, rice, or corn, as set out in China's WTO Schedule." The United States had failed to specify on what basis it considered China's implementation to fall short of full compliance. To the extent that the United States truly disagreed with China's implementation of the DSB's recommendations and rulings, it was required to resolve the matter through Article 21.5 proceedings. Regrettably, the United States had instead chosen to pursue retaliation directly by filing a request under Article 22.2 of the DSU. The United States had further refused to engage with China on reaching a sequencing agreement, as was customary practice in dispute settlement, and the "logical way forward" to resolve any disagreement between the parties regarding China's compliance measures. China was deeply concerned by the systemic implications of the United States' approach, which would encourage Members to attempt to sidestep their obligations under Article 21.5 of the DSU.

5.4. In light of the US refusal to engage with China to resolve any disagreement regarding China's implementation of the DSB's recommendations and rulings in the usual manner, China had been forced to take the unusual step of submitting this request. Article 21.5 proceedings would enable a proper review of China's compliance measures through a transparent multilateral dispute settlement mechanism, protect China's rights under the covered agreements, and allow the parties to find a positive resolution of the dispute. China emphasized that the unusual procedural posture of this request did not shift the burden of proof. It remained the US burden to establish the WTO-inconsistency of China's compliance measures. China strongly believed that the compliance panel would confirm China's full compliance. To harmonize different ongoing proceedings in this dispute, the arbitrator under Article 22.6 should suspend its work pending the conclusion of the Article 21.5 proceedings. Prompt findings under Article 21.5 would, therefore, assist the parties in securing a positive solution to the dispute, and China looked forward to doing everything it could to facilitate that outcome.

5.5. The representative of the United States said that the United States was not in a position to agree with China that it had come into compliance with the DSB recommendations in this dispute. To recall, the DSB found that China had failed to administer its wheat, rice, and corn TRQs on a transparent, predictable, and fair basis, using clearly specified requirements and administrative

procedures, and in a manner that would not inhibit the filling of each TRQ under China's Protocol of Accession, to the extent that it incorporated Paragraph 116 of the *Report of the Working Party on the Accession of China.* The DSB had adopted its recommendation to China to bring its measures into conformity with its WTO obligations in May 2019. Since then, China had – among other things – continued to administer its wheat, rice, and corn TRQs in a non-transparent and unpredictable manner. Not only was the public process by which China administered its TRQs non-transparent, but China also had refused US requests for additional information that would allow the United States to better understand how these TRQs had been administered in practice. Without such transparency, which most WTO Members provided as a matter of good governance and to promote market-oriented agricultural trade, the United States and other WTO Members were left without the basic information necessary to assess China's compliance with fundamental WTO obligations.

5.6. In its statement, China stated that the United States had failed to specify on what basis China's implementation fell short of compliance. The United States was under no obligation to present claims and arguments under this Agenda item. The United States had engaged bilaterally with China on those issues on a regular and ongoing basis, and would continue to do so. For the purpose of the present meeting, the United States had referred to the lack of transparency in China's system to highlight the underlying challenge to the United States and other WTO Members of understanding China's administration of basic import laws and regulations. Beyond that, the United States simply noted that, including because of China's lack of transparency, the TRQ measures notified by China in February 2020 and subsequent TRQ measures published in 2021 did not themselves demonstrate that China presently administered its wheat, rice, and corn TRQs on a transparent, predictable, and fair basis, using clearly specified requirements and administrative procedures, and in a manner that would not inhibit the filling of each TRQ. Indeed, several of the panel's findings were based on the discrepancy between what China's legal instruments stated *would* be done, and what China asserted – during the course of the litigation – *was in fact* done in practice.

5.7. Furthermore, contrary to the position taken by China, nothing in the DSU supported the view that an Article 22.6 arbitration proceeding had to be suspended while the corresponding Article 21.5 proceedings were ongoing. Members had at times agreed through *voluntary* agreements on the sequencing of proceedings or otherwise to conduct proceedings in such an order, but as Members were well aware, this was not required under the DSU. In some disputes, an agreement provided for the completion of a 21.5 compliance proceeding before a Member could request authorization to suspend concessions or other obligations. In others, the parties agreed that, once a Member requested authorization pursuant to Article 22.2 and the responding Member objected, the arbitration could be suspended to permit Article 21.5 proceedings to occur. Where no sequencing agreement had been reached between the parties, as was the case here, a complaining member had to request authorization to suspend concessions or other obligations within the time frame specified in Article 22.6 of the DSU or risk prejudicing its rights to do so at a later date. Accordingly, in this proceeding, the United States had done so in a timely manner. Regrettably, the United States could not at this time confirm China's assertion of compliance with the DSB's recommendations in this dispute. That said, the United States stood ready to work constructively with China to reach a resolution to this dispute, as it had done since adoption of the panel report. For those reasons, the United States was not in a position to agree to the establishment of a compliance panel.

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

6 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.19)

6.1. 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.19 and invited the representative of Mexico to speak.

6.2. The representative of Mexico, speaking on behalf of the co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.19, said that the delegations in question had agreed to submit the joint proposal, dated 7 December 2020 to launch the selection processes for the vacancies of the Appellate Body members. On behalf of those 121 Members, Mexico wished to state the following. The extensive number of Members submitting the joint proposal reflected a common concern with the current situation in the Appellate Body that was seriously affecting the overall dispute settlement system, against the best interest of its Members. WTO Members had a responsibility to safeguard and preserve the Appellate Body, the dispute settlement system, and the multilateral trading system. Thus, it was their duty to proceed, without further delay, with the launching of the selection processes for the Appellate Body members, as submitted to the DSB at the present meeting. The proposal sought to: (i) start seven 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 resulted from the resignation of Mr Hyun Chong Kim with effect from 1 August 2017; a third process to replace Mr Peter Van den Bossche, whose second term had expired on 11 December 2017; a fourth process to replace Mr Shree Baboo Chekitan Servansing, whose four-year term of office had expired on 30 September 2018; a fifth process to replace Mr Ujal Singh Bhatia, whose second term had expired on 10 December 2019; a sixth process to replace Mr Thomas Graham whose second term had expired on 10 December 2019; and a seventh selection process to replace Ms Hong Zhao, whose first four-year term of office had expired on 30 November 2020); (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 in the determination of the deadlines for the selection processes, but Members should consider the urgency of the situation. The proponents continued to urge all Members to support this proposal in the interest of the dispute settlement and multilateral trading systems.

6.3. The representative of the United States said that the United States was not in a position to support the proposed decision. The United States continued to have systemic concerns with the Appellate Body. As Members knew, the United States had raised and explained its systemic concerns for more than 16 years and across multiple US Administrations. The United States believed that Members had to undertake fundamental reform if the system was to remain viable and credible. The dispute settlement system could and should better support the WTO's negotiating and monitoring functions. The United States looked forward to further discussions with Members on those concerns and to constructive engagement with Members at the appropriate time.

6.4. The representative of Canada said that Canada 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 to consider joining the 121 Members calling for the launch of the selection process. The critical mass of WTO Members behind the proposal demonstrated the importance that all Members accorded to a fully functional Appellate Body as an

integral part of the dispute settlement system. The fact that the Appellate Body was unable to hear new appeals was of great concern. Canada reiterated that it was fully committed to solution-oriented discussions on matters related to the functioning of the Appellate Body, and encouraged the United States to constructively engage in those discussions. Canada's priority remained to find a long-lasting multilateral resolution to the impasse that covered all Members, including the United States. In the meantime, Canada and 24 other WTO Members had endorsed the Multi-Party Interim Appeal-Arbitration Arrangement (MPIA) as a contingency measure to safeguard their rights to binding two-stage dispute settlement in disputes amongst themselves. The MPIA was open to all WTO Members. Canada invited all WTO Members to consider joining the MPIA to safeguard their dispute settlement rights to the greatest extent possible until Members collectively found a permanent solution to the Appellate Body impasse. Canada remained available to discuss the MPIA with any interested Member.

6.5. The representative of Indonesia said that Indonesia wished to refer to its statements made at previous DSB meetings under this Agenda item. Indonesia supported the AB proposal and the statement made by Mexico. Indonesia was of the view that Members should maintain the relevance of WTO dispute settlement in providing security and predictability to the multilateral trading system, as embodied in Article 3.2 of the DSU, including through restoring a fully functioning Appellate Body. It should be the utmost priority for all WTO Members. Indonesia also hoped that the discussions on the Appellate Body matters would start as soon as possible. Indonesia was ready to engage constructively with other Members to find common ground on this matter.

6.6. The representative of China said that China supported the statement made by Mexico on behalf of 121 co-sponsors and called upon other Members to join the AB proposal. China wished to refer to its previous statements on this urgent matter and reiterated its firm commitment to an independent and impartial two-tier dispute settlement system. In accordance with Article 17.2 of the DSU, Members bore collective duty to ensure a standing Appellate Body by filling vacancies as they arose. China had serious concerns that due to the US persistent blockage, Members could not fulfil the above-mentioned obligation. More systemically, the paralysis of the Appellate Body had posed a severe challenge to the WTO and the multilateral trading system as a whole. Therefore, China called upon all Members to restore the Appellate Body function and urged the United States to constructively engage with Members in the solution-based consultations with a view to breaking the selection impasse at the earliest date.

6.7. The representative of Japan said that Japan wished to refer to its statements made at previous DSB meetings and supported the AB proposal. Japan shared the sense of urgency for reform of the dispute settlement system. As it had stated consistently, Japan considered it the utmost priority to achieve an expeditious reform that would contribute to a long-lasting solution to the structural and functional problems of the dispute settlement system. The Appellate Body virtually ceased its operation a long time ago, and meanwhile, a number of cases had been appealed into the void. Japan considered it essential that every WTO Member, as the owner of the system, took the situation seriously and engaged in a constructive discussion towards reform of the dispute settlement system. Japan spared no efforts to collaborate with all WTO Members to that end.

6.8. The representative of Thailand said that Thailand supported the statement made by Mexico on behalf of the co-sponsors. Thailand, like other co-sponsors, strongly supported a prompt solution to the Appellate Body impasse. The importance of the two-tiered dispute settlement system was self-evident as some Members continued to file appeals before the Appellate Body. Thailand urged all Members to find ways and means to solve this impasse and launch the Appellate Body selection process. Thailand stood ready to constructively engage with Members to restore the effective functioning of the dispute settlement system in all forms and configurations.

6.9. The representative of the European Union said that the European Union referred to its previous statements on this issue. Since 11 December 2019, the WTO had no longer guaranteed access to a binding, two-tier, independent, and impartial resolution of trade disputes. A fully functioning WTO dispute settlement system was critical for a rules-based multilateral trading system. This was why the most urgent area of WTO reform involved finding an agreed basis to restore such a system and proceeding to the appointment of the members of the Appellate Body. This task should be addressed as a priority. As the European Union had consistently noted, WTO Members had a shared responsibility to resolve this issue as soon as possible, and to fill the outstanding vacancies as required by Article 17.2 of the DSU. The European Union agreed that meaningful reform was needed in order to achieve that objective. The European Union therefore renewed its call on all WTO

Members to engage in a constructive discussion as soon as possible in order to restore a fully functioning WTO dispute settlement system. The European Union thanked all Members that had co-sponsored the proposal to launch the appointment processes.

6.10. The representative of Hong Kong, China said that Hong Kong, China supported Mexico's statement and wished to join Mexico and the other co-sponsors to reiterate yet again its great concern over the Appellate Body impasse. Hong Kong, China urged for restoration of the full functioning of the WTO's dispute settlement system without any further delay. Hong Kong, China called on all Members to seek a shared understanding of the reforms needed for that purpose.

6.11. The representative of Brazil said that Brazil thanked Mexico for introducing the AB proposal on behalf of the co-sponsors. Brazil wished to refer to its previous statements and stood ready as it had always been to engage with all Members in order to find a lasting solution to this impasse.

6.12. The representative of New Zealand said that New Zealand reiterated its support for the co-sponsored proposal and referred to its previous statements made on this matter New Zealand continued to urge all Members to engage, constructively, on the issues with a view to addressing the situation as a priority. The time was ripe to refocus Members' collective efforts on finding a solution that worked for all Members.

6.13. The representative of Korea said that as the judicial arm of the WTO, the dispute settlement system was designed to provide stability and predictability to the multilateral trading system. At the same time, the original drafters undoubtedly envisaged that the system would help effectively pursue prompt and satisfactory settlement of disputes. Due to the impasse in the appointment of members of the Appellate Body, the WTO's dispute settlement system had exposed its vulnerability. As far as Korea was aware, a total of 19 disputes appealed into the void remained unresolved. Consequently, the competence of the system to ensure the smooth and effective implementation of WTO agreements had been undermined. Korea wished to echo many Members' call for full restoration of the system before the current paralysis imposed a permanent damage on the system. To that end, Korea fully supported the joint proposal and invited all Members to engage constructively in relevant discussions to find a permanent solution to restore the binding and two-tier adjudication system. Given the paucity of time available until MC12, Members should at least establish a work plan and a specific time-frame leading up to MC12 to draw a clear picture on the way forward to resolve this issue. Korea stood ready to work together with other Members and would continue to play an active and constructive role with a view to reaching a tangible outcome by MC12 in this area.

6.14. The representative of Nigeria, speaking on behalf of the African Group, said that the Group wished to refer to its previous statements made under this Agenda item. The African Group wished to join others in supporting the statement made by Mexico. The African Group continued to regret that until now the DSB had failed to fill the vacancies of the Appellate Body. Therefore, the Group urged the DSB to urgently fulfil its obligation under the DSU, which was to fill vacancies as they arose so as to maintain the two-tier dispute settlement system and restore the full functioning of the Appellate Body. Finally, the African Group called on all other Members who were yet to co-sponsor the proposal to support and co-sponsor the document in order to promote predictability within the multilateral trading system.

6.15. The representative of Norway said that Norway referred to its previous statements made under this Agenda item and to the joint proposal presented by Mexico, which Norway fully supported. Norway continued to support any efforts to restore the fully functional dispute settlement mechanism. The current impasse was deeply regrettable. Norway was ready to engage constructively in discussions, and to explore various options for how to move forward.

6.16. The representative of the United Kingdom said that the United Kingdom continued to support a fully functioning dispute settlement system as the best means of enforcing the rules Members had negotiated and ensuring the fair resolution of disagreements. The United Kingdom would continue to engage with all Members to support efforts to find common ground for dispute settlement reform.

6.17. The representative of Singapore said that Singapore thanked Mexico for its statement, which Singapore strongly supported. Singapore reiterated its previous statements on this matter and urged all Members to embark on the Appellate Body selection process as a priority. Singapore looked

forward to engaging constructively in discussions with all Members, including the United States, to find a lasting multilateral solution.

6.18. The representative of Argentina said that Argentina wished to thank Mexico for its statement and the previous speakers that had expressed their support for the joint AB proposal. Once again, Argentina reiterated its concern regarding the undue delay to launch the selection process for new members of the Appellate Body, which progressively affected the functioning of the WTO. As a developing country, where only a rules-based system could contribute to its sustainable development, Argentina reiterated its concern at the structural impasse and invited all Members to explore all possible alternatives to find a satisfactory solution to this matter.

6.19. The representative of Switzerland said that Switzerland wished to refer to its statements made on this issue at previous DSB meetings. A fully functioning Appellate Body was in everybody's interest. Switzerland hoped that new momentum could be provided to solve this situation in which Members had found themselves for a very long time. Switzerland was ready to work to achieve this objective, and strongly encouraged all Members to work in a constructive way to find a solution that would remove the current blockage.

6.20. The representative of India said that India supported the proposal by Mexico on behalf of 121 Members. India wished to refer to its previous statements made on this matter and called on all Members to engage constructively to immediately start the AB selection process as a priority.

6.21. The representative of Turkey said that Turkey thanked Mexico for bringing this item on the Agenda. As a co-sponsor of the proposal, Turkey believed that a functioning Appellate Body was at the core of a well-functioning dispute settlement system. Therefore, it was important that the two-stage character and binding nature of the dispute settlement system be safeguarded. In this respect, Turkey referred to its previous statements and recalled the urgent need to start the selection processes for the vacancies of the Appellate Body, in accordance with Article 17.2 of the DSU. To that end, Turkey was committed to play its part to resolve the issue as soon as possible and was ready to engage with the Members to launch the selection process.

6.22. The representative of Qatar said that Qatar wished to refer to its statements made at previous DSB meetings on this matter. Qatar supported the statement made by Mexico and regretted that the DSB to date had failed to initiate the AB selection processes. Qatar recalled that Members had a shared obligation to promptly fill the vacancies of the Appellate Body, as required by Article 17.2 of the DSU. The clear text of that provision indicated that such responsibilities shall be fulfilled unconditionally. To avoid unintended consequences, Qatar called on all Members to act in a cooperative manner in order to break the impasse in the AB selection processes without further delay. Qatar wished to emphasize that a discussion on improving the DSU should not be a reason to delay the AB appointments. Qatar was ready to work on a solution with all Members while preserving the essential features of the system and the Appellate Body.

6.23. The representative of the Russian Federation said that the Russian Federation wished to thank Mexico for the proposal submitted on behalf of the co-sponsors and referred to its previous statements made regarding the urgent need to fill the vacancies in the Appellate Body. At the same time, the Russian Federation, once again, confirmed its commitment to engage in constructive dialogue with all WTO Members towards effective resolution of the AB crisis.

6.24. The representative of Mexico, speaking on behalf of the 121 co-sponsors, regretted that for the forty-forth occasion, Members had still not been able to start the selection processes for the vacancies in the Appellate Body, and had thus continuously failed to fulfill their duty as Members of this Organization. The fact that a Member may have had concerns about certain aspects of the functioning of the Appellate Body could not serve as a pretext to impair and disrupt the work of this body and dispute settlement in general. There was no legal justification for the current blocking of the selection processes, which was causing concrete nullification and impairment for many Members. As Article 17.2 of the DSU clearly stated, "vacancies shall be filled as they arise". No discussion should prevent the Appellate Body from continuing to operate fully and Members shall comply with their obligation under the DSU to fill the vacancies. Mexico noted with deep concern that by failing 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.

6.25. The representative of Mexico said that Mexico wished to refer to its previous statements made on this matter and to emphasize its deep concern at finding itself faced with an unprecedented situation with an Appellate Body that was inoperative. For more than two years, 121 Members had been requesting that this proposal be adopted so that Members have access to appeals. All the current disputes were being affected because the dispute settlement system was not fully operational and this put at risk prompt compliance with panel/AB reports. This was why Mexico urgently called for Members who had not done so to join the AB proposal. Mexico continued to be ready to work constructively on concrete proposals to achieve a real multilateral solution.

6.26. The Chairman thanked Mexico and all delegations for their statements. 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. As Members were all aware, this matter had also been raised in the consultations held by the Chair of the General Council in preparation for the next Ministerial Conference. He said that, as Members were aware, this matter required a political engagement on the part of all WTO Members. The Chairman hoped that Members would be able to find a solution to this matter as soon as possible, and said that his door remained open to any delegation wishing to contact him directly on this matter.

6.27. The DSB took note of the statements.

7 REPORT BY THE FACILITATOR ON PROGRESS IN THE FACILITATOR-ASSISTED DISCUSSIONS IN THE DS371 DISPUTE

7.1. The Chairman invited the Facilitator, Ambassador Mina of Australia, to make a report on progress in the Facilitator-assisted discussions in the DS371 dispute.

7.2. The Facilitator in the DS371 dispute, Ambassador Mina of Australia, speaking under "Other Business", said that in a report to the DSB, dated 31 March 2021, contained in WT/DS371/45, he had provided an update on the DS371 Facilitator-assisted discussions, in accordance with paragraph 5 of the 21 December 2020 Understanding between the Philippines and Thailand on the DS371 Facilitator-assisted discussions contained in WT/DS371/44. As part of that report, he had advised the DSB that, after consulting with the parties, it was his intention to recommend continuation of the discussions up to 31 July 2021. He had also proposed to make a further report to the DSB prior to that date. He was, therefore, taking the opportunity at the present meeting to make a brief statement under "Other Business" to update on the Facilitator-assisted discussions over recent weeks and months. In this regard, he was pleased to report that the parties had continued to engage constructively with him in discussions, as well as directly with each other through engagement in Geneva and between officials in capitals. He remained hopeful that those mutually supportive processes would progressively lead to the parties building up elements of agreement, although it had become clear that, in order to do so, the Facilitator-assisted discussions would need to be extended beyond 31 July 2021. He said that, as envisaged in paragraph 5 of the Understanding, based on his recommendation, and following the agreement of the parties, the current Facilitator-assisted discussions would continue beyond 31 July 2021. It was his intention to continue to inform the DSB on this matter, as appropriate. He looked forward to the parties' ongoing co-operation in progressing their discussions on outstanding issues.

7.3. The Chairman thanked Ambassador Mina for his statement and his efforts towards finding a mutually satisfactory solution to this dispute.

7.4. The DSB took note of the statements and of the report by the Facilitator on progress in the Facilitator-assisted discussions in the DS371 dispute