

**Dispute Settlement Body
27 November 2023**

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 27 NOVEMBER 2023¹

Chairman: H.E. Mr Petter ØLBERG (Norway)

Prior to the adoption of the Agenda: (i) the Chairman welcomed all delegations participating in the present meeting of the DSB both in-person and remotely. He reminded delegations that the technical instructions for the remote participation remained the same as was the case at the previous meetings; (ii) the Chairman made a short statement regarding item 4 of the proposed Agenda of the 28 April 2021 DSB meeting pertaining to the DS574 dispute. He said that, as Members would recall, that matter had been removed from the proposed Agenda to allow time for the Chair's consultations with each interested party regarding that Agenda item. At the present meeting, he wished to inform delegations that, like the previous Chair of the DSB, he continued to consult with each interested party on this matter and that those consultations were ongoing; (iii) the representative of Antigua and Barbuda said that, under "Other Business", Antigua and Barbuda wished to make a statement regarding the dispute on: "United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services" (DS285); and (iv) the representative of India said that, under "Other Business", India wished to make a statement concerning the joint communication by Egypt, India and South Africa contained in document JOB/DSB/7 titled: "Reflections on the Reform of the WTO Dispute Settlement System".

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

Table of Contents

1 SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB 2

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States	3
B. United States – Section 110(5) of the US Copyright Act: Status report by the United States	3
C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union	4
D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States	4
E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States	5
F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia	5

2 COLOMBIA – ANTI-DUMPING DUTIES ON FROZEN FRIES FROM BELGIUM, GERMANY AND THE NETHERLANDS (DS591)

6

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

A. Statement by Colombia	6
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3 EUROPEAN UNION – COUNTERVAILING DUTIES ON IMPORTS OF BIODIESEL FROM INDONESIA..... 7

A. Request for the establishment of a panel by Indonesia	7
--	---

4 PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS..... 8

5 ADOPTION OF THE 2023 DRAFT ANNUAL REPORT OF THE DISPUTE SETTLEMENT BODY 8

6 APPELLATE BODY APPOINTMENTS: PROPOSAL BY AFGHANISTAN; ANGOLA; ANTIGUA AND BARBUDA; ARGENTINA; AUSTRALIA; BANGLADESH; BENIN; PLURINATIONAL STATE OF BOLIVIA; BOTSWANA; BRAZIL; BRUNEI DARUSSALAM; BURKINA FASO; BURUNDI; CABO VERDE; CAMBODIA; CAMEROON; CANADA; CENTRAL AFRICAN REPUBLIC; CHAD; CHILE; CHINA; COLOMBIA; CONGO; COSTA RICA; CÔTE D'IVOIRE; CUBA; DEMOCRATIC REPUBLIC OF CONGO; DJIBOUTI; DOMINICA; 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; LAO PEOPLE'S DEMOCRATIC REPUBLIC; LESOTHO; LIECHTENSTEIN; MADAGASCAR; MALAWI; MALAYSIA; MALDIVES; MALI; MAURITANIA; MAURITIUS; MEXICO; REPUBLIC OF MOLDOVA; MOROCCO; MOZAMBIQUE; MYANMAR; NAMIBIA; NEPAL; NEW ZEALAND; NICARAGUA; NIGER; NIGERIA; NORTH MACEDONIA; NORWAY; PAKISTAN; PANAMA; PARAGUAY; PERU; THE PHILIPPINES; QATAR; RUSSIAN FEDERATION; RWANDA; SAINT KITTS AND NEVIS; SAINT LUCIA; SENEGAL; SEYCHELLES; SIERRA LEONE; SINGAPORE; SOUTH AFRICA; SWITZERLAND; THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU; TANZANIA; THAILAND; TOGO; TUNISIA; TÜRKIYE; UGANDA; UKRAINE; UNITED KINGDOM; URUGUAY; THE BOLIVARIAN REPUBLIC OF VENEZUELA; VIET NAM; ZAMBIA AND ZIMBABWE (WT/DSB/W/609/REV.26) 8

7 STATEMENT BY ANTIGUA AND BARBUDA REGARDING THE DISPUTE ON: "UNITED STATES – MEASURES AFFECTING THE CROSS-BORDER SUPPLY OF GAMBLING AND BETTING SERVICES" (DS285) 15

8 STATEMENT BY INDIA REGARDING THE JOINT COMMUNICATION CONTAINED IN DOCUMENT JOB/DSB/7 TITLED: "REFLECTIONS ON THE REFORM OF THE WTO DISPUTE SETTLEMENT SYSTEM" 17

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.244)

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.219)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.182)

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.66)

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States (WT/DS471/17/Add.58)

F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.53 – WT/DS478/22/Add.53)

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 would recall, Article 21.6 required 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, the Chairman wished to invite 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: "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.244)

1.2. The Chairman drew attention to document WT/DS184/15/Add.244, 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 provided a status report in this dispute on 16 November 2023, 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 the most recent status report and the statement made 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.219)

1.6. The Chairman drew attention to document WT/DS160/24/Add.219, 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 November 2023, 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 said that the European Union thanked the United States for its status report and its statement made at the present meeting. The European Union referred to its previous statements and said that it 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.182)

1.10. The Chairman drew attention to document WT/DS291/37/Add.182, 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 recalled that the EU approval system was not covered by the DSB's recommendations and rulings. The EU continued to propose for vote authorizations for genetically modified organisms that, in the European Food Safety Authority's risk assessment, had been concluded to be safe. On 19 October 2023, the Commission had presented to the Appeal Committee a draft decision renewing the authorizing for the placing on the market of a GM oilseed rape² for food uses. The vote had resulted in "no opinion". It was now for the Commission to decide on the adoption of the draft decision. On 24 October 2023, the Commission had presented to the Standing Committee a draft decision authorizing the placing on the market of a GM maize and a decision renewing the authorisation for placing on the market of a GM oilseed rape³ for food and feed uses. The votes had resulted in "no opinion". The draft decisions would be referred to the Appeal Committee during the meeting of 28 November 2023.

1.12. 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 engage with the EU on these issues, and had provided recommendations on several occasions as to how the EU could address the undue delays in its approval procedures. The United States had described these problems in detail and noted its concerns with the EU's biotech approval procedures monthly in the DSB and during the semi-annual US-EU biotech consultations, the most recent of which took place on 22 June 2023. The United States appreciated that, from October 2022 through October 2023, the European Commission had approved eight new agricultural biotechnology products and reappraised the use of five additional products. Despite this progress, the United States again requested that the EU move to issue final approvals for all products that had completed science-based risk assessments at the European Food Safety Authority, including those products that were with the Standing Committee and Appeals Committee.

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.66)

1.14. The Chairman drew attention to document WT/DS464/17/Add.66, 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 16 November 2023, in accordance with Article 21.6 of the DSU. On 6 May 2019, the US Department of Commerce 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 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 made at the present meeting. Korea, once again, urged the United States to take prompt and appropriate steps to implement the DSB recommendations for the "as such" measures in this dispute.

² GM oilseed rape GT73.

³ GM maize Bt11 × MIR162 × MIR604 × MON 89034 × 5307 × GA21 and sub-combinations and oilseed rapes Ms8, Rf3 and Ms8 × Rf3 (renewal).

1.17. The representative of Canada said that Canada wished to recall its statement made under this Agenda item at the 26 October 2023 DSB meeting.

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.58)

1.19. The Chairman drew attention to document WT/DS471/17/Add.58, 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 16 November 2023, 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 and the statement made at the present meeting. China was disappointed that more than five years after the expiry of the reasonable period of time, the United States still failed to implement the adopted rulings and recommendations in this dispute. Therefore, China, once again, urged the United States to honor its obligation by bringing its measures into conformity 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.53 – WT/DS478/22/Add.53)

1.23. The Chairman drew attention to document WT/DS477/21/Add.53 – WT/DS478/22/Add.53, 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.

1.24. The representative of Indonesia said that Indonesia provided its status report pursuant to Article 21.6 of the DSU. Indonesia wished to state that it had implemented the rulings and recommendations of the DSB in these disputes by enacting Law No. 6/2023 on the Stipulation of the Government Regulation in lieu of Law No. 2/2022 on Job Creation to address Measure 18 regarding self-sufficiency. Indonesia also reiterated that it had adjusted its importation policy to address Measure 1-17 with the enactment of the Minister of Agriculture and Minister of Trade Regulations. Indonesia believed that these adjustments had eliminated the harvest period restriction, import realization requirement, six-month harvest requirement, reference price, and domestic purchase requirement so that it was in line with the DSB's rulings and recommendations. Indonesia acknowledged the concerns raised by New Zealand and the United States with respect to Indonesia's import licensing regime and commodity balance mechanism. Indonesia wished to ensure the complainants that this mechanism served as a tool to facilitate trade, provide ease, and expedite importation through an integrated national database system without creating additional burdens on imports. Indonesia wished to reaffirm its readiness to continue engaging in discussions with New Zealand and the United States to find solutions for these disputes and related matters.

1.25. The representative of the United States said that the United States continued to have concerns with Indonesia's compliance with the DSB's recommendations. With respect to measures 1-17, the United States had asked several times and would still appreciate further clarity on which regulations now comprised Indonesia's import licensing regimes and on any forthcoming regulations that would affect the regimes. The United States noted that measures 9 and 17 were, respectively, the horticultural products, and animal and animals products import licensing regimes as a whole. As the United States had expressed before, it continued to have concerns about Indonesia's administration of these regimes. To enable the United States to understand and evaluate Indonesia's claim of

compliance with the DSB recommendations, the United States had requested that Indonesia provide the regulations that comprised Indonesia's current import licensing regimes, in addition to any draft regulations that might affect the regimes. As of 23 November 2023, the United States had not received a response from Indonesia. The United States was also not in a position to agree with Indonesia's claim of compliance regarding Measure 18 because it was still reviewing Indonesia's statement that Law No. 6/2023 on the Stipulation of the Government Regulation in lieu of Law No. 2/2022 on Job Creation removed Measure 18. 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 DSB's recommendations and rulings. As outlined at previous meetings of the DSB, New Zealand remained concerned about a number of measures. New Zealand would still appreciate understanding better the regulations that now underpinned Indonesia's import licensing regimes as a result of the relevant legislative adjustments, as well as any regulations or other amendments that were forthcoming. New Zealand continued to have concerns about the administration of these regimes, including a lack of transparency regarding allocation criteria and applicable timeframes. New Zealand also remained interested in better understanding how the new commodity balance would in fact operate to simplify and facilitate trade in affected products. New Zealand looked forward to further constructive engagement with Indonesia on the outstanding issues.

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

2 COLOMBIA – ANTI-DUMPING DUTIES ON FROZEN FRIES FROM BELGIUM, GERMANY AND THE NETHERLANDS (DS591)

A. Statement by Colombia

2.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Colombia, and he invited the representative of Colombia to speak.

2.2. The representative of Colombia said that on 10 March 2023, pursuant to Article 21.3(b) and Article 25.4 of the DSU, the European Union and Colombia had notified the Chair of the DSB that they had agreed that the reasonable period of time for Colombia to implement the recommendations of the Award of the Arbitrators (WT/DS591/ARB25 and WT/DS591/ARB25/Add.1) in the dispute "Colombia - Anti-Dumping Duties on Frozen Fries from Belgium, Germany and the Netherlands" (DS591) would expire on 5 November 2023. In other words, 10 months and 15 days from the day of the issuance of that Award to the Parties on 21 December 2022. Since the reasonable period of time was established, Colombia had conducted a detailed administrative review of the original determination. Colombia was now pleased to inform the DSB that, on 21 November 2023, it had issued Ministerial Resolution No. 286 officially concluding the administrative review and publishing its results. Colombia would submit a status report to the DSB, as provided for in Article 21.6 of the DSU, prior to the DSB meeting in December 2023. The recent aforementioned Ministerial Resolution No. 286 fully implemented the DSB rulings and recommendations based on the findings of the panel and the MPIA panel in this dispute. Colombia also acknowledged and appreciated the EU's flexibility with regard to the issuance of this Resolution a few days prior to the official expiry of the reasonable period of time. As discussed with the EU, this was necessary to enable its agencies to fully address all the comments received from the EU and other stakeholders. The issuance of the Ministerial Resolution came after more than 10 months of ongoing and coordinated efforts by the directorates of Colombia's Ministry of Commerce, which had carefully reviewed the terms of the Award and followed them to the letter, resulting in a significant reduction in the dumping margins applicable to European companies. Therefore, Colombia considered that it had already implemented all its obligations under the Award of the Arbitrators (WT/DS591/ARB25 and WT/DS591/ARB25/Add.1) and that this dispute had been resolved successfully. Colombia thanked the European Union for its constructive engagement throughout these proceedings, including the implementation phase. As Colombia had stated on previous occasions, Colombia was pleased that the MPIA procedure had been used for the first time in this dispute. This demonstrated the usefulness and effectiveness of the procedure, and underlined the urgent need to restore the Appellate Body to its full capacity in order to fulfil the desire of the vast majority of WTO Members to have a functional appellate review.

Colombia looked forward to continuing to work with all WTO Members on this important issue with a view to restoring the WTO dispute settlement system to its full functionality MC13.

2.3. The representative of the European Union said that the European Union thanked Colombia for its statement made at the present meeting. Nevertheless, the European Union was disappointed by Colombia's failure to implement the recommendations of the Arbitrators' Award by the end of the reasonable period of time, which had ended on 5 November 2023. Given the particularities of this case, the reasonable period of time was more than sufficient to implement all Arbitrators' findings. The European Union took note of Colombia's statement made at the present meeting. The European Union reserved its right to express its views on the matter at a later stage. The European Union regretted that Colombia had so far not provided any status report in this dispute, inconsistently with its obligations pursuant to Article 21.6 of the DSU. This obviously made it even more difficult for the European Union to assess Colombia's progress in the implementation of the recommendations and rulings in the Arbitrators' Award. The European Union urged Colombia to respect its obligations under Article 21.6 of the DSU and, in particular, to provide a status report with respect to this dispute as soon as possible.

2.4. The DSB took note of the statements.

3 EUROPEAN UNION – COUNTERVAILING DUTIES ON IMPORTS OF BIODIESEL FROM INDONESIA

A. Request for the establishment of a panel by Indonesia (WT/DS618/2)

3.1. The Chairman recalled that the DSB had considered this matter at its meeting on 26 October 2023 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/DS618/2 and he invited the representative of Indonesia to speak.

3.2. The representative of Indonesia said that on 11 August 2023, Indonesia had requested consultations with the European Union ("EU") pursuant to Articles 1 and 4 of the DSU, Article 30 of the SCM Agreement, and Article XXIII of the GATT 1994, concerning the imposition of countervailing duties on imports of biodiesel from Indonesia. The consultations had taken place in Geneva on 4 October 2023, however it had failed to resolve this dispute. At the previous regular DSB meeting, Indonesia had filed its first request for the establishment of a panel. Now, Indonesia wished to reiterate its right to protect its national interest and urged the European Union to bring its measures into conformity with the WTO provisions. Indeed, despite EU's assertion that its measures were WTO-consistent, Indonesia remained firm that the measures were inconsistent with EU's commitments under the WTO rules. Therefore, Indonesia was requesting the establishment of a panel pursuant to Article 4.7 and 6 of the DSU.

3.3. The representative of the European Union said that the European Union regretted Indonesia's decision to request a WTO panel on countervailing duties on imports of biodiesel from Indonesia. Indonesia was of course entitled to bring this matter to dispute settlement in the WTO, but the European Union firmly believed that the measures at stake were fully justified. The European Union was therefore confident that it would prevail in this dispute, and that its measures would be found to be in accordance with the WTO law. The European Union stood ready to preserve the availability of appeal review through the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) and stood ready to work towards this with Indonesia.

3.4. 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.

3.5. The representatives of Argentina; Canada; China; Japan; Norway; the Russian Federation; Singapore; Thailand; Türkiye; the United Kingdom and the United States reserved their third-party rights to participate in the Panel's proceedings.

4 PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/725)

4.1. The Chairperson drew attention to document WT/DSB/W/725 which contained one new nomination proposed by Chile 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/725.

4.2. The DSB so agreed.

5 ADOPTION OF THE 2023 DRAFT ANNUAL REPORT OF THE DISPUTE SETTLEMENT BODY (WT/DSB/W/723)

5.1. The Chairman said that, under this Agenda item, he was submitting for adoption the draft text of the 2023 Annual Report of the DSB contained in document WT/DSB/W/723. He said that he was doing so pursuant to the Procedures for an Annual Overview of WTO Activities and for Reporting under the WTO, contained in document WT/L/105. This Report covered the work of the DSB since the previous Annual Report contained in document WT/DSB/84. In other words, it covered meetings of the DSB from 20 December 2022 through 26 October 2023. The Report contained a factual summary of DSB meetings during the period under review. As in the past, following the adoption of the Annual Report at the present meeting, the Secretariat would update the Report under its own responsibility in order to include the actions taken by the DSB at the present meeting. Subsequently, the updated Annual Report would be submitted for consideration by the General Council at its meeting scheduled for 14 and 15 December 2023. Consequently, the Chairman proposed that the DSB adopt the draft Annual Report of the DSB contained in document WT/DSB/W/723 on the understanding that it would be further updated by the Secretariat.

5.2. The DSB took note of the statement and adopted the draft Annual Report of the DSB contained in document WT/DSB/W/723 on the understanding that it would be further updated by the Secretariat.⁴

6 APPELLATE BODY APPOINTMENTS: PROPOSAL BY AFGHANISTAN; ANGOLA; ANTIGUA AND BARBUDA; ARGENTINA; AUSTRALIA; BANGLADESH; BENIN; PLURINATIONAL STATE OF BOLIVIA; BOTSWANA; BRAZIL; BRUNEI DARUSSALAM; BURKINA FASO; BURUNDI; CABO VERDE; CAMBODIA; CAMEROON; CANADA; CENTRAL AFRICAN REPUBLIC; CHAD; CHILE; CHINA; COLOMBIA; CONGO; COSTA RICA; CÔTE D'IVOIRE; CUBA; DEMOCRATIC REPUBLIC OF CONGO; DJIBOUTI; DOMINICA; 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; LAO PEOPLE'S DEMOCRATIC REPUBLIC; LESOTHO; LIECHTENSTEIN; MADAGASCAR; MALAWI; MALAYSIA; MALDIVES; MALI; MAURITANIA; MAURITIUS; MEXICO; REPUBLIC OF MOLDOVA; MOROCCO; MOZAMBIQUE; MYANMAR; NAMIBIA; NEPAL; NEW ZEALAND; NICARAGUA; NIGER; NIGERIA; NORTH MACEDONIA; NORWAY; PAKISTAN; PANAMA; PARAGUAY; PERU; THE PHILIPPINES; QATAR; RUSSIAN FEDERATION; RWANDA; SAINT KITTS AND NEVIS; SAINT LUCIA; SENEGAL; SEYCHELLES; SIERRA LEONE; SINGAPORE; SOUTH AFRICA; SWITZERLAND; THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU; TANZANIA; THAILAND; TOGO; TUNISIA; TÜRKIYE; UGANDA; UKRAINE; UNITED KINGDOM; URUGUAY; THE BOLIVARIAN REPUBLIC OF VENEZUELA; VIET NAM; ZAMBIA AND ZIMBABWE (WT/DSB/W/609/REV.26)

6.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Guatemala, on behalf of a number of delegations. He drew attention to the proposal contained in document WT/DSB/W/609/Rev.26 and invited the representative of Guatemala to speak.

6.2. The representative of Guatemala, speaking on behalf of the co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.26, said that the delegations in question had agreed to submit the joint proposal, dated 6 September 2023 to launch the selection processes for the vacancies of the Appellate Body members. On behalf of those 130 Members, Guatemala wished to

⁴ Subsequently, the Annual Report of the DSB was circulated in document WT/DSB/85.

state the following. This Agenda item and the extensive number of Members submitting the joint proposal reflected a common interest in the functioning of the Appellate Body and, more generally, in the functioning of the dispute settlement system. The joint proposal sought to: (i) start seven selection processes; (ii) to establish a Selection Committee; (iii) to set a deadline of 30 days for the submission of candidates; and (iv) to request that the Selection Committee issue its recommendations within 60 days after the deadline for nominations of candidates. The co-sponsors invited and urged 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, before beginning with its statement, the United States recalled that the United States and other Members had jointly issued WT/GC/244, "The Joint Statement on Aggression by the Russian Federation against Ukraine with the Support of Belarus," which condemned Russia's actions as a violation of international law, the UN Charter, and fundamental principles of international peace and security. The United States reiterated its support for Ukraine during this unimaginably difficult time. The United States paid tribute to the heroism of the Ukrainian people, their armed forces and Leaders. With respect to the current Agenda item, Members were aware of the longstanding US concerns with WTO dispute settlement. Those concerns remained unaddressed, and the United States did not support the proposed decision. The United States believed that fundamental reform was needed to ensure a well-functioning WTO dispute settlement system. The goal for the United States was not to return to the old system. Rather, the United States was seeking a system that would be fair and would revitalize the agency of Members to settle their disputes. A system that preserved the policy space in WTO rules for Members to address their critical interests – most notably on matters of essential security. And a system that supported, rather than undermined, the WTO's role as a forum for discussion and negotiation to help Members address new challenges. As WTO Members continued working to better understand each other's interests in WTO dispute settlement, the next task of reform was to ensure that any future system would meet the interests of all Members to the greatest extent possible. The United States had been working with Members to advance this goal, and looked forward to continued engagement. The United States was committed to working towards a fundamentally reformed and improved system. As Members continued to engage, the United States welcomed the experimentation of Members in finding alternative means to resolve their disputes, such as the increased adoption of panel reports, including through agreements to adopt that had been reached prior to circulation of a panel's report; arrangements between specific Members to permit review of a report; and intensified discussions to find solutions to disputes, including in the case of the United States. These varied approaches reinforced Members' primary interest in a system that supported parties in the resolution of their disputes. The United States shared that objective and looked forward to engaging further with those Members that also saw value in an improved and reformed dispute settlement system that was accessible to all.

6.4. The representative of Bangladesh said that Bangladesh wished to thank Guatemala for presenting the proposal on Appellate Body appointments contained in document WT/DSB/W/609/REV.26. With regard to the restoration of the Appellate Body, Bangladesh, as a co-sponsor of the proposal was requesting that the DSB take a decision to launch the selection processes immediately to fill the vacancies in the Appellate Body. In order to ensure the security and predictability of this multilateral trading system, Members had to launch the process for Appellate Body appointments as a top priority and without further delay. Bangladesh requested Members to engage immediately in discussions on Appellate Body appointments. This was an urgency, also expressed by the Ministers at MC12. Bangladesh was ready to continue constructive discussions in that regard.

6.5. The representative of Brazil said that Brazil thanked Guatemala for presenting the proposal on behalf of its many co-sponsors to call for the selection of new Appellate Body members without further delay and referred to its previous statements made under this Agenda item. The dispute settlement mechanism ensured the fulfillment of the rights and obligations of all Members and guaranteed that their commitments would be either respected or enforced. Deliberately preventing the rules-based system from its fundamental pillar of binding dispute settlement was a double loss for developing countries. First, developing countries were more negatively affected by power dynamics. Second, Members were witnessing a period in which developed nations resorted to unilateral trade measures of questionable consistency with their WTO obligations with no system to effectively challenge them. For Brazil, having a fully and well-functioning two-tier binding DS system accessible to all Members by 2024 was of the utmost importance. Brazil called again on all Members

to deepen their engagement in the DSB restoration workflow, with a view to concluding discussions on the remaining and most important issues by MC13.

6.6. The representative of Canada said that, first, Canada wished to say that it continued to strongly condemn Russia's unprovoked and unjustifiable invasion of Ukraine. Those hostile acts were a flagrant violation of international law and the rules-based international system, upon which organizations such as the WTO were based. Canada expressed its solidarity with the Ukrainian people. Ukraine's sovereignty and territorial integrity had to be respected, and the Ukrainian people had to be free to determine their own future. Canada called on Russia to immediately cease all hostile and provocative actions against Ukraine, and to withdraw its military forces from the country. Turning back to this Agenda item on the appointment of Appellate Body members, Canada thanked Guatemala for its statement made on behalf of the co-sponsors. The critical mass of WTO Members supporting this proposal clearly demonstrated the importance they all attached to a fully operational Appellate Body as an integral part of the dispute settlement system. Canada reiterated Members' objective of having a fully operational and well-functioning dispute settlement system, accessible to all, by 2024. Canada would continue to participate actively in discussions aimed at finding solutions to the current situation. Canada's priority remained to find a multilateral and lasting solution for all Members, including the United States. In the meantime, the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), provided access to binding dispute settlement that included the possibility of appeal in disputes between its participants. There were now 53 WTO Members endorsing the MPIA. Canada had witnessed the positive impacts of this arrangement in the context of several disputes and invited all WTO Members to consider participating in the MPIA. Canada was available to discuss the details of the MPIA with any interested Members.

6.7. The representative of China said that China supported the statement made by Guatemala on behalf of the 130 co-sponsors. China referred to its previous statements made on this urgent matter, and called upon more Members to join the AB proposal. Like others, China reiterated its firm commitment to an independent, impartial two-tier dispute settlement system, which had not only facilitated prompt and fair resolution of disputes between Members, but had also provided security and predictability to the multilateral trading system. To ensure that such objectives continued to be fulfilled, China believed that the most urgent task was to immediately launch the selection processes and fill the vacancies in the Appellate Body. This was a treaty obligation of all WTO Members. No prerequisite should be attached to it. China would continue its constructive engagement in the ongoing discussion on DS reform, and called upon all Members to engage in this exercise in good faith and with pragmatic, outcome-oriented spirits. Before concluding, China wished to take this opportunity to encourage more Members to join the MPIA as a contingent measure to safeguard their right to appeal until the Appellate Body was restored. China stood ready to discuss with any interested Members and would be ready to provide further information as necessary.

6.8. The representative of Norway said that Norway fully supported the joint proposal presented by Guatemala, to launch the process for appointments to the Appellate Body, supported by 130 Members. A fully functioning dispute settlement system accessible to all Members was critical to maintain the rules-based multilateral trading system and for the credibility of the WTO as a rules-based organization and was a top priority for Norway. Norway referred to its previous statements made under this Agenda Item. Norway continued to engage in the ongoing discussions to address the current impasse. Norway again thanked Mr. Molina and other delegations for their tremendous efforts laid down in the past months. The Annual Report of the Dispute Settlement Body adopted at the present meeting also clearly showed that Members valued and continued to make use of the dispute settlement mechanism. Norway also wished to use this opportunity to remind Members of the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). The Arrangement was open for WTO Members to join for as long as the Appellate Body remained unable to function fully. As the work of the DSB directly concerned the upholding of the rules based international order, Norway also found it appropriate and pertinent to address the situation in Ukraine. Norway continued to strongly condemn Russia's egregious military attack on Ukraine. Russia's war of aggression against Ukraine constituted a gross violation of international law, the rules-based system which also underpinned this Organization and the work of the DSB.

6.9. The representative of New Zealand said that New Zealand continued to condemn unequivocally Russia's ongoing war of aggression against Ukraine. Those actions were egregious and unlawful: the use of force to change borders is strictly prohibited under international law, as was the targeting of civilians and civilian infrastructure. Russia's invasion of Ukraine's sovereign territory had deep

implications for global peace, security, and economic stability. New Zealand continued to stand firmly alongside its Ukrainian partners and against any steps by Russia that risked a further escalation in this conflict. In relation to this Agenda item, New Zealand reiterated its support for the proposal co-sponsored by 130 WTO Members and wished to refer to its previous statements made on this matter. Reform of the dispute settlement system remained a key priority for New Zealand and it was heartened by the progress and momentum in the ongoing discussions. While there was more to be done, the consolidated draft text under consideration was testament to the quality and the pace of the work to date. New Zealand thanked all those delegations involved in the drafting process for the collaborative spirit in which this had been undertaken. New Zealand urged all Members to continue engaging constructively and pragmatically in order to advance this well ahead of MC13, consistent with the shared priority placed in restoring a fully and well-functioning dispute settlement system accessible to all Members. New Zealand also wished to take this opportunity to invite those Members who had not joined the MPIA to consider doing so. The MPIA provided an avenue to safeguard access to an appeal level of review, while Members worked collectively towards reform.

6.10. The representative of Nigeria, speaking on behalf of the African Group, wished to thank Guatemala for its statement. The African Group reiterated its support for a fully functioning dispute settlement system that was accessible to all Members by 2024, in accordance with the mandate from Ministers at MC12. The African Group's priority remained to find a long-lasting solution to the impasse that all Members could agree to in order to restore confidence of Members in the multilateral trading system, as well as strengthen the negotiating function within the WTO. The critical mass of WTO Members that had co-sponsored the proposal for Appellate Body appointments indicated the importance that they all accorded to a fully functioning dispute settlement system. Members were reminded by the 2023 Draft Annual Report of the significant activities of the DSB, particularly the DSB's approval of 11 new nominations proposed for inclusion on the Indicative List of Governmental and Non-Governmental Panelists and the establishment of four panels during the period under review. The foregoing activities by the DSB, including the process whereby two panel reports had been adopted, as indicated in the Report, demonstrated the critical importance of the dispute settlement system for the functioning of the WTO and its overall contribution to a rules-based multilateral trading system. The African Group believed that process issues could always be addressed with substance and therefore the appointments of Appellate Body members should be delinked from reform objectives. Finally, the African Group stood ready to engage constructively in the ongoing discussions on dispute settlement reform in order to restore a fully functioning dispute settlement system by 2024 and as agreed at MC12.

6.11. The representative of Saint Vincent and the Grenadines, speaking on behalf of the ACP Group, thanked Guatemala for presenting the joint proposal under this Agenda item. Whilst the ACP Group on a whole was not a co-sponsor of the current proposal, there were 45 ACP Group members which, under their own responsibility, were co-sponsors. The rule of law was not an arid legal doctrine but the foundation of a fair, certain, predictable and just multilateral trading system. In this regard, the ACP Group remained concerned that WTO Members were unable to benefit from the full functioning of the dispute settlement system (DSS). The WTO dispute settlement system was essential for maintaining a rules-based international trading system, resolving conflicts in a fair and orderly manner, and fostering an environment where the rule of law prevailed over the rule of might. Therefore, the ACP Group supported the call for the launch of the selection processes for Appellate Body appointments so as to restore the full functioning two-tier binding dispute settlement in the WTO. The ACP Group called on the WTO Member which continued to block these appointments to join the other 163 WTO Members that wished to see the system restored.

6.12. The representative of Hong Kong, China said that it had been Hong Kong, China's top priority to restore a two-tiered, binding and fully-functioning dispute settlement system in the WTO. Hong Kong, China continued to join other Members in reiterating its concerns about the Appellate Body impasse, as well as its commitment to work constructively with all WTO Members to restore a fully and well-functioning dispute settlement system accessible to all by 2024 as mandated in the MC12 Outcome Document.

6.13. The representative of Indonesia said that Indonesia thanked Guatemala for presenting the proposal on behalf of 130 WTO Members and wished to be associated with the statement made by Guatemala. Indonesia also wished to refer to its previous statements made on this Agenda item. Indonesia deeply regretted that this unprecedented circumstance of non-functioning appeal continued to exist while the number of disputes continued to rise. If this situation persisted, it would

result in an imbalance of rights and obligations among WTO Members. While Members were working intensively to discuss informally on possible ways forward in dispute settlement reform, Indonesia wished to place Members' attention on the urgency of the immediate launch of the selection processes to fill Appellate Body members vacancies, as mandated in Article 17.2 of the DSU, to maintain the two-tier dispute settlement system in place. With MC13 fast approaching, again, Members should intensify their work in an open, transparent, and inclusive manner toward a fully functioning dispute settlement system accessible to all Members by 2024, as set out in the MC12 Outcome Document.

6.14. The representative of Singapore said that Singapore thanked Guatemala for its statement, which Singapore strongly supported. Singapore reiterated its previous statements made on this matter and emphasized its commitment to participating constructively in ongoing discussions in order to deliver lasting and durable dispute settlement reform.

6.15. The representative of Japan said that, first, Japan wished to touch upon the situation in Ukraine. Japan strongly condemned Russia's aggression against Ukraine and its attacks against civilian infrastructure and cities across Ukraine. Japan strongly urged Russia, once again, to stop the aggression and immediately withdraw its forces from the territory of Ukraine within its internationally recognized borders. Japan would also continue to work firmly on the two pillars of imposing severe sanctions against Russia and providing robust support to Ukraine, in cooperation with the international community. Turning to this Agenda item, Japan wished to refer to its statements made at previous DSB meetings and supported the AB proposal. Japan absolutely shared the sense of urgency for reform of the dispute settlement system and had set as the utmost priority to achieve that reform. For that purpose, Japan welcomed the intensive discussions in the informal process on DS reform. With a view to having a fully and well-functioning DS system by 2024, as agreed at MC12, Japan would work actively and constructively with all WTO Members.

6.16. The representative of South Africa said that South Africa wished to be associated with the statement made by Guatemala on the proposal for Appellate Body appointments and thanked Guatemala for its statement made on behalf of the co-sponsors. South Africa reiterated its previous statements made regarding the urgency of this matter. When Members had agreed to bind themselves to the Uruguay Round Agreements, it was on the understanding that their rights would be protected by a predictable, binding, rules-based system underpinned by a two-tier dispute settlement mechanism. The assurance that their trade relations would be subject to rules rather than soft power was a fundamental element of the bargain struck and the continued dysfunctionality of the Appellate Body undermined the consensus reached in the Uruguay Round and imperilled the multilateral trading system. A fully functioning Appellate Body was a top priority for WTO reform and it was crucial to the effective operation of the multilateral trading system. South Africa welcomed the commitment by Members undertaken during MC12 for a fully and well-functioning dispute settlement system accessible to all Members by 2024. South Africa would work actively and constructively with all Members to find a lasting solution to the current impasse that would ensure an effective dispute settlement system.

6.17. The representative of the United Kingdom said that the United Kingdom continued to support launching the process for appointments to the Appellate Body. The United Kingdom wished to refer to its previous statements made on this matter and continued to encourage all remaining Members to join in support. Achieving a fully and well-functioning dispute settlement system accessible to all Members was in the interests of all Members who valued a predictable, rules-based trading system. The United Kingdom continued its active participation in the Member-led discussions on dispute settlement reform and was encouraged by the progress made. The United Kingdom continued to call on all Members to engage pragmatically and find solutions that would command the support of all Members. The United Kingdom continued to condemn President Putin's war against Ukraine in the strongest terms. The United Kingdom again recalled that Russia's actions were a repudiation of the principles of the UN Charter and of the purpose and principles of this Organization. The United Kingdom stood with Ukraine and would continue to do everything it could to support Ukraine's heroic resistance to this assault on its sovereignty and territorial integrity.

6.18. The representative of Korea said that Korea echoed other delegations and reaffirmed its consistent position on Russia's aggression that the sovereignty, territorial integrity and independence of Ukraine should be respected. As for the Agenda item, Korea thanked Guatemala and the co-sponsors for their continuous support in favour of launching the Appellate Body selection

processes. Korea reiterated its support for the joint proposal and wished to refer to its previous statements made on this matter. The WTO dispute settlement system enhanced the security and predictability of the rule-based multilateral trading system in response to the needs of WTO Members. With that in mind, Korea welcomed Members' continuous engagement in ongoing discussions for dispute settlement reform and very much appreciated all the efforts that they were making to fulfil the mandate of the MC12 Outcome Document in achieving a fully and well-functioning dispute settlement system accessible to all Members by 2024.

6.19. The representative of Australia said that, first, Australia wished to note that it condemned in the strongest terms Russia's illegal, unjustified and unprovoked invasion of Ukraine. Australia continued to raise this issue in this forum because Russia's actions were a violation of international law, and the fundamental international norms on which organizations such as the WTO were based. Australia stood in solidarity with the people of Ukraine and called on Russia to withdraw its troops. Turning to this Agenda item, fixing the dispute settlement system remained Australia's highest reform priority. With little more than two months before MC13, time was fast running out to achieve Members' shared objective of having a fully and well-functioning dispute settlement system accessible to all Members by 2024. Australia was pleased with the progress made by Members in the ongoing informal discussions, but there was still more work to be done. Australia would continue working actively and constructively, and urged all other Members to do the same so they could maintain the momentum to meet the MC12 mandate. As they worked towards this goal, Australia continued to encourage Members to join the MPIA, which served to highlight the value Members placed on a binding, enforceable dispute settlement system. Australia was open to discussing the MPIA with any interested delegation.

6.20. The representative of the Russian Federation said that the Russian Federation wished to refer to its previous statements made on this matter and thanked Guatemala and the co-sponsors for their continuous and faithful commitment to the appointment processes of Appellate Body members. The Russian Federation reiterated its strong support for launching the appointment processes immediately. Also, the Russian Federation considered that the problem with the Appellate Body impasse was the core issue around which the discussions on DS reform should be conducted. Without solving it, the restoration of the fully and well-functioning, two-tiered dispute settlement system was unachievable, which left the consideration of other elements of possible reform meaningless. Concerning certain political statements made by certain Members at the present meeting, unfortunately, Russia was forced to remind Members that the DSB had its own tasks and mandate, as set out in different DSU provisions. The political issues raised by some WTO Members neither concerned any of the issues contained on the Agenda of the present meeting, nor were within the competence of the DSB. Most importantly, the WTO was not a political organization and Members should refrain from trying to address the issues that were not in the competence of the Organization. In contrast, under Article 17.2 of the DSU, the DSB did not just have the mandate, but obligation regarding this matter. Accordingly, the situation with the blockage of the Appellate Body appointments was the one to be addressed and the solution to this matter would strengthen the multilateral trading system. Hence, the Russian Federation encouraged WTO Members to focus on resolving the problems they already had and not create new ones.

6.21. The representative of Thailand said that Thailand wished to reiterate its previous position on this matter as it continued to support and co-sponsor the proposal by Guatemala. Thailand agreed with other co-sponsors that it was urgent to appoint the Appellate Body members and Thailand fully supported the restoration of the Appellate Body. While Thailand was committed to discuss the dispute settlement reform, it was, at the same time, also committed to restoring the Appellate Body so that the WTO's dispute settlement system could be fully functioning by 2024.

6.22. The representative of Pakistan said that Pakistan wished to support the statement made by Guatemala on behalf of the co-sponsor of WT/DSB/W/609/Rev.26. A well-functioning dispute settlement system, in Pakistan's view, was a system that addressed the issues and challenges identified by Members without compromising on agreed principles. However, Pakistan's priority was to ensure a fully operational Appellate Body. A dysfunctional system would not serve their rules-based system in the present environment that required certainty and predictability.

6.23. The representative of Malaysia said that Malaysia expressed support for Guatemala's statement, which represented the 130 co-sponsors of the revised joint proposal, contained in WT/DSB/W/609/Rev.26, to launch the selection processes and to fill the vacancies in the Appellate

Body members. The immediate launch of the selection processes of vacancies of the Appellate Body were most crucial. Malaysia wished to reiterate its support in finding solutions with the view to restoring the fully functioning dispute settlement system, in particular the two-tiered dispute settlement system, which must be ensured to remain as the central pillar of this institution. Such a system had demonstrated its effectiveness in facilitating prompt and fair resolution of disputes between Members and provided security and predictability to the multilateral trading system. While Malaysia hoped that the current ongoing informal discussion would contribute towards the fully and well-functioning dispute settlement system, accessible to all Members by 2024, as mandated by Ministers at MC12, Malaysia would also urge all Members who had yet to support this proposal, to do so, so that they could commence the selection processes immediately. Malaysia also wished to refer to its previous statements on this matter.

6.24. The representative of Ukraine said that this challenging year was a reminder for Ukraine of the importance of the collaboration amongst Members to achieve a common goal such as "to preserve the basic principles and to further the objectives underlying this multilateral trading system" as it was laid down in the preamble to the Marrakesh Agreement Establishing the World Trade Organization. Ukraine believed that restoring a fully functioning dispute settlement system and appointing members of the Appellate Body were crucial issues and might be realized only by a meaningful reform. Ukraine was ready to make extensive efforts by actively being involved on initiatives for the achievement of a mutually agreed solution in order to renew guaranteed access to a binding, two-tier and independent resolution of trade disputes. Taking this opportunity, Ukraine wished to make a statement regarding the ongoing Russian war of aggression against Ukraine. Russia proceeded with its everyday shells in Ukraine and commits terrorist acts against civilians and its critical infrastructure. The residential areas, port infrastructure, grain warehouses, airfield network and industrial enterprises were under constant air and missile strikes. With such obvious terrorist attacks, Russia directly destroyed Ukraine's supply chains and logistics, significantly reducing Ukraine's exports and trade which had long-term negative effects. The terrifying consequences of the Russian military invasion increased constantly acquiring larger scales, becoming more global, going beyond Ukraine, affecting significantly more than the economy and trade. Ukraine was grateful to its partners for their reliable, powerful, united support and called upon WTO Members to deprive the aggressor state - Russia - of all its possibilities to commit the crime of aggression against Ukraine and to undermine the rules-based multilateral trading system.

6.25. The representative of Switzerland said that Switzerland condemned Russia's military aggression against Ukraine in the strongest terms. This was a flagrant violation of international law, most notably the prohibition of the use of force and the principle of the territorial integrity of States. Switzerland called on Russia to take military de-escalation measures, end hostilities and immediately withdraw its troops from the Ukrainian territory. Switzerland called on all actors to respect international law, in particular international humanitarian law. Turning to this Agenda item, Switzerland thanked Guatemala for placing this matter on the Agenda of the present meeting and wished to refer to the statements made by Switzerland on this matter at previous DSB meetings. Switzerland shall continue to participate constructively in the dispute settlement reform process and called on all Members to continue their engagement. Switzerland encouraged all Members to join the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). The MPIA was a pragmatic and effective way to preserve Members' rights until the Appellate Body impasse was resolved. Switzerland's priority remained, of course, to find a multilateral solution that would ensure that the dispute settlement system was fully functioning.

6.26. The representative of the European Union said that the European Union reiterated its resolute condemnation of the Russian Federation's war of aggression against Ukraine, which deliberately violated the UN Charter and disregarded the rules-based international order. It undermined international security and stability, and had no place in the 21st century. The European Union's support for Ukraine's independence, sovereignty, territorial integrity and right of self-defence was unwavering. The European Union called on the Russian Federation to stop its acts of aggression and withdraw its troops from Ukraine. Russia had to cease actions endangering the civilians and respect international humanitarian law. The European Union was firmly committed to ensuring full accountability for war crimes and other crimes committed against Ukraine and its people. Regarding this Agenda item, the European Union wished to refer to its previous statements made on this matter and thanked all Members that have co-sponsored the proposal to launch the AB appointment processes. Since 11 December 2019, the WTO no longer guaranteed access to a binding, two-tier, independent and impartial resolution of trade disputes. A fully functioning WTO dispute settlement

system was crucial. That was evidenced by the large number of Members co-sponsoring the present proposal. The European Union believed that restoring a fully functioning dispute settlement system and appointing members of the Appellate Body was a key priority. This task was a shared responsibility of WTO Members. In order to achieve this objective, the EU agreed that a meaningful reform was needed. The European Union supported a reform that would preserve the core features of the dispute settlement system. The European Union treated very seriously the commitment, made at MC12, of having a fully and well-functioning system by 2024 and it was committed to continuing to work towards meeting that goal. The European Union welcomed the progress that had already been achieved in the ongoing discussions and that was reflected in the draft text. The European Union hoped that Members could continue constructive discussions with a view to finalize the text by December 2023. In the meantime, the European Union was concerned about the impact that the absence of a fully functioning dispute settlement system was having on the international trading order. In that context, the MPIA had been put in place as an interim arrangement to preserve a fully functioning dispute settlement system among its participants and to support rules-based trade. The MPIA was open to any WTO Member, and the European Union invited any WTO Member to join the MPIA as long as a solution to this impasse had not been found.

6.27. The representative of Cambodia said that, at the outset, Cambodia wished to be associated with the statement made by Guatemala on behalf of the 130 co-sponsors of the joint AB proposal, contained in document WT/DSB/W/609/Rev.26. Cambodia wished to refer to its previous statements made on this important and longstanding Agenda item, and called for more Members to consider co-sponsoring this proposal. Cambodia urged Members to be more flexible to move this Agenda item forward in order to meet the MC12 mandate on appointments of the Appellate Body members. Cambodia stood ready to continue the constructive engagement towards the restoration of the Appellate Body under multilateral discussions.

6.28. The representative of Guatemala said that Guatemala, on behalf of the 130 co-sponsors, regretted that for the seventy-first occasion, Members had not been able to launch the selection processes for the vacancies in the Appellate Body. Thus, Members continued to fail fulfilling their duties as Members of the WTO. As Article 17.2 of the DSU clearly stated that: "vacancies shall be filled as they arise". Ongoing conversations about reform of the dispute settlement system should not prevent the Appellate Body from continuing to operate fully, and Members shall comply with their obligation under the DSU to fill vacancies as they arise. Guatemala noted with deep concern that by failing to launch the selection processes at the present meeting, the Appellate Body would continue to be unable to perform its functions, against the best interest of all WTO Members.

6.29. The Chairman thanked 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. Once again, he wished to take this opportunity to recall Members' commitment at MC12 to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024. The Chairman also noted that currently the informal process on DS reform was being carried out by technical experts. He recalled that this process was strongly supported by Senior Officials who met in Geneva on 23 and 24 October 2023. He hoped that collectively Members would be able to find a solution to this matter.

6.30. The DSB took note of the statements.

7 STATEMENT BY ANTIGUA AND BARBUDA REGARDING THE DISPUTE ON: "UNITED STATES – MEASURES AFFECTING THE CROSS-BORDER SUPPLY OF GAMBLING AND BETTING SERVICES" (DS285)

7.1. The representative of Antigua and Barbuda, speaking under "Other Business", said that Antigua and Barbuda wished to make a brief statement with respect to the compliance of the United States with the recommendations and rulings of the DSB as it related to the dispute on: "United States - Measures Affecting Cross-Border Supply of Gambling and Betting Services" (DS285). Or rather, to be more accurate, the non-compliance of the United States, because it was the US truly staggering practice to demur, to defer and to delay that had brought them to where they were now. Antigua and Barbuda served notice that at the next DSB meeting, it would propose a substantive Agenda item in order to brief Members more fully on this landmark case and to learn from the USTR delegation what compliance actions the US authorities had taken or intended to take. But for now, Antigua and Barbuda wished to start by noting a number of grim milestones that characterized the

passage of DS285 through the WTO dispute settlement system. This year marked twenty years since Antigua and Barbuda had requested consultations with the United States regarding measures applied by central, regional and local authorities in the United States, which had affected the cross-border supply of gambling and betting services which Antigua and Barbuda considered to have the cumulative impact of preventing the supply of gambling and betting services from its territory to the United States on a cross-border basis. Antigua and Barbuda had submitted that these unlawful actions of the United States in restricting betting and gaming services from Antigua and Barbuda were destroying an industry it valued at USD 3.3 billion, an industry that was on track to overtake tourism as the leading sector of the economy. This year also marked 20 years since the DSB had established a panel to examine this matter. A year from now would mark 20 years since the Panel had circulated its report to Members. They were also two years shy of two decades since the Appellate Body had circulated its report following the US appeal of the Panel Report.

7.2. In fact, every time Antigua and Barbuda thought of DS285, it was reminded of a book written by Arthur Leo Zagat entitled: "The Land Where Time Stood Still", the first chapter of which was called "Into Nothingness". Since the adoption of the Appellate Body Report and the Panel Report, as modified by the Appellate Body; since the expiration of the reasonable period of time following "binding" arbitration pursuant to Article 21.3 of the DSU; and since compliance proceedings as per Article 21.5 of the DSU – the United States had still not complied with the recommendations and rulings of the DSB – a fact confirmed by the compliance Panel on 30 March 2007. It was true that on 28 January 2013, the DSB had authorized the suspension of concessions and obligations to the United States with respect to intellectual property rights. However, the political directorate in Antigua and Barbuda was of the view that taking such a punitive course of action would likely come at significant economic and political costs to Antigua and Barbuda. The Government of Antigua and Barbuda had concluded that to take the lawful retaliatory action allowed under the recommendations and rulings of the DSB would open its economy to annihilation by the United States. The Government of Antigua and Barbuda was led to this view by, among other things, the threatening statements made by the US delegation in this very chamber at the time of the DSB's decision in January 2013. In addition, it seemed that all the third-party countries that had registered an interest in DS285, including the European Union and Japan, had been compensated by the United States, and generously so, while the state that had brought the original action remained languishing in the wilderness. Nevertheless, in a spirit of amity and cooperation, the Government of Antigua and Barbuda had, over the years, including very recently, reached out to the USTR seeking to arrive at an amicable resolution to this outstanding matter. To its great consternation and regret, all that had been to no avail. There appeared to be no "amicable solution" on the horizon. So what, therefore, was to be done? As it did on 24 April 2012, Antigua and Barbuda once again asked the DSB to keep this matter under robust surveillance. Antigua and Barbuda also asked the United States, once again, to make every good-faith effort to bring this matter to a mutually satisfactory conclusion. The Biblical story of Job spoke of a man who suffered calamity after calamity, but never lost patience or his faith. In like manner, the Government of Antigua and Barbuda had endured many calamities relating to DS285 and had exhibited great patience and had, remarkably, still kept faith with the ability of the multilateral trading system to resolve disputes. It was said that patience is a virtue; and virtue a grace. But how long shall this continue? It was little wonder then that in fact DS285 had become the poster-child for reform of the WTO dispute settlement system. Because if one of the world's smallest economies had to wait twenty years for resolution of a matter against the world's most powerful economy, then surely the system was broken and Members needed to fix it. However, the Government of Antigua and Barbuda wished to place on record that, the patience of Job notwithstanding, it also reserved its right, in keeping with its rights and obligations under the WTO, including the rulings and recommendations of the DSB, to take the measures it deemed appropriate.

7.3. The representative of the United States said that the United States recognized that, as provided for in Rule 25 of the Rules of Procedure of DSB meetings: "discussions on substantive issues under 'Other Business' shall be avoided ... ". If the intention of Antigua and Barbuda was to have a substantive discussion, it should have proposed this item for the Agenda of the DSB meeting ahead of the deadline. Nonetheless, the United States took note of the statement made by Antigua and Barbuda and would convey it to capital.

7.4. The representative of Saint Vincent and the Grenadines, speaking on behalf of the ACP Group, said that the ACP Group thanked Antigua and Barbuda for raising the issue of the non-compliance of the United States with the recommendations and rulings of the DSB as it related to the dispute on: "United States - Measures Affecting Cross-Border Supply of Gambling and Betting Services"

(DS285). The ACP Group remained disappointed that twenty years since this matter had been raised in the WTO, there had been no definitive resolution. The ACP Group assigned preeminence to respect for the rule of international law. When Members ignored the rule of law, the potential for disorder increased. It remained a blot on the integrity of the multilateral trading system that one of the WTO's smallest Members had not been able to rely on the system to protect its interests from the political and economic power of a major trading nation. The ACP Group supported an amicable resolution of this matter and especially encouraged the United States to take the steps necessary to comply with the rulings and recommendations of the DSB. The ACP Group also supported the call from Antigua and Barbuda, as it did in April 2012, for the DSB to keep this matter under its surveillance.

7.5. The representative of India said that India wished to take this opportunity to urge the relevant parties to work together to amicably resolve the dispute, and also wished to take this opportunity to underline the importance of compliance reforms for developing countries. Such as issues on topics like cross retaliation and sequencing.

7.6. The representative of Bangladesh said that Bangladesh thanked Antigua and Barbuda for its statement made on the compliance in the DS285, which had been pending for a long time. For the credibility of the WTO dispute settlement system, compliance was not only important but indispensable. Bangladesh urged the relevant parties to obey the agreed principles, rules and established procedures of this Organization and work together for an early resolution of the DS285 dispute.

7.7. The DSB took note of the statements.

8 STATEMENT BY INDIA REGARDING THE JOINT COMMUNICATION CONTAINED IN DOCUMENT JOB/DSB/7 TITLED: "REFLECTIONS ON THE REFORM OF THE WTO DISPUTE SETTLEMENT SYSTEM"

8.1. The representative of India, speaking under "Other Business", said that India wished to take this opportunity to briefly introduce the joint communication contained in document JOB/DSB/7 and to summarize the main issues to which it wished to draw the attention of this Organization. First, the dispute settlement system was an integral part of the architecture of the multilateral trading system that developing countries signed on to. In spite of that, developing countries had been cognizant of the need to reform this system and had been active participants in previous reform efforts. It was in this spirit that, in spite of its concerns, India had participated in the ongoing informal process, which had now been underway for almost two years. In this context, India reiterated that it was now critical to initiate formal multilateral discussions on DS reform. Furthermore, the manner in which the outcomes of the informal process were integrated into the multilateral process had to be carefully considered. The context and the evolution of the discussions had to be kept in mind. The concerns that developing countries had been repeatedly raising, with the patience of Job also in this case, had to be addressed. It was essential that the way the manner in which the outcomes of the informal process would be integrated into the multilateral process be carefully considered, because that was essential to having comprehensive, balanced and equitable outcomes. In the context of the concerns that had been raised by many delegations at the recently concluded Senior Officials meeting, India hoped that an open-minded discussion of the suggestions that had been made in this paper would facilitate the Membership's efforts towards meaningful DS reform, including the restoration of the Appellate Body.

8.2. The representative of South Africa said that South Africa wished to thank India for introducing the joint communication. South Africa valued the current informal dispute settlement discussions and had participated actively and constructively in the process. South Africa thanked Mr. Marco Molina for his efforts in facilitating the discussions, as well as the participants for their contribution and work. South Africa shared the view of many Members that the two-tier dispute settlement system was vital in providing security and predictability to the multilateral trading system. South Africa reaffirmed the objective of Paragraphs 3 and 4 of the MC12 Outcome Document in having a fully and well-functioning dispute settlement system accessible to all Members by 2024. South Africa wished to take this opportunity to recall the communications from the African Group (WT/GC/W/892) and Indonesia (JOB/DSB/6) to highlight the topic of process with regard to the dispute settlement discussion process. Such discussions were to be Member-driven, open, transparent, inclusive and address the interests of all Members. South Africa observed the difficulties encountered by developing and LDC Members to meaningfully and effectively participate in the informal discussions

due to capacity and resource constraints. These were articulated in the joint communications and these challenges must be seriously considered and addressed to enable full and active participation of small delegations to continuously follow and contribute to the discussions. To address this issue, amongst others that were articulated in the communication, the joint communication outlined what South Africa considered as indispensable for an outcome of any reform of the dispute settlement system. The informal discussions were meant to contribute to multilateral discussions on dispute settlement reforms as mandated under Paragraphs 3 and 4 of the MC12 Ministerial Declaration. Thus, the call also for a holistic, formal and multilateral process. In closing, long-lasting reform could only be achieved when all Members could provide contribution and share their interests in an equal manner. To achieve this, South Africa stood ready to work with all Members in fulfilling the Mandate of the MC12 Outcome Document by 2024.

8.3. The representative of Egypt said that, first, Egypt wished to thank India for the introduction of their joint submission. Without going into the details, Egypt wished to draw Members' attention to their joint communication contained in JOB/DSB/7, which had been circuited on 24 November 2023. The intention of this communication was to reiterate the fundamental elements that shaped their engagement in the current informal post, to state their understanding of this process and its outcomes, and to acknowledge the challenges faced by developing countries and LDCs in participating in this process as well as to share their views about the way forward in terms of the process and the substance of the discussion. Egypt was involved in this process and was keen to attend the relevant meetings as much as possible. Egypt believed that despite being open to all Members, the informal nature of this process and its non-hybrid mode had hindered the participation of many small delegations. Egypt believed that there was a need to formalize the current process as soon as possible. Egypt also acknowledged that there was a need to include developing countries interests in the final outcome of this process, including the restoration of the Appellate Body. Finally, Egypt looked forward to engaging constructively with other Members on the joint communication.

8.4. The representative of Antigua and Barbuda, speaking on behalf of the OECS, said that the OECS thanked India for introducing this Agenda item on behalf of the co-sponsors. The OECS would take the opportunity on a subsequent occasion to reflect more fully on the communication contained in JOB/DSB/7. However, suffice it to say that the OECS assigned great importance to the restoration of the full functioning, binding dispute settlement at the WTO, of which a well-functioning, two-tier dispute settlement system, accessible to all Members, was indispensable. The OECS wished to take note of the fundamental elements that shaped the engagement of the co-sponsors in the reform process. Many of those aligned favourably with their interests. Indeed, many other elements of the communication resonated with them. In closing, the OECS wished to take this opportunity to recognize the work being done under the informal process to which they were committed as they saw value in this process as being able to take Members towards a meaningful outcome on dispute settlement reform. The OECS reiterated its interest in the formalization of this process as soon as practicable. The OECS also implored Members to treat the concerns and suggestions of developing and least developed countries with the seriousness that they deserved.

8.5. The representative of Nigeria, speaking on behalf of the African Group, said that the African Group thanked Egypt, India and South Africa for their joint communication contained in document JOB/DSB/7 titled: "Reflections on the Reform of the WTO Dispute Settlement Process". The African Group strongly supported this document as it aligned with the positions of the African Group, which included, among other things, working towards reform of the dispute settlement system with the view to having a fully and well-functioning two-tier dispute settlement system that was accessible to all Members. The African Group reaffirmed its communication and proposals on DSU reform which sought to address the structural challenges inherent in the dispute settlement system with the aim to facilitate developing countries participation in the dispute settlement system. The African Group underscored the need for DSU reform to incorporate adequate and effective special and differential treatment for developing countries in line with the Doha Development agenda, so as to address the capacity and accessibility challenges faced by developing countries and particularly accessibility challenges faced by African countries. The African Group shared the same objectives as stipulated in paragraph 7 of said document that stated that, going forward, the full, effective and equal participation of WTO Members was paramount through a transparent and inclusive process and was key in complying with the mandates of Paragraphs 3 and 4 of the MC12 Ministerial Declaration. Given that Members had limited time before MC13, a clear date for the formalization of the process of the informal process had to be communicated in clear terms. Finally, the African Group underscored the need for any updates to the DSU rule book to incorporate adequate and effective

special and differential treatment for developing countries in line with the Doha Development Agenda, so as to address the capacity and accessibility challenges faced by developing countries such as the high costs of disputes.

8.6. The representative of Indonesia said that, at the outset, Indonesia wished to thank Egypt, India and South Africa for circulating the joint communication, and thanked India for introducing the communication on behalf of the co-sponsors. Indonesia also acknowledged the hard work done to submit a paper that not only highlighted the challenges faced by developing Members and LDCs in terms of process, but also of substance. Indeed, in terms of the process, as echoed in its document JOB/DSB/6, Indonesia was one of many Members who did not have a dedicated delegate to actively follow the matter and was unable to assign its capital delegates to fly to Geneva on a daily basis. As a result, at times, Indonesia could not catch up with the pace of the discussion and was unable to provide meaningful contribution, including in voicing its interests to preserve its due process rights as well as its rights for security and predictability of the system that had been provided through the existing two-tier dispute settlement mechanism. Members were weeks away from the Ministerial Conference, yet, there was no clear indication as to when the discussion would be formalized. Time was of the essence and Indonesia did not want the process to be formalized at a critical point, where any contribution would not be welcomed. Despite all those challenges, Indonesia would continue to participate actively in the ongoing informal dispute settlement reform discussion.

8.7. The representative of the United Kingdom said that the United Kingdom wished to thank Egypt, India and South Africa for their communication on this important topic, and acknowledged the need to avoid substantive discussion under "Other Business". The United Kingdom believed strongly in a dispute settlement system that was accessible to all Members, and was transparent, and it would continue to work with all Members to pursue those shared objectives. The informal discussions were delivering convergence and momentum. The United Kingdom wished to thank the facilitator, Mr. Marco Molina, for his tireless work to support Members. If Members did not find agreement they would continue to have a system that was not fully-functioning. That was not in the interests of any Member that valued an effective rules-based multilateral trading system. The United Kingdom urged all Members to continue to work to find a resolution, including through continued engagement in the informal process. All Members had to continue to look for solutions that could command consensus. That meant taking a pragmatic approach – they must not let the perfect be the enemy of the good.

8.8. The representative of Bangladesh said that Bangladesh wished to thank Egypt, India and South Africa for the joint communication, contained in document JOB/DSB/7, highlighting the priorities for the reform of the DS system. Bangladesh had always emphasized that for any reform in the WTO, the voices of smaller delegations must be heard. The LDC Group's submission, contained in document JOB/GC/223/Rev.1, adequately highlighted the urgency of the situation. Also, Paragraph 3 of the MC12 Outcome Document assured that any reform work, which of course included DS reform, "... shall be Member-driven, open, transparent, inclusive, and must address the interests of all Members, including development issues". Inclusivity was only possible, as a primary condition, under a multilateral process through a WTO Body. The established practices and procedures of this Organization could not be overlooked. Therefore, Bangladesh welcomed this submission which also re-emphasized MC12 Ministerial instructions. Bangladesh supported the suggestions in the communication including the restoration of the proper functioning of the Appellate Body at the earliest, with needed clarifications and guidance from the WTO Membership to enable more effective functioning of the two-tier dispute settlement system. Bangladesh looked forward to working with the co-sponsors and other delegations on this important topic.

8.9. The representative of the Russian Federation said that the Russian Federation appreciated the communication circulated by Egypt, India and South Africa on 24 November 2023 and supported many of the elements reflected in that communication. In particular, the Russian Federation shared the view that the multilateral outcome could be achieved only through the formal process as envisaged by Paragraphs 3 and 4 of the MC12 Outcome Document. Only the formalization of the informal discussions on DS reform could guarantee that any possible outcome would be acceptable by all WTO Members, as the participation in the discussions in an equal, inclusive and transparent manner was an inevitable part of the negotiations conducted within this Organization. The Russian Federation also proceeded from the understanding that the "informal discussions" were meant only "to contribute to multilateral discussions on dispute settlement reforms as mandated under the MC12 Ministerial Declaration, rather than to substitute [them]". Further, the Russian Federation supported the approach that "nothing is agreed, until everything is agreed", which Members should follow in

the discussions. In this regard, the Russian Federation shared the view, and in fact reiterated its position, that the restoration of the two-tiered system with a fully and well-functioning Appellate Body was the indispensable element of any successful dispute settlement reform. The inability to review the matters submitted to the Appellate Body left disputes unresolved, including those where one of the parties was a developing country. This situation could not be tolerated anymore.

8.10. The representative of Cambodia said that Cambodia welcomed the joint communication circulated by Egypt, India and South Africa. Cambodia shared the same view as other delegations that the informal process was useful. However, Cambodia also shared the similar sentiments with Members about the intense schedule of this informal process including the structure and pace of the meetings and Cambodia could not manage to participate and contribute substantively to the discussion. Dispute settlement reform was one of the top priorities for most Members, including Cambodia, to ensure a fully and well-functioning dispute settlement system accessible to all Members by 2024. Therefore, to ensure the inclusive participation of all Members, especially in addressing the challenges of the LDCs and small delegations and to avoid overlapping with any WTO official meetings, the informal dispute settlement reform process should be institutionalized or multilateralized. Finally, Cambodia wished to be associated with the statement made by Bangladesh.

8.11. The representative of the European Union said that the European Union wished to thank India for introducing the joint communication and to recall its statement made at the October DSB meeting under the Agenda item concerning "Discussions Concerning DS Reform". As previously mentioned, the European Union was committed and strongly supported the ongoing process as it treated very seriously the commitment, made at MC12, of having a fully and well-functioning system accessible to all Members by 2024. The European Union acknowledged the importance of accessibility of the ongoing process. The European Union appreciated the efforts already made to ensure that the process was transparent, inclusive and multilateral and it was grateful to Mr. Marco Molina for his restless efforts to continuously improve the ongoing informal discussions. If Members were to have a fully functioning dispute settlement system "by 2024", these discussions had to pave the way for agreement on dispute settlement reform at MC13. The European Union agreed with previous statements made encouraging a pragmatic approach.

8.12. The representative of Canada said that Canada wished to thank the co-sponsors for their statements. Canada understood the concerns expressed and supported accessibility and transparency in the process and would carefully examine the proposal. Canada also wished to thank Mr. Marco Molina for his dedication and his work to advance the discussions on dispute settlement reform. In Canada's view, while the process would need to be formalized in the future, Members were not yet at that stage. The most reasonable and pragmatic approach to achieving their objectives by the MC13 was to continue as they were. This was the only way to avoid upsetting the momentum they had managed to establish, and which had enabled Members to make meaningful progress. Canada remained open to any ideas put forward in order to further fine-tune the informal process pending the time when Members were ready to submit a full text to the DSB.

8.13. The representative of Switzerland said that Switzerland wished to thank Egypt, India and South Africa for their joint communication, which had just come to Switzerland's attention and which it would study carefully. Switzerland wished to refer to its previous statements made on the informal process on dispute settlement reform. Switzerland reiterated that dispute settlement discussions had never been so effective, and it supported their continuation. The informal discussions were pragmatic, inclusive and should facilitate the search for compromise in that Members discussed their interests rather than limiting themselves to defending positions of principle. Fundamental issues were still under discussion and required the commitment of all Members if they were to ensure an outcome that would contribute to the success of MC13. Switzerland shared the United Kingdom's position of wishing to avoid a situation in which "perfect is the enemy of good".

8.14. The representative of Australia said that Australia wished to thank Egypt, India and South Africa for their joint communication. Australia agreed that it was critical to address the interests of all Members, including developing and LDC Members, in the dispute settlement reform discussions and that discussions had to be multilateral, open, transparent and inclusive. Australia maintained that the current informal process met those key criteria, and thanked Mr. Marco Molina for his efforts to ensure that all Members could participate in the discussions. While the negotiations had been fast-paced, the urgency of delivering on the MC12 mandate demanded that Members work quickly. Australia reiterated that it shared the ultimate intention of formalizing the discussions at the right

time, but Members should not do this prematurely. The innovative nature of the informal process remained the best chance to identify reforms that met the interests of all Members. Finally, it was worth noting that many of the reform ideas listed in the joint communication were being discussed in the informal process. Australia therefore encouraged all Members to continue to engage constructively and flexibly in the informal process.

8.15. The representative of Japan said that Japan wished to thank Egypt, India and South Africa for the joint communication contained in document JOB/DSB/7. Japan wished to refer to its previous statement made under Agenda item 6 of the 26 October 2023 DSB meeting. However, Japan wished to highlight that the ongoing process was already multilateral and open, transparent and inclusive to all Members. The process with having informal discussions amongst Members and reporting to the DSB was well designed and struck a balance between efficiency/flexibility as well as transparency/accountability. In this regard, Japan appreciated Mr. Marco Molina for his efforts so that Members could attend the meetings and access all documentation. The process would be formalized at an appropriate time before MC13, but now was not the right time. Members would continue the informal process for the moment so that they could discuss the remaining issues under a frank and constructive environment. To achieve the commitment agreed at MC12, Japan would continue to work actively and constructively with all WTO Members.

8.16. The representative of Colombia said that Colombia valued the efforts made and the dedication of the facilitator, Mr. Marco Molina, and urged him to continue with his work. Colombia recognized and valued the progress made to date in these negotiations. Despite its limited capacity, Colombia had been heard and it had taken into account the debate. Colombia had not been able to participate in all the meetings, however its contributions had been reflected in the draft text. The constant guidance of Mr. Marco Molina in these discussions had been invaluable. Members now had simultaneous interpretation and access to texts in the WTO official languages and this undoubtedly facilitated their work. Colombia considered that the process was transparent, open, inclusive and had the effective participation of all Members. This progress encouraged Members and bolstered their commitment to work towards effective solutions.

8.17. The representative of Venezuela said that Venezuela wished to thank Egypt, India and South Africa for the joint communication. Venezuela supported many of the ideas put forward by the proponents, including the need to take into account the different views of developing and least developed countries in order to enhance their full, effective and equal participation in these dispute settlement reform discussions.

8.18. The representative of China said that China wished to refer to its previous statement made at the 26 October 2023 DSB meeting and it was encouraged by the substantial progress achieved so far through Members' collective efforts and China fully appreciated the eagerness of Egypt, South Africa and India to have more participation and it supported the efforts to improve the current process. China also wished to stress that a bit more patience might be needed to bring this outcome into a fuller shape through the informal discussions, and it supported the efforts to improve the current process. China acknowledged that there were still fundamental challenges ahead of Members, including the Appellate review issue, and China would appreciate more participation from both developed and developing Members to address those core issues.

8.19. The representative of Korea said that Korea wished to thank Egypt, India and South Africa for the joint communication and their statements made at the present meeting. Korea wished to refer to its previous statement made at the 26 October 2023 DSB meeting regarding the WTO DS reform. Korea noted that this process was open, transparent and inclusive to all Members and thanked all Members for their participation and proactive engagement. In this connection, Korea wished to express its sincere appreciation to Mr. Marco Molina for his efforts. While Korea recognized that the pace of discussions was fairly swift, it believed this was imperative to deliver on the Mandate of Paragraph 4 of the MC12 Outcome Document. Korea looked forward to continued engagement of all parties and would also contribute constructively to the process.

8.20. The DSB took note of the statements.
