WORLD TRADE ORGANIZATION

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Dispute Settlement Body
28 April 2023

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 28 APRIL 2023[1]

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 Dispute Settlement Body (DSB) both in-person and remotely. The Chairman recalled a few technical instructions regarding the virtual participation of delegates. He said that if a Member was unable to take the floor during the meeting because of a technical issue, the delegation could inform the Secretariat and that Agenda item would remain open until the delegation could take the floor. In the alternative, the item would remain open temporarily, the meeting would proceed to the next Agenda item, and the DSB would revert to the open item after the technical issue had been resolved. If a technical issue remained unresolved, the delegation had the option to send the statement to the Secretariat with the request that it be read out by the Secretariat on behalf of that delegation during the meeting so that the statement could be reflected in the minutes of the meeting; and (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 recalled, 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.

The DSB took note of the statements and adopted the Agenda.

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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.238)

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.213)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.176)

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.60)

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States (WT/DS471/17/Add.52)

F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.47 – WT/DS478/22/Add.47)

1.1. The Chairman noted that there were six sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. As Members recalled, Article 21.6 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 Chair 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.238)

1.2. The Chairman drew attention to document WT/DS184/15/Add.238, 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 17 April 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.213)

1.6. The Chairman drew attention to document WT/DS160/24/Add.213, 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 17 April 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.176)

1.10. The Chairman drew attention to document WT/DS291/37/Add.176, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

1.11. The representative of the European Union said that the European Union recalled that the EU approval system was not covered by the DSB's recommendations and rulings. The European Union 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. Accordingly, on 31 March 2023, the Commission presented to the Standing Committee three draft decisions

authorizing the placing on the market of GM maize[2] and three decisions renewing the authorization for placing on the market of GM soybeans.[3] The votes resulted in "no opinion". The six draft decisions would be referred to the Appeal Committee on 11 May 2023.

1.12. The representative of the United States thanked the European Union for its status report and its statement made at the present meeting. The United States continued to engage with the European Union on these issues, and had provided recommendations on several occasions as to how the European Union could address the undue delays in its approval procedures. The United States had described these problems in detail and had noted its concerns with the European Union's biotech approval procedures monthly in the DSB and during the semi-annual US-EU biotech consultations, including through their most recent consultations in October. The United States again requested that the European Union 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. The United States noted the European Union's continued issuance of approvals on a rolling basis and appreciated that approach.

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.60)

1.14. The Chairman drew attention to document WT/DS464/17/Add.60, 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 17 April 2023, in accordance with Article 21.6 of the DSU. On 6 May 2019, the US Department of Commerce had published a notice in the US Federal Register announcing the revocation of the anti-dumping and countervailing duty orders on imports of large residential washers from Korea (84 Fed. Reg. 19,763 (6 May 2019)). With 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 again urged the United States to take prompt and appropriate steps to implement the DSB recommendations for the "as such" measures in this dispute.

1.17. The representative of Canada said that more than five years had passed since the expiry of the reasonable period of time for implementation of the DSB recommendations arising from the Appellate Body Report in *US – Washing Machines*, according to which the Differential Pricing Methodology (DPM) was inconsistent "as such" with the WTO Agreements. In spite of this, the United States continued to apply the DPM "as such" in investigations concerning foreign companies and continued to collect cash deposits from foreign exporters on the basis of that non-compliant methodology. Canada was deeply concerned about that violation and called on the United States to put an end to it as soon as possible.

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

[2] GM maize MON 87429, MON 95379 and DP4114 x MON89034 x MON87411 x DAS-40278-9 and its sub-combinations.

[3] GM maize MON 87429, MON 95379 and DP4114 x MON89034 x MON87411 x DAS-40278-9 and its sub-combinations.

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States (WT/DS471/17/Add.52)

1.19. The Chairman drew attention to document WT/DS471/17/Add.52, 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 17 April 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 most recent status report and the statement made at the present meeting. It was disappointing that more than four years after the expiry of the reasonable period of time, the United States had still failed to implement the adopted rulings and recommendations in this dispute. China, therefore, once again urged the United States to honour its obligations 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.47 – WT/DS478/22/Add.47)

1.23. The Chairman drew attention to document WT/DS477/21/Add.47 – WT/DS478/22/Add.47, 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 had provided a status report regarding implementation of the recommendations and rulings of the DSB in these disputes in accordance with Article 21.6 of the DSU. Indonesia wished to refer to its previous statements made on this matter and reiterated its commitment to implementing the rulings and recommendations of the DSB. In this regard, Indonesia wished to highlight the meaningful corrective actions that had been taken to the measures at issue. In the context of measure 18, on self-sufficiency, revocation of relevant Laws that were found to be inconsistent with WTO rules had come into force following the enactment of Law No. 6/2023 on Stipulation of Government Regulation in Lieu of Law No. 2/2023 on Job Creation. On measures 1-17, Indonesia had also removed disputed measures regulated under relevant Ministerial Regulations, including, *inter alia*: harvest period restriction; import realization requirement; six-months harvest requirement; reference price; and domestic purchase requirement. In response to the interests raised by both complainants, Indonesia emphasized that the Commodity Balance mechanism served as a tool for the Government to provide comprehensive, accurate, and reliable information through an integrated national database system, allowing the permit process to be simplified. Indonesia truly believed that the Commodity Balance would enhance the ease of doing business and facilitate trade without creating restrictive effects on trade. Indonesia stood ready to continue working with New Zealand and the United States in order to find a positive solution to this matter.

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. As the United States had expressed before, it would still appreciate further clarity on: which regulations presently comprised Indonesia's import licensing regimes and on any forthcoming regulations that would affect the regimes; and how Indonesia expected the new commodity balance mechanism to, in its words, simplify and streamline the permit process and provide for greater business certainty. The United States would also appreciate further clarity on whether Indonesia was planning on making any adjustments to the operation of its import licensing process to ensure that the significant delays in issuing permits for the first half of 2023 are not repeated. The United States remained willing to confer and 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. Both compliance deadlines had long since expired, and New Zealand remained concerned about a number of measures. New Zealand thanked Indonesia for the additional information provided in recent meetings. New Zealand continued to assess that information and would revert with any additional questions on those and other matters. Like the United States, New Zealand would also appreciate understanding better the regulations that presently underpinned Indonesia's import licensing regimes, as well as any regulations that would be forthcoming. 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 EUROPEAN UNION – COUNTERVAILING AND ANTI-DUMPING DUTIES ON STAINLESS STEEL COLD-ROLLED FLAT PRODUCTS FROM INDONESIA

A. Request for the establishment of a panel by Indonesia (WT/DS616/2)

2.1. The Chairman drew attention to the communication from Indonesia contained in document WT/DS616/2 and he invited the representative of Indonesia to speak.

2.2. The representative of Indonesia said that on 24 January 2023, Indonesia had requested consultations with the European Union concerning the imposition of countervailing and anti-dumping duties on Stainless Steel Cold-Rolled Flat Products (SSCRFP) from Indonesia. Indonesia noted that those measures appeared to be inconsistent with the obligations of the European Union and its member States under the SCM Agreement, the Anti-Dumping Agreement, the GATT 1994, and the DSU, and had nullified or impaired benefits accruing to Indonesia directly or indirectly under the covered agreements. The consultations between the parties had taken place and unfortunately had not brought any solution to this dispute. Therefore, on 17 April 2023, Indonesia had filed its request for the establishment of a panel to examine this matter. Indonesia respectfully requested the establishment of a panel at the present meeting to examine the matter set out in its panel request.

2.3. The representative of the European Union said that the European Union took note of Indonesia's decision to request a WTO panel on countervailing and anti-dumping duties on SSCRFP from Indonesia. The European Union recalled that it held constructive consultations with Indonesia on 13 March 2023. The European Union had expressed hope that the consultations had provided the necessary information and clarifications. 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. For those reasons, the European Union was confident that it would prevail in this dispute, and that its actions would be found to be WTO-compatible. At the present meeting, the European Union was not ready to accept the establishment of a panel. The European Union also stood ready to discuss with Indonesia reciprocal interim arrangements that would preserve the availability of appeal review in this and other disputes on the basis of Article 25 of the DSU as long as the Appellate Body was not functioning, such as through the Multi-Party Interim Appeal Arbitration Arrangement (MPIA).

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

3 UNITED STATES – SAFEGUARD MEASURE ON IMPORTS OF LARGE RESIDENTIAL WASHERS

A. Report of the Panel (WT/DS546/R and WT/DS546/R/Add.1)

3.1. The Chairman recalled that at its meeting on 26 September 2018, the DSB had established a Panel to examine the complaint by Korea pertaining to this dispute. He also recalled that the Report of the Panel contained in document WT/DS546/R and WT/DS546/R/Add.1 was circulated on 8 February 2022 as an unrestricted document. He recalled that in 2022, on several occasions, the parties to this dispute had agreed to extend the time-period for adoption or appeal of this Panel

Report. In addition, in February 2023, the parties had reached an agreement to postpone the consideration of the Panel Report by the DSB until 28 April 2023. At the present meeting, the Panel Report was before the DSB for adoption at the request of Korea. This adoption procedure was without prejudice to the right of Members to express their views on the Panel Report.

3.2. The representative of Korea said that Korea welcomed the Panel Report in the dispute: *United States – Safeguard Measure on Imports of Large Residential Washers* (DS546). Since the circulation of the Report, Korea and the United States had closely consulted with each other to achieve prompt and effective settlement of the dispute. Korea acknowledged that, by terminating the safeguard measure at issue, the United States had brought its measure into conformity with relevant agreements. Therefore, considering that further dispute proceedings did not need to be pursued, Korea intended to make a joint statement with the United States so as to express its willingness to reach a final conclusion of this dispute through the adoption of the Panel Report, followed by a mutually agreed solution to terminate subsequent proceedings of the dispute.

3.3. The representative of Korea, speaking on behalf of Korea and the United States, said that the joint statement agreed by both parties was as follows. Korea and the United States wished to express their gratitude to the members of the Panel and the Secretariat for their work in this dispute, *United States – Safeguard Measure on Imports of Large Residential Washers* (DS546). At the outset, Korea recognized the United States' view that the Panel in this dispute had erred to the extent it relied on interpretations reached in prior reports. Both parties confirmed in that respect that panels had to focus their interpretation on the text of the agreements. That said, affirming the importance of their strong and cooperative relationship and desiring to secure a positive solution to the dispute, Korea and the United States had decided to have the Panel Report adopted at the present meeting. Furthermore, Korea and the United States wished to deliver to the Members and the DSB their shared understanding as follows. First, Korea and the United States recognized that the purpose of dispute settlement was fundamentally about helping parties resolve their disputes. Accordingly, both parties recognized their extensive communication and joint efforts to reach a mutually agreed solution. Second, Korea and the United States recognized that adopted dispute settlement reports had no binding precedential value or effect. Third, Korea and the United States recognized that discussion between Members was necessary to achieve a common understanding of their commitments, including those relating to safeguard measures. Finally, Korea and the United States recognized their intention to deepen communication and cooperation on fundamental reform of WTO dispute settlement to ensure it served the primary purpose of helping parties to resolve their disputes and strengthen the WTO as a forum for communication and negotiation. In future circumstances, Korea and the United States would work together to ensure those concerns were addressed in a forward-looking manner. On that basis, Korea and the United States were also pleased to jointly inform the Members and the DSB that, with a view to terminating subsequent procedures of the dispute, they had reached a mutually agreed solution, which would be notified shortly after the present meeting. Korea and the United States thanked Members for their attention to this statement.

3.4. The representative of the United States thanked Korea for delivery of the joint statement on behalf of the United States and Korea. The United States welcomed the close engagement with Korea that had led to the mutually agreed solution that would be notified to the DSB, and looked forward to continued collaboration on dispute settlement matters going forward. Turning to the Report of the Panel, the United States thanked the Panel, and the Secretariat staff assisting it, for their work in this dispute. The United States acknowledged the Panel's thorough review of the legal arguments put forward by the parties. While the United States was disappointed in the Report in certain respects, the United States welcomed the Panel's findings on certain key issues in this dispute. In this dispute, Korea had brought numerous claims regarding the US safeguard measure on large residential washers under the GATT 1994 and the Agreement on Safeguards. The Panel had rightly rejected certain of Korea's claims. Those included claims regarding the United States' chosen form of safeguard relief; the timeliness of the United States' notifications to the Committee on Safeguards; certain aspects of the US International Trade Commission's (USITC) definition of the relevant "domestic industry" in its serious injury investigation; and certain aspects of the USITC's analyses of increased imports, serious injury, and causation. For example, the United States was pleased that the Panel had rejected Korea's claim that the President's chosen form of safeguard relief was inconsistent with Article 5.1 of the Safeguards Agreement, on the basis that the selected duty rates exceeded the degree of price underselling found by the USITC. The Panel found, correctly, that the Safeguards Agreement does not obligate a Member to ensure that the remedy matches the degree of

underselling found, and that imposing such a requirement would be at odds with the text. Likewise, the United States welcomed the Panel's finding that the President did not need to "calibrate" the safeguard remedy relative to then-existing US anti-dumping and countervailing measures on large residential washers under Article 5.1. As the Panel rightly found, nothing in the Safeguards Agreement required this so-called calibration.

3.5. However, the United States was disappointed with certain of the Panel's findings. The representative of the United States said that the United States would not discuss every one of the Panel's analytical missteps in this statement, but would highlight what the United States believed were the most troubling findings. Perhaps most troubling was that the Panel read Article XIX:1(a) of the GATT 1994 and Article 3.1 of the Safeguards Agreement as allowing for a safeguard measure only if the competent authorities demonstrated, *in their published report*, that unforeseen developments exist, and that the Member incurred obligations that otherwise prevented it from remedying serious injury. In conducting its analysis, the Panel overwhelmingly relied on prior Appellate Body reports, rather than the texts of the relevant covered agreements, and, in turn, exacerbated the Appellate Body's past interpretive errors in assessing this issue. Put simply, Article XIX:1(a) of the GATT 1994 and Article 3.1 of the Safeguards Agreement, read together, imposed *no* obligation on the competent authorities to make findings on "unforeseen developments" or "obligations incurred" *in their report* that was published pursuant to Article 3.1.

3.6. Also deeply concerning were certain of the Panel's findings regarding the USITC's definition of the "domestic industry" in its underlying serious injury investigation. This included the Panel's finding that the United States acted inconsistently with Article 4.1(c) of the Safeguards Agreement on the basis that the USITC defined the domestic industry to include covered washer parts. According to the Panel, to be considered "like", there must be at least some degree of competition between the imported and domestically produced products. The Panel misinterpreted Article 4.1(c) by inventing a "competitive relation" test that had no basis in the text of that Article. The text imposed no obligation on the competent authorities to find domestic and imported articles "like" only if they were in "competitive relation" with one another. Moreover, the Panel ignored the USITC's determination that domestically produced parts *were* in competitive relation with imported parts. That is, extending the measure to covered parts was necessary to remedy serious injury, by preventing Korean producers from importing covered parts for simple assembly into washers in screwdriver operations.

3.7. In addition, in analyzing certain claims, the Panel substituted its own judgment for that of the competent authorities, rather than considering the reasonableness of the conclusions drawn from the evidence discussed and relied on by the USITC. For example, in assessing Korea's claim under Article 4.2(b) of the Safeguards Agreement, the Panel ignored the USITC's discussion of evidence showing that differences in product mix between domestically produced washers and subject imports had not significantly attenuated subject import competition. The Panel instead undertook its own analysis of the record, ignoring that the evidence cited by the USITC reasonably supported the USITC's finding that pervasive subject import underselling had depressed and suppressed domestic prices to a significant degree, and was the only explanation for the domestic industry's increasing cost of goods sold to net sales ratio during the period of investigation. Although the United States was disappointed with certain of the Panel's findings, on balance, the United States had decided to permit the report to be adopted at the present meeting. The United States took this step in light of all the circumstances, including its desire to work with Korea to resolve this dispute through a mutually agreed solution, and the fact that the safeguard measure was now expired. The United States thanked Members for their attention to this statement.

3.8. The DSB took note of the statements and adopted the Panel Report contained in document WT/DS546/R and WT/DS546/R/Add.1.

4 UNITED STATES – ORIGIN MARKING REQUIREMENT (HONG KONG, CHINA) (DS597)

A. Statement by the United States

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

4.2. The representative of the United States said that Hong Kong, China had challenged in this dispute certain US origin marking requirements. As the United States had demonstrated to the panel,

the challenged measures were based on well-grounded determinations implicating US essential security interests relating to democracy and human rights. At the previous DSB meeting, the United States had explained that more recent developments confirmed that the conditions that warranted the US imposition of the challenged measures continued to exist. Since the previous DSB meeting, the US Department of State had again certified that Hong Kong, China did not warrant treatment under US law in the same manner as prior to 1 July 1997, in light of its findings that China had taken new actions to erode rights and freedoms in Hong Kong, in direct contravention of its obligations under the Hong Kong Basic Law and the Sino-British Joint Declaration, which promised Hong Kong a high degree of autonomy.[4] In making that certification, the US State Department had reported additional findings on the far-reaching infringement of basic democratic and human rights within the fabric of Hong Kong society as a result of the National Security Law. For example: China and Hong Kong authorities deliberately acted to restrict the ability of Hong Kong voters to elect representatives of their choosing, and China's officials played an unprecedented role in directing the outcome of the Hong Kong elections. In December 2022, China's National People's Congress Standing Committee issued its first "interpretation" of the National Security Law stating that the Chief Executive and Committee for Safeguarding National Security in Hong Kong had the authority to issue legally binding certificates and decisions on issues related to national security that were not subject to judicial review. According to legal experts, that interpretation could significantly increase the authority of Hong Kong's executive branch over the judiciary.[5]

4.3. As the United States had stated throughout the dispute proceedings and at prior DSB meetings, Hong Kong authorities continued to make arrests and prosecutions for peaceful political expression critical of the local and central governments. This included the posting and forwarding of social media posts and slogans, such as "Liberate Hong Kong, Revolution of Our Times". Hong Kong officials characterized this type of speech as "inciting hatred against the government" or "promoting feelings of ill will or enmity between different classes".[6] In July 2022, activist Koo Sze-yiu was convicted of "attempted sedition" for planning to stage a protest against the Beijing Winter Olympics outside China's central government's liaison office in Hong Kong. At sentencing, the presiding judge ruled that slogans critical of the National Security Law could "weaken people's confidence in the judicial administration". Hong Kong authorities arrested the former Catholic Bishop of Hong Kong, Cardinal Joseph Zen, and other trustees of a now-dissolved humanitarian fund that supported individuals arrested or injured during the 2019 pro-democracy protests, on suspicion of "collusion with foreign forces". In a separate but related case, in November 2022, Cardinal Zen and the fund's other former trustees were convicted and fined for failing to register the fund as a society, in what the defendants described as an infringement of their freedom of association.[7]

4.4. In March 2023, three former members of a pro-democracy group that organized annual candlelight vigils to mark China's Tiananmen Square crackdown were found guilty of not complying with a request for information under the National Security Law and sentenced to four and a half months in jail.[8] The group was accused of being a "foreign agent" for an unidentified organization.[9] The United Nations (UN) had called for the release of another former leader of the group, prominent civil rights activist Albert Ho, following his arrest by national security police on suspicion of witness tampering, in light of his health issues. Mr. Ho was already facing trial for incitement to subversion under the National Security Law.[10] Hong Kong authorities also arrested and prosecuted individuals for publishing and even merely possessing books that they claimed included "seditious content".[11]

[4] 2023 Hong Kong Policy Act Report (March 31, 2023).
[5] 2023 Hong Kong Policy Act Report (March 31, 2023).
[6] 2023 Hong Kong Policy Act Report (March 31, 2023).
[7] 2023 Hong Kong Policy Act Report (March 31, 2023).
[8] Hong Kong court sentences 3 Tiananmen vigil organisers to jail (11 March 2023), available at https://www.aljazeera.com/news/2023/3/11/hong-kong-court-sentences-3-tiananmen-vigil-organisers-to-jail; Hong Kong activists behind Tiananmen vigil jailed for months (11 March 2023), available at https://apnews.com/article/1989-crackdown-tiananmen-activist-hong-kong-court-6d8b471d28fb6a8bb45c01b93adc0730.
[9] 2023 Hong Kong Policy Act Report (31 March 2023); Hong Kong court sentences 3 Tiananmen vigil organisers to jail, 11 March 2023, available at https://www.aljazeera.com/news/2023/3/11/hong-kong-court-sentences-3-tiananmen-vigil-organisers-to-jail.
[10] UN Calls For Release Of Hong Kong Rights Activist Ho Agence France Presse, 28 March 2023, available at https://www.barrons.com/news/un-calls-for-release-of-hong-kong-rights-activist-ho-e0650361.
[11] Hong Kong: Two men arrested for possessing "seditious" children's books, 13 March 2023, available at https://www.bbc.com/news/world-asia-china-64985527.

4.5. Hong Kong authorities continued the prosecution of former editors and executives of now-closed independent media outlets Apple Daily and Stand News under Hong Kong's sedition law, and also prosecuted Jimmy Lai and other former Apple Daily executives and editors under the National Security Law.[12] In December 2022, Hong Kong officials requested that Google manipulate its search results for the phrase "Hong Kong national anthem" to place China's anthem ahead of the 2019 pro-democracy protest song "Glory to Hong Kong," indicating that there could be legal consequences for Google if it did not comply.[13] Throughout 2022, the Hong Kong government had violated the people's freedom of assembly, especially for individuals and organizations associated with the pro-democracy movement.[14] According to media reports, no NGO applied to hold a public protest at least through October 2022. No organization applied to hold a public event to commemorate the 4 June anniversary of the 1989 Tiananmen Square crackdown. Police arrested at least six people on 4 June 2022, in what media described as an effort to thwart attempts to commemorate the event. In May 2022, the Catholic Diocese of Hong Kong announced that no Catholic Churches in the city would hold memorial masses for the victims of Tiananmen Square on 4 June, citing concerns that the masses could violate the National Security Law.[15]

4.6. As the United States had documented to the panel in the dispute, the National Security Law had a chilling effect on school campuses when the Education Bureau released guidelines for schools on national security and banned any political participation or expression on campuses.[16] In furtherance of that, in December 2022, the Education Bureau published new guidelines for primary and secondary school teachers that barred them from encouraging speech that "violates the social order" and from promoting "biased values", and required teachers to have a "correct understanding" of the National Security Law.[17] As travel had resumed, some US citizens with ties to people or organizations that had been critical of Hong Kong's or China's central governments were held and questioned by immigration authorities upon entering Hong Kong regarding their local contacts. Since the imposition of the National Security Law in June 2020, China had increasingly exercised police and security power in Hong Kong, subjecting US citizens who were publicly critical of China to a heightened risk of arrest, detention, expulsion, or prosecution in Hong Kong.[18]

4.7. The United States was not alone in its concerns. During the UN Human Rights Committee's periodic review of Hong Kong, China's compliance with its obligations under the International Covenant on Civil and Political Rights in July 2022, the experts on the committee indicated that they were "deeply concerned" that the National Security Law prevailed over Hong Kong local laws and thus "overrides fundamental rights and freedoms protected by the Covenant"[19], as well as "deeply concerned about the overly broad interpretation of and arbitrary application" of the National Security Law.[20] The committee urged Hong Kong's and China's authorities to repeal the National Security Law and Hong Kong's sedition law, and to ensure that any new national security legislation conformed with the ICCPR and was passed via an inclusive and transparent legislative process.[21]

4.8. These events reflected the ongoing damage to democracy and human rights in Hong Kong by China. And these facts further demonstrated the error in the panel's finding that the pattern of human rights abuses and the erosion of autonomy in Hong Kong, China did not "meet the requisite

[12] 2023 Hong Kong Policy Act Report (31 March 2023).
[13] 2023 Hong Kong Policy Act Report (31 March 2023).
[14] 2023 Hong Kong Policy Act Report (31 March 2023).
[15] 2023 Hong Kong Policy Act Report (31 March 2023).
[16] DS597 U.S. Opening Statement, para. 30; 2021 Hong Kong Policy Act Report (31 March 2021); Education Bureau Circular No. 3/2021, National Security: Maintaining a Safe Learning Environment Nurturing Good Citizens (4 February 2021) available at https://applications.edb.gov.hk/circular/upload/EDBC/EDBC21003E.pdf.
[17] 2023 Hong Kong Policy Act Report (31 March 2023).
[18] 2023 Hong Kong Policy Act Report (31 March 2023).
[19] Human Rights Committee, Concluding observations on the fourth periodic report of Hong Kong, China, CCPR/C/CHN-HKG/CO/4 (27 July 2022) at 2, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCHN-HKG%2FCO%2F4&Lang=en.
[20] Human Rights Committee, Concluding observations on the fourth periodic report of Hong Kong, China, CCPR/C/CHN-HKG/CO/4 (27 July 2022) at 3, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCHN-HKG%2FCO%2F4&Lang=en.
[21] CCPR/C/CHN-HKG/CO/4 (27 July 2022) at 4.

level of gravity to constitute an emergency in international relations under Article XXI(b)(iii)".[22] Again, the United States fundamentally disagreed with the panel's approach, which suggested a state ought to defer consideration of its essential security interests until after a breakdown in relations. A WTO Member could not be expected to wait until it was too late to act, or be required to sever relations as a prerequisite for other action it considered necessary. The WTO did not have the competence or the authority to assess the foreign affairs relationships of a Member. Nor did it have the competence or authority to pass judgment on the value that the United States – and some other Members – placed on freedom and human rights, and the actions they took in seeking to secure those values. The United States reiterated that Members needed to address this issue to prevent undermining of the WTO, and clarify and adopt a shared understanding of the essential security exception.

4.9. The representative of Hong Kong, China said that Members would note that this was the third time that the panel report in the DS597 dispute was discussed in the DSB, since circulation of the panel report on 21 December 2022 and the US notification to the DSB on 26 January 2023 of its decision to appeal to the Appellate Body certain issues of law and legal interpretations in the panel report. First, on a point of procedure, Rule 27 of the Rules and Procedures for the General Council, which were applicable to DSB meetings, set out that "[r]epresentatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record". Further, from a systemic point of view, Hong Kong, China harboured serious doubts about whether it served the interests of the dispute settlement system, for a party to a dispute to keep coming back to DSB meetings to repeat its arguments in a dispute settlement case that had already been duly heard and ruled on by a panel, especially when that Member had also lodged an appeal under the DSU against the panel ruling. The fact that the United States had blocked appointment to the Appellate Body thereby incapacitating the Appellate Body from considering its appeal was not intended by any Member except the US. Hong Kong, China could not see how it would help resolve the dispute, for the United States to present its one-sided arguments time and again at DSB meetings, when those arguments should be heard by adjudicators in accordance with the relevant rules and procedures in the DSU.

4.10. Turning to the law enforcement actions and judicial system as discussed by the United States, Members would recall that**,** as Hong Kong, China had pointed out several times before, the DSB was not the right forum for discussions of internal affairs of any individual Member and Hong Kong, China continued to hold this view. Hong Kong, China's refusal to be engaged in political discussions about its internal affairs in DSB meetings, was not to be construed as its agreement with the US wrongful allegations. Its refusal stemmed from its respect for the DSU and the DSB functions, and its firm belief that the DSB should not be used by anyone to seek to achieve ulterior, political motives not related to nor conducive to resolving trade disputes. But to Hong Kong, China's disappointment, the United States had presented yet again at this meeting its biased and untrue descriptions of the present state of affairs in Hong Kong, so Hong Kong, China had to set out the facts for the record.

4.11. Hong Kong, China strongly objected to the groundless and out-of-context statements about the situation in Hong Kong just made by the United States. Hong Kong, China reiterated that it was a society underpinned by the rule of law, which had always adhered to the principle that laws had to be obeyed and lawbreakers be held accountable. The Hong Kong Special Administrative Regime (HKSAR) Government safeguarded independent judicial power and fully supported the Judiciary in exercising its judicial power independently, safeguarding the due administration of justice and the rule of law. All judges and judicial officers were appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors. All judges and judicial officers so appointed would continue to abide by the Judicial Oath and administer justice in full accordance with the law, without fear or favour, self-interest or deceit. Establishing the mechanism for safeguarding national security in the HKSAR would not undermine the independent judicial power. Hong Kong, China's judicial system continued to be protected by the Basic Law. When adjudicating cases concerning offence endangering national security, as in any other case, judges remained independent and impartial in performing their judicial duties, free from any interference.

[22] Panel Report, *US – Origin Marking Requirement*, para. 7.353.

4.12. In view of the increasingly pronounced national security risks faced by the HKSAR, the enactment of the National Security Law in 2020 was both necessary and urgent in order to plug the loophole in national security in Hong Kong, and restore stability in the society. The National Security Law provided clear rules and legal basis for preventing, suppressing and imposing punishment for acts endangering national security. The National Security Law only targeted an extremely small minority of persons endangering national security. It clearly stipulated the four categories of offences that endangered national security. Apart from providing that the principle of the rule of law shall be adhered to, Article 5 of the National Security Law provided for the presumption of innocence, the prohibition of double jeopardy, the right to defend oneself, and other rights in judicial proceedings that a criminal suspect, defendant, and other parties in judicial proceedings were entitled to under the law.

4.13. Following the implementation of the National Security Law in 2020, chaos stopped and stability had been restored in Hong Kong. It helped to bring the society back on track to focus on developing the economy, enhancing people's livelihood, sustaining Hong Kong's long-term stability and prosperity, and achieving good governance. The National Security Law ensured the resolute, full and faithful implementation of the "one country, two systems" principle under which the people of Hong Kong administered Hong Kong with a high degree of autonomy, and it also clearly stipulated that human rights shall be respected and protected in safeguarding national security in Hong Kong. The rights and freedoms – including the freedoms of speech, of the press, of publication, of association, of assembly, of procession, and of demonstration – enjoyed by residents of the HKSAR under the Basic Law, and the provisions of the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights, as applicable to Hong Kong shall be protected in accordance with the law. As in many other jurisdictions that uphold the "rule of law", so long as people, institutions or organizations observed the laws in Hong Kong, they would not unwittingly violate the law, including the National Security Law. Meanwhile, any law enforcement actions taken by Hong Kong law enforcement agencies under the National Security Law or any local laws of Hong Kong were based on evidence, strictly in accordance with the laws, based on the acts of the persons or entities concerned, and had nothing to do with their political stance, background, or occupation.

4.14. With regard to the dispute DS597, Hong Kong, China was a staunch supporter of the rules-based multilateral trading system with the WTO at its core. Hong Kong, China respected the WTO, its rules, and its dispute settlement system, which resolved trade disputes among WTO Members. As a small delegation, Hong Kong, China had followed and gone through all the steps in accordance with the rules and procedures under the DSU in handling DS597, from requesting consultations, to establishment of the panel, and participating in the panel proceedings. The United States, in the DS597 dispute, was given ample opportunities to put forth, elaborate and clarify its arguments, and to respond to Hong Kong, China's submissions and responses before the panel, composed of three independent and fair-minded experts. The panel had considered the submissions of the United States and Hong Kong, China, as well as from the third parties, in full and in totality, and came to the unanimous decision that the challenged measure in question was discriminatory and WTO-inconsistent, and that the United States should bring its WTO-inconsistent measure into conformity with WTO rules.

4.15. As Members were aware, the United States did not agree with the ruling and had lodged an appeal to the Appellate Body, when that Body had been single-handedly wrecked by the United States since the end of 2019. Reading all those acts together, one could not help but question whether the purpose of the US lodging an appeal was to stall its obligations to implement the panel ruling: in short, a procedural abuse. The United States notified the DSB of its decision to appeal issues of law covered in the DS597 panel report on 26 January 2023. Presumably, a notice of appeal had to include "a brief statement of the nature of the appeal", which in turn included "an indicative list of the paragraphs of the panel report containing the alleged errors", as well as an appellant's submission. As the US notice of appeal was not accompanied by those required documents, Hong Kong, China, despite being the respondent of the appeal, was not privy to the issues of law that the United States contemplated in the appeal, if they existed at all. This showed a lack of respect for the well-established rules set out in the working procedures for appellate review.

4.16. Meanwhile, and outside of the appeal and the adjudicative process, the United States had been continuously and unilaterally clamouring its objection to the panel's ruling and, as mentioned in its statement at the previous DSB meeting on 31 March 2023, "the serious consequences of the

flawed interpretation of Article XXI of the GATT 1994" in the DS597 panel report. Hong Kong, China considered that the US attempts to keep repeating the issues regarding the DS597 dispute and criticising the specific panel ruling showed no respect to the panel, the panelists and, most importantly, the rules-based multilateral trading system. What added to the US disrespect of the rules-based multilateral trading system was that the United States had already initiated an appeal and would have sufficient opportunities to present its case before the Appellate Body, had the appointments to the Appellate Body not been held hostage by the United States, resulting in the present impasse. If the United States was genuine in its quest for a "correct" ruling, perhaps it should consider unblocking the appointment process of the Appellate Body so that DS597, as well as other cases being held up, could be heard and adjudicated on expeditiously. But instead, the United States had turned to DSB meetings to continue its "appeal", by repeating its arguments and political claims against Hong Kong, China. Hong Kong, China strongly believed that the DSB should not be subjected to such needless and repeated distractions, not least those which served nothing but the political purpose of one single Member.

4.17. The representative of China said that, at the outset, China wished to raise its serious concerns on the US request to reintroduce this fully and repeatedly debated item on the Agenda of the present meeting. China considered that this action by the United States contradicted the rules of procedure for meetings of the DSB, which required that Members make every effort to avoid the repetition of a full debate at each meeting on any issue that had already been fully debated in the past and on which there appeared to have been no change in Members' positions already on record. China was more disappointed to see this Agenda item at the present meeting, in the background of the ongoing WTO reform process, in which the vast majority of Members, including the United States, called for enhancing the efficiency of WTO meetings and making discussions more focused and meaningful. China wondered how that could be achieved by the US request to continue discussion on an issue that had been already debated twice. Furthermore, the United States would have sufficient opportunity to express its views and provide its arguments should they agree to unblock the selection processes of Appellate Body members, and in no event should DSB meetings bear the responsibility of discussing cases in which the panel report had been appealed.

4.18. Second, China rejected in the strongest terms the US false allegations and unilateral judgement of and interference in other Members' internal affairs. The permanent representative of Hong Kong, China had just provided detailed explanations with regard to Hong Kong's law enforcement actions and judicial system, so China limited itself to reiterating that the WTO, including its dispute settlement mechanism, was a forum to discuss trade issues and resolve trade disputes rather than a place to engage in discussions on political issues. As a third party in this dispute, China appreciated the panel's impartial and objective rulings and recommendations. It was clear from the text, the context, the object and purpose, and the negotiating history that the security exception under the GATT 1994 was not entirely self-judging, as found by this panel and six previous panels. Any Member, regardless of its power and size, shall refrain from taking unilateral and protectionist measures in the name of "national security", or using it as a vehicle to disregard the core principles of the WTO or to interfere with other Members' internal affairs. China urged the United States to faithfully honour its multilateral obligations and stop abusing national security.

4.19. The representative of the Russian Federation said that the Russian Federation wished to recall the mandate of the WTO, which was to provide a common institutional framework for the conduct of trade relations amongst Members. That mandate precluded the Membership from diving into the political discussions that were being reopened at this meeting by the United States. The Russian Federation also wished to recall Article 1.1 of the DSU – the DSU applied to disputes brought pursuant to provisions of the WTO Agreements. Those rules and procedures also applied to settlement of disputes between Members concerning their rights and obligations under the WTO Agreements. As the Russian Federation understood, that was exactly the case in *US – Origin Marking Requirement.* The panel in that dispute considered whether the US measures were consistent with provisions of the GATT 1994. Whether or not the United States was complying with its commitments under the covered agreements – that was the question to be determined by panels, in particular the panel established in *US – Origin Marking Requirement*. Whether or not any Member was compliant with the relevant international commitments in the area of human rights, as well as other political matters raised by the United States – those were questions for designated forums to decide. The WTO was not one of them. Whether or not a Member was compliant with the US vision of human rights and democracy – the Russian Federation was not even sure that such a forum existed, but it definitely was not the WTO. The Russian Federation also wished to note that the United States, who

had brought an appeal against the panel report in this dispute, would be in a position – to the same extent as Hong Kong, China or any third party – to express their appreciation of or disappointment with said report, justify their position, and provide relevant evidence and facts. However, that would be done when – and only when – the United States would unblock the functioning of the Appellate Body. Raising the issue of incorrect interpretation of a provision of a WTO Agreement either at this meeting, or during the previous DSB Meeting under the "Other Business", in the context of this particular panel report under appeal, and from a purely political perspective, was a deliberate waste of everybody's time. It was also quite cynical given that the United States merely expressed its disagreement with the report while not allowing that disagreement to be resolved once and for all.

4.20. The representative of the United States said that the United States took note of Hong Kong, China's and China's concerns with raising matters on the internal affairs of a Member in the DSB. It was, of course, not the United States that had brought these circumstances into the WTO. It was Hong Kong, China's choice to challenge a US national security action and to encourage the WTO panel to review the US invocation of the essential security exception. It was, therefore, Hong Kong, China that invited WTO Members in the Dispute Settlement Body to review its actions eroding protected rights and freedoms in Hong Kong, which undermined its obligations under the Hong Kong Basic Law and the Sino-British Joint Declaration. The US presentation at this meeting was grounded in the facts. Those facts demonstrated the pattern of human rights abuses and erosion of autonomy in Hong Kong, China. And those facts formed the basis for the challenged US actions taken to protect US essential security interests.

4.21. The representative of Hong Kong, China said that Hong Kong, China had to take the floor again because the United States in its second intervention continued its repeated accusation that it was Hong Kong, China bringing politics into the WTO and the DSB. From Hong Kong, China's perspective, both the United States and Hong Kong, China were Members of the WTO, and as such both were subject to the rights and obligations, as provided for under the WTO covered agreements and would expect each other to comply with their obligations in handling all aspects of trade matters, in accordance with the covered agreements. The US revised origin marking measure imposed on exports from Hong Kong, China was a discriminatory trade measure, as it accorded less favourable treatment to Hong Kong, China's products. Hong Kong, China rightfully sought to address the impairment suffered by its exports through the established rules and procedures under the DSU. The entire dispute settlement process, by design, was legal, technical, and professional. The focus of the dispute had all along been whether the US trade measure was inconsistent with the rights and obligations under the WTO covered agreements. In Hong Kong, China's view, the fact that the US decision to impose the measure stemmed from its own political decision, and that the United States sought to rely on the security exceptions under Article XXI(b) of the GATT 1994 as a defence before the panel for the measure in question are perhaps where the so-called "bringing politics into this case" may have come from. But they were all actions initiated by the United States, rather than by Hong Kong, China, so it was neither accurate nor fair to lay the blame on Hong Kong, China. The United States seemed to believe that the security exceptions provisions were entirely self-judging and once it invoked the security exceptions, the measure in question could no longer be reviewed by any dispute panel. That argument was not accepted by the panel, nor by any third party involved in this case. Other panels, which had considered similar arguments under other cases in the past had also come to the same conclusion. It seemed to Hong Kong, China that the United States was blaming Hong Kong, China for defending its rights under the WTO covered agreements when it was being discriminated against by another WTO Member. The United States seemed to expect that Hong Kong, China should submit to its discriminatory actions once the United States had claimed to have invoked security exceptions, otherwise Hong Kong, China was bringing politics into the WTO/DSB. That could not be further from the truth in this case. The DS597 panel had rightly ruled that: the security exceptions provision was not entirely self-judging; the US origin marking measure in question was according less favourable treatment to products of Hong Kong, China and hence was not WTO-consistent; and the US origin marking requirement was not justified by its claim of invoking the security exceptions. Hong Kong, China called on the United States to follow the panel's decision to bring its measure into conformity early with its obligation under the GATT 1994. Should the United States genuinely wish to pursue its appeal against the panel's ruling in accordance with the DSU, Hong Kong, China would be obliged to follow the established rules and procedures to assist the adjudicators in considering the appeal so as to resolve the dispute in a timely manner.

4.22. The DSB took note of the statements.

5 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; LESOTHO; LIECHTENSTEIN; MADAGASCAR; MALAWI; MALAYSIA; MALDIVES; MALI; MAURITANIA; MAURITIUS; MEXICO; REPUBLIC OF MOLDOVA; MOROCCO; MOZAMBIQUE; NAMIBIA; NEPAL; NEW ZEALAND; NICARAGUA; NIGER; NIGERIA; NORTH MACEDONIA; NORWAY; PAKISTAN; PANAMA; PARAGUAY; PERU; 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.24)

5.1. 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 then drew attention to the proposal contained in document WT/DSB/W/609/Rev.24 and invited the representative of Guatemala to speak.

5.2. The representative of Guatemala said that, at the outset, he wished to announce that Brunei Darussalam had decided to co-sponsor the joint proposal to be considered under this Agenda item. He thanked Brunei Darussalam for its interest in joining the proposal and welcomed it to the group of co-sponsors. Guatemala, speaking on behalf of the co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.24, said that the delegations in question had agreed to submit the joint proposal, dated 17 April 2023, to launch the selection processes for the vacancies of the Appellate Body members. On behalf of those 128 Members, Guatemala wished to 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 candidacies; and (iv) to request that the Selection Committee issue its recommendations within 60 days after the deadline for nominations of candidates. The proponents invited and urged all Members to support this proposal in the interest of the dispute settlement and multilateral trading systems.

5.3. The representative of the United States said that, at the outset, the United States would like to note that the United States and other Members had jointly issued WTO document 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. Turning to the present 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. A well-functioning dispute settlement system supported WTO Members in the resolution of their disputes in an efficient and transparent manner, and in doing so limited the needless complexity and interpretive overreach that had characterized dispute settlement in recent years. The first step towards reform was to better understand the interests of all Members in WTO dispute settlement. The United States had been engaging with Members to advance that goal and looked forward to continued engagement. The United States acknowledged that considerable work remained and that achieving dispute settlement reform – that is, fundamental reform to meet the needs of all WTO Members to the greatest extent possible – would not be easy. But the United States continued to believe that working collectively towards that goal provided the greatest chance of achieving durable, lasting reform. The United States was committed to working towards an improved system. The

United States 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.

5.4. The representative of Ukraine said that Ukraine, once again, sought to emphasize that it was ready to contribute to and support the process of improving the functioning of the dispute settlement mechanism and in particular the functioning of the two-stage dispute settlement system. Despite the full-scale war unleashed by Russia, which had been ongoing for more than 14 months, as well as daily attacks, Ukraine wished to underline that it remained strongly committed to the fundamental rules of the WTO and made every effort to ensure a fully functioning WTO dispute settlement system. Ukraine believed that a rules-based multilateral trading system was in the interest of every Member and that was where Members should focus every effort. Ukraine reiterated its sincerest gratitude to all Members that stood with Ukraine in the face of the unprecedented, illegal and terrifying aggression of Russia, and urged them to remain strong and united in their support of Ukraine for as long as it took.

5.5. The representative of Brunei Darussalam said that Brunei Darussalam wished to thank Guatemala for presenting the proposal on behalf of the co-sponsors and wished to add Brunei Darussalam's voice on the importance and urgency of restoring the two-tiered dispute settlement system by filling the vacancies of the Appellate Body, in compliance with the DSU. In that regard, as a strong supporter of rules-based multilateral trading system, Brunei Darussalam was pleased to join 127 delegations in co-sponsoring this very important initiative. Like others, Brunei Darussalam also stressed the need to deliver the MC12 Ministerial mandate of having a fully and well-functioning dispute settlement system accessible to all Members by 2024. In that connection, Brunei Darussalam supported the ongoing Member-driven informal discussions on dispute settlement reform with the hope to achieve solutions to Members concerns whilst delivering the mandate.

5.6. The representative of the United Kingdom said that the United Kingdom continued to support launching the process for appointments to the Appellate Body, and referred to its previous statements made on this issue. The United Kingdom noted the increasing number of Members co-sponsoring this proposal, and, at the present meeting in particular, welcomed the addition of Brunei Darussalam. The United Kingdom encouraged all remaining Members to support the proposal. The United Kingdom continued to be seized of the urgent need to reach a resolution to the current impasse: achieving a fully and well-functioning dispute settlement system was in the interest of all Members who valued an effective multilateral trading system. As such, the United Kingdom was actively participating in the ongoing Member-led discussions on dispute settlement reform. The United Kingdom welcomed the ambition of phase 3 of those discussions. A pragmatic and dedicated approach was required to find solutions that would command the support of all WTO Members. The United Kingdom called on all Members to continue to prioritise that work. As Members discussed these issues concerning how Members ensured that rules were respected, the United Kingdom had to address the egregious violations of international law and the UN Charter committed by one WTO Member against another. The United Kingdom unreservedly condemned Putin's outrageous and illegal war of aggression. Russia's assault on Ukraine was an unprovoked, premeditated, and barbaric attack against a sovereign democratic state. What happened in Ukraine mattered to the work of the WTO and mattered to all Members. As well as the direct consequences of Russia's actions in the WTO – impeding the ability of Ukraine to fully participate in the work of this institution and the global trading system – Members had to recognize the enormous global impact of Putin's chosen war. The United Kingdom and the international community had made it clear to President Putin that his attack on the Ukrainian people had to stop, and that he had to withdraw from Ukraine and restore regional and global stability. As the people in Ukraine continued to face relentless Russian bombardment, the United Kingdom stood with Ukraine and would continue to support the Ukrainian government in the face of this assault on their sovereignty and territorial integrity. The United Kingdom had to stand for freedom, democracy, and the sovereignty of nations around the world.

5.7. The representative of Brazil said that Brazil thanked Guatemala for presenting the proposal on behalf of its many co-sponsors and referred to its previous statements made under this Agenda item. Brazil also welcomed Brunei Darussalam as a co-sponsor. Having a fully and well-functioning dispute settlement system accessible to all Members was a top priority for Brazil and it was Members' collective obligation under the DSU. Brazil continued to engage constructively in informal discussions on dispute settlement reform, which it hoped would contribute to that outcome, within the deadline set by Ministers at MC12. Finally, Brazil recalled that, while the impasse with the appointment of Appellate Body members was not resolved, Members could ensure the resolution of their disputes

by joining the MPIA. Once again, Brazil encouraged Members to do so. Brazil was ready to discuss the MPIA with any delegation wishing to learn more about the Arrangement and its functioning.

5.8. The representative of Canada said that, first of all, Canada strongly condemned the unjustified and unprovoked invasion of Ukraine by President Putin. Canada wished to express its solidarity with the Ukrainian people. President Putin's plans to "annex" Ukrainian territory were devoid of legitimacy and would never be recognized. Those hostile acts had now continued for more than a year. Those acts were a flagrant violation of international law and of the rules-based international trading system. Ukraine's sovereignty and territorial integrity had to be respected and the Ukrainian people had to be free to determine their own future. Canada urged Russia to immediately cease all acts of hostility and provocation against Ukraine and to withdraw from the country its military and intermediary forces. Concerning the appointment of Appellate Body members, for over three years the Appellate Body had no longer a quorum and had been unable to hear new appeals. Canada supported the statement made by Guatemala at the present meeting on behalf of the sponsors and thanked Guatemala for its statement. Canada welcomed Brunei Darussalam as an additional co-sponsor of the proposal and invited those Members that had not yet endorsed the proposal to consider joining the 128 Members that were calling for the selection process to be launched. The critical mass of WTO Members that supported the proposal was a clear testimony to the importance they all accorded to a fully functioning Appellate Body as an integral part of the dispute settlement system. Canada recalled the Membership's objective, which was to have a fully and well-functioning dispute settlement system that was accessible to all by 2024. Canada would continue to actively participate in solution-oriented discussions on the current situation. In short, Canada's priority remained to find a multilateral and lasting solution for all Members, including the United States. Meanwhile, the MPIA was the best way to safeguard their rights to binding dispute settlement that included the possibility to appeal in disputes among Members. Fifty-three WTO Members had now joined the MPIA. Canada invited all WTO Members to consider joining the MPIA. Canada was available to discuss the details of the MPIA with interested Members.

5.9. The representative of Indonesia said that Indonesia thanked Guatemala for its statement and for presenting the proposal on behalf of the now 128 co-sponsors. On that note, it would be remiss if Indonesia did not congratulate its ASEAN family member, Brunei Darussalam, for becoming a co-sponsor. Even though to date Brunei Darussalam had no dispute its decision was a testament that no matter how big or small the Member, or how frequent that Member used the system, it boiled down to the fact that all Members believed in and needed the dispute settlement system to be fully functional as soon as possible. With that in mind, Indonesia also encouraged more Members to consider positively becoming co-sponsors of this proposal. Moreover, Indonesia wished to refer to its statements made at previous DSB meetings on this matter. In this regard, solving the Appellate Body impasse should be the utmost priority for all Members, notwithstanding the ongoing dispute settlement reform discussions. Therefore, Indonesia also wished to remind Members that their target was to have a fully operational dispute settlement system by 2024. In that context, Indonesia wished that the informal discussions could evolve towards text-based negotiations soon while taking full consideration of Members' capacity constraints. Indonesia reiterated its readiness and openness to work with other Members, as well as its commitment to participate actively and constructively in the discussions.

5.10. The representative of Cambodia said that, at the outset, Cambodia warmly welcomed Brunei Darussalam's decision to co-sponsor the joint proposal contained in document WT/DSB/W/609/Rev.24. Cambodia supported the statement made by Guatemala on behalf of the 128 co-sponsors and called upon more Members to join the proposal. Cambodia referred to its previous statements made on this urgent matter and reiterated its firm commitment and support for the well-functioning of an independent and impartial two-tier dispute settlement system with accessible to all, including the least-developed countries. In conjunction with dispute settlement reform, Cambodia wished to urge all Members to work together in good faith and in a constructive manner, as mandated by Ministers at the MC12 on, *inter alia,* the appointments of Appellate Body members and towards achieving a true multilateral solution.

5.11. The representative of Norway said that as the work of the DSB directly concerned the upholding of the rules-based international order, Norway found it pertinent to address the current situation in Ukraine. Norway continued to strongly condemn Russia's egregious military attack on its neighbour Ukraine. Russia's war of aggression against Ukraine constituted a gross violation of international law and the rules-based system, which also underpinned the WTO. Norway was

contributing extensively to the efforts to support Ukraine and collaborated closely with the Ukrainian authorities, other donors, the UN, the World Bank, and humanitarian organizations, on coordinating efforts to ensure that aid reached those who were most in need and was used as effectively as possible. Turning to Appellate Body appointments, Norway fully supported the joint proposal presented by Guatemala, and co-sponsored by 128 Members, to launch the process for appointments to the Appellate Body. At the present meeting, Norway warmly welcomed Brunei Darussalam as a co-sponsor of the proposal. Norway very much welcomed the ongoing informal discussions among Members and participated constructively in those discussions to address the current impasse. Those discussions should, however, not prevent Members from launching the process for appointments to the Appellate Body, and the present meeting further underlined the urgency of that matter. Norway, like several others, took this opportunity to invite other Members to join the MPIA. The Arrangement was open to WTO Members to join for as long as the Appellate Body remained unable to fully function. Norway also wished to refer to its previous statements made under this Agenda item.

5.12. The representative of New Zealand said that New Zealand joined other Members in condemning, unequivocally, the unprovoked and unjustified attack by Russia on Ukraine. Those actions were egregious and unlawful – the act of aggression was strictly prohibited under international law, as was the targeting of civilians. Russia's invasion of Ukraine's sovereign territory had deep implications for global peace, security, and economic stability. New Zealand continued to stand firmly against any steps by Russia that risked a further escalation in this conflict. In relation to Agenda item 5, New Zealand reiterated its support for the proposal co-sponsored alongside 127 other WTO Members and referred to its previous statements made on this matter. New Zealand also warmly welcomed Brunei Darussalam as the most recent co-sponsor. Reform of the dispute settlement system to ensure a fully and well-functioning system accessible to all Members remained a priority for New Zealand. New Zealand urged all Members to engage in the ongoing discussions constructively and pragmatically in order to address this situation as a priority in line with the direction of their Ministers at MC12. New Zealand also took 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 in order to restore a fully functioning dispute settlement system.

5.13. The representative of Moldova said that Moldova first wished to thank the representative of Guatemala for its statement and welcomed the new co-sponsor of the joint proposal. Moldova joined other Members in reiterating its support regarding ongoing efforts focused on unblocking the Appellate Body selection processes and recalled its previous statements made under this Agenda item. Second, Moldova reiterated its voice of support for Ukraine, condemning in the strongest terms the ongoing war initiated by Russia against a sovereign and independent state – a war that caused destruction and suffering in a neighbouring country on a daily basis. The previous day and night, for example, Russia had committed another missile attack against civilians in Dnipro, Nikolaev, and Kiev region, killing 8 people and injuring 17 and many more remaining under the rubble. The economic and social impacts of the war were strongly felt in and around Ukraine, including in Moldova. From the trade perspective, it should be noted that due to the war initiated by Russia against Ukraine, Moldovan exporters had lost access to an important share of their markets and transit routes to Asian partners. Some of the top exported products, for example fresh fruits and vegetables, had been totally blocked and exporters were being required to go bankrupt or reorient their trade flows in a rapid manner towards other trading partners. Full or partial loss of export markets was exacerbated by an energy crisis and high inflationary pressures. During the previous year, for example, the inflation spikes in Moldova reached 30%. Despite those challenges, Moldova would, with the help of donor partners, be able to withstand the crisis and offer the necessary shelter and assistance to people fleeing the war from Ukraine. In conclusion, Moldova wished to reiterate that it would continue to stand in solidarity with Ukraine for as long as it took, and called upon Russia to stop the war immediately and unconditionally.

5.14. The representative of Malaysia said that at the outset Malaysia wished to warmly welcome its fellow ASEAN member, Brunei Darussalam, as the latest co-sponsor of the joint proposal to launch the selection processes for the vacancies of the Appellate Body members, contained in document WT/DS/B/W/609/Rev.24. Malaysia also wished to thank Guatemala for presenting the proposal and supported the statement made. With this newest addition, 128 Members represented 78% of the total WTO Membership supporting this proposal. Malaysia referred to its statements made at previous DSB meetings under this Agenda item and wished to reiterate its strong view that the dispute settlement system, including the Appellate Body, was most critical and required the urgent

attention of all Members. WTO Members had the responsibility to safeguard and preserve the dispute settlement system and should not further delay the commencement of the selection process for the AB vacancies. Malaysia invited other Members to support the proposal. Malaysia also hoped that all Members would work together towards having a fully and well-functioning dispute settlement system accessible to all Members by 2024, as mandated by Ministers at MC12.

5.15. The representative of the Philippines said that the Philippines welcomed Brunei Darussalam's decision to join as a co-sponsor of the proposal to immediately start the appointment processes of new Appellate Body members. Brunei's co-sponsorship demonstrated its belief that the multilateral dispute settlement system deserved a second chance. Brunei had chosen to side with reasonableness. The Philippines, therefore, commended Brunei, its neighbour and fellow ASEAN member-state, for sharing the commitment to a rules-based multilateral trading system that was beneficial for all WTO Members. The Philippines took this opportunity to reiterate its commitment to support the revival of a functional two-tier dispute settlement system. The Philippines urged delegations to rethink their positions, engage, and find practical solutions in confronting shared challenges of the WTO dispute settlement system.

5.16. The representative of Australia said that, first, Australia wished to note that it continued to condemn 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, Australia joined other Members in warmly welcoming Brunei Darussalam as a co-sponsor. Australia reiterated that its number one WTO reform priority was delivering a fully and well-functioning WTO dispute settlement system accessible to all Members by 2024, as agreed by Ministers at MC12. A fully functioning system was critical to the rules-based multilateral trading system. Australia welcomed ongoing discussions to develop meaningful reforms to improve the dispute settlement system, that met Members' interests and concerns. Australia would continue working constructively with all Members and urged all Members to continue doing the same as they sought to deliver on the MC12 mandate. While they collaborated to restore a fully functional dispute settlement system, Australia encouraged all Members to join the MPIA as the best interim mechanism for ensuring Members' rights under the WTO Agreements could be enforced and protected. Australia was ready to engage with any delegation interested in joining the MPIA.

5.17. The representative of Iceland said that a fully functional dispute settlement system was directly connected to the upholding of the rules-based international order, which had been seriously undermined by the unprovoked attack of the Russian Federation on Ukraine. Iceland condemned in the strongest possible terms Russia's actions, which violated international law and the UN Charter, and undermined the international order and laws on which organizations such as the WTO were based. Turning to item 5 of the Agenda, Iceland wished to thank Guatemala for presenting the proposal on behalf of the co-sponsors, and reiterated its previous statements on this matter. As one of the many co-sponsors of the proposal, Iceland was concerned with the longstanding lack of progress in resolving this important issue. Iceland welcomed all ongoing efforts to advance discussions on dispute settlement reform with the aim of being able to deliver on the MC12 mandate. Until then, Iceland encouraged other Members to join the MPIA as an interim mechanism for ensuring Members' access to a binding, two-tier, and independent dispute settlement system, which they would work to restore until a fully-functional dispute settlement system was put in place.

5.18. The representative of Switzerland said that Switzerland joined other delegations in condemning Russia's military aggression against Ukraine in the strongest possible terms. Such aggression blatantly violated international law, most notably the prohibition on the use of force and the principle of the territorial integrity of States. Switzerland called upon Russia to take military de-escalation measures, end hostilities, and immediately withdraw its troops from Ukrainian territory. Switzerland called on all actors to respect international law, in particular international humanitarian law. Switzerland thanked Guatemala for placing this matter on the Agenda of the present meeting, and wished to refer to its statements made on this matter at previous DSB meetings. Switzerland called upon all Members to commit to ensuring a fully functioning dispute settlement system by 2024, as set out in the MC12 Outcome Document. Switzerland would continue to participate constructively in the newly initiated phase of informal discussions and hoped that concrete solutions could be discussed in the coming weeks and months.

5.19. The representative of Korea said that, like others, Korea reaffirmed its consistent position on the Ukrainian war that the sovereignty, territorial integrity, and independence of Ukraine should be respected. Korea, as a responsible member of the international community, supported various diplomatic and economic efforts of the international community to contribute to the end of the Ukrainian war and the restoration of peace, and would more actively participate in those efforts. With regard to the item on Appellate Body appointments, Korea thanked Guatemala for its statement and reiterated its support for the joint proposal. Korea also referred to its previous statements on this issue and wished to warmly welcome Brunei Darussalam as a co-sponsor. The WTO dispute settlement system had been a central element in providing security and predictability to the multilateral trading system. In this regard, Korea very much welcomed Members' continuous interest and participation in ongoing discussions on dispute settlement reform, recalling Members' commitment on the MC12 mandate. Korea reaffirmed its commitment to engaging in pertinent discussions on reform with a view to having constructive solutions to enrich the functioning of the WTO dispute settlement system, with the objective of accommodating the needs of WTO Members.

5.20. The representative of South Africa said that South Africa wished to be associated with the statement made by Guatemala on the joint proposal for Appellate Body appointments and thanked Guatemala for delivering the statement on behalf of the co-sponsors. South Africa equally wished to welcome Brunei Darussalam as a co-sponsor. South Africa reiterated its previous statements regarding the urgency of this matter. When Members 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 order underpinned by a two-tiered 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 in Montevideo 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 reform of the WTO 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. That commitment was being reiterated during the recent informal discussions on WTO dispute settlement reform. South Africa would work actively and constructively with all Members to find a lasting solution to the present impasse and to ensure an effective dispute settlement system.

5.21. The representative of Nigeria, speaking on behalf of the African Group, wished to thank the delegation of Guatemala for its statement regarding the joint proposal on Appellate Body appointments, of which the African Group were co-sponsors. The African Group also wished to congratulate the latest Member to join the list of co-sponsors, Brunei Darussalam. 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 fact that the Appellate Body could not hear new appeals remained a concern. The African Group urged the DSB to urgently fulfil its obligation under the DSU, which was to fill vacancies as they arose, so as to maintain the two-tier dispute settlement system. This would maintain the security, credibility, and predictability of the multilateral trading system. The critical mass of Members asking for the launch of the selection process indicated the importance Members attached to having a fully functioning dispute settlement system for the multilateral trading system. 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, as agreed at MC12.

5.22. The representative of Japan said that Japan would first touch upon the situation in Ukraine. In this regard, Japan strongly condemned Russia's aggression against Ukraine and its missile attacks against civilian infrastructure and cities across Ukraine. Japan strongly urged Russia once again to stop its aggression and withdraw its forces from the territory of Ukraine, within its internationally recognized borders, immediately. Japan would also continue to work firmly on the two pillars of imposing strong sanctions on Russia and providing logistical support to Ukraine in cooperation with the international community. With regard to Agenda item 5, Japan wished to refer to its statements made at previous DSB meetings and supported the joint AB proposal. Japan absolutely shared a sense of urgency for reform of the dispute settlement system and had set as the utmost priority to achieve a reform that would contribute to a long-lasting solution to the structural and functional problems of the dispute settlement system. Members should discuss that reform, including how to address the concerns surrounding the Appellate Body. In this regard, Japan welcomed the new step in the informal dispute settlement reform discussions currently led by Members. With a view to

having a fully and well-functioning dispute settlement system by 2024, as agreed at MC12, Japan wished to work actively and constructively with all WTO Members.

5.23. The representative of Peru said that Peru thanked Guatemala for its statement, and supported that statement made now on behalf of 128 co-sponsors, including Peru. Peru also took the opportunity to welcome Brunei Darussalam as the newest co-sponsor and called on Members who were not yet co-sponsors to consider doing so. Peru wished to stress the need to continue to work with a sense of urgency for the restoration of the full functioning of the DS system, which was a priority for Peru. Within that framework, Peru supported and participated in the informal discussions that were being held in order to move forward towards fulfilling the mandate to have a fully operational dispute settlement system that functioned properly and was accessible to all Members by 2024. In the meantime, and in order to preserve the security and predictability of the system, Peru joined the call already made by others to join the MPIA, to which Peru was a party, and which allowed Members, under the text of the DSU, to safeguard, for the duration of the impasse, their right to binding dispute settlement that included two levels of adjudication.

5.24. The representative of Singapore said that Singapore warmly welcomed its fellow ASEAN member Brunei Darussalam as the most recent co-sponsor of this proposal, and thanked Guatemala for its statement, which Singapore strongly supported. Singapore reiterated its previous statements regarding the proposal's urgency and importance. Singapore was committed to participating constructively and with an open mind in ongoing discussions on dispute settlement reform. While the Appellate Body impasse persisted, Singapore encouraged Members to join the MPIA as an interim solution that preserved Members' right to appeal, until Members collectively found a durable and lasting solution. Singapore, together with other MPIA participants, stood ready to engage with any delegation that wished to learn more about the Arrangement.

5.25. The representative of Thailand said that Thailand thanked Guatemala for the statement, which Thailand fully supported. Thailand also warmly welcomed the decision of Brunei Darussalam to join the AB proposal, bringing the total number of co-sponsors to 128, demonstrating the strong commitment by the critical mass of Members to restoring a fully functioning, two-tiered binding dispute settlement system. It was the shared responsibility of all WTO Members to resolve this issue as soon as possible and to fill the outstanding vacancies as required by the DSU. Thailand referred to its previous statements made under this Agenda item and reiterated its commitment to working constructively with other Members in finding a meaningful solution and fulfilling the MC12 mandate.

5.26. The representative of Hong Kong, China said that Hong Kong, China wished to first thank Guatemala for presenting the proposal on behalf of other Members. Hong Kong, China also wished to welcome Brunei Darussalam on board. Under the previous Agenda item, Hong Kong, China had pointed out the very importance of having the Appellate Body's appointments unblocked so that Members could overcome the current Appellate Body impasse and Members could have their cases heard by the Appellate Body properly. Hong Kong, China thus continued to join other Members to reiterate its concerns about the Appellate Body impasse. Hong Kong, China wished to emphasize its commitment to work constructively with all WTO Members to restore a fully and well-functioning dispute settlement system by 2024, as mandated by the MC12 Outcome Document.

5.27. The representative of China said that China supported the statement made by Guatemala on behalf of the co-sponsors and warmly welcomed Brunei Darussalam as a new co-sponsor of the proposal. China referred to its previous statements on this urgent matter, and called upon more Members to join the proposal. China reiterated its firm commitment to an independent, impartial two-tier dispute settlement system, which not only facilitated prompt and fair resolution of disputes between Members, but also provided security and predictability to the multilateral trading system. To fulfil such objectives, China believed that the most urgent task was to immediately launch the selection processes and fill the vacancies for the Appellate Body. This was a treaty obligation of all WTO Members. No prerequisite should be attached to it. Like others, China would continue its constructive engagement with all Members in the ongoing discussions on dispute settlement reform with a view to having a fully and well-functioning dispute settlement system by 2024, as mandated by Ministers at MC12. China called upon all Members to engage in that exercise in good faith and with pragmatic, outcome-oriented spirits. Before concluding, China also wished to take this opportunity to encourage more Members to join the MPIA as a contingent measure to safeguard Members' right to appeal until the Appellate Body was restored. China stood ready to discuss with, and provide further information to, any interested Members.

5.28. The representative of Viet Nam said that Viet Nam wished to echo other Members in thanking Guatemala and almost 130 co-sponsors for their continuous and faithful commitment to the appointment processes of the Appellate Body members. At the present meeting, Viet Nam warmly welcomed Brunei Darussalam, an ASEAN member, to become a new co-sponsor of the Appellate Body proposal. Viet Nam reiterated its support for launching the appointment processes as soon as possible and hoped more Members would join this proposal. Regarding the informal discussions on dispute settlement reform, Viet Nam was ready to engage constructively in the process to reinforce the building of an effective, fully functioning dispute settlement system.

5.29. 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 the Appellate Body members. Russia wished to warmly welcome Brunei Darussalam as a new co-sponsor. Russia reiterated its strong support for launching the appointment processes immediately. In that regard, Russia welcomed the attempts to start the informal discussions on dispute settlement issues and was ready to engage constructively with any delegation that intended to reinforce the building of the effective fully functioning dispute settlement system rather than demolish it. At the same time, the present discussions had not been formalized and therefore, being an informal process with a limited number of participants, was not in a position to produce consensus-based results. The Russian Federation had consistently supported the idea to start discussions on dispute settlement reform in a formal mode, as agreed by WTO Members at MC12. That was the only process that could bring Members to a meaningful result supported by every Member. Such a formal process could serve as a guarantee of transparency and inclusivity. Hence, Russia called upon all Members to launch such a process, as agreed at MC12, in order to urgently restore a fully functioning dispute settlement system. It was also necessary to address certain political declarations made by some WTO Members under this Agenda item. First, Members should keep to the Agenda of the present meeting, circulated in document WT/DSB/W/717 and adopted at the present meeting. The political discussions suggested by some WTO Members did not concern any of the issues listed in the Agenda. Second, the DSB had its own tasks and mandate expressed in different provisions of the DSU. None of the political issues raised by some WTO Members was within the competence of the DSB. Third, and ultimately, the WTO was not a political organization and Members shall refrain from trying to address issues in the DSB that were not in the competence of the organization. Russia considered that some of the root causes of the crisis of the multilateral trading system that Members were facing were the actions that blocked the Appellate Body appointments as well as the attempts to politicize the WTO that Members had heard at the present meeting. Russia encouraged WTO Members to focus on resolving the problems they already had and not create new ones, unless any WTO Member had an intention to continue to destroy the multilateral trading system further.

5.30. 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. That war 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 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. On the proposal for appointment of Appellate Body members, the European Union referred to its previous statements made on this matter and thanked all Members who had co-sponsored the proposal to launch the 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. That task was a shared responsibility of WTO Members. In order to achieve that objective, the European Union agreed that a meaningful reform was needed. The European Union supported a reform that preserved the core features of the dispute settlement system. The European Union treated very seriously the commitment, made at MC12, to conduct discussions with a view to having a fully and well-functioning dispute settlement accessible to all Members by 2024. It was with that objective in mind, and in a constructive spirit, that the European Union had been engaging in the discussions on dispute settlement reform for almost a year. The European Union welcomed the recent change of

gear in those discussions, which now related to specific reform topics. The European Union was keen to see DS discussions continue in a focused and results-oriented manner, with a view to having a well and fully functioning dispute settlement system by 2024. Members had an ambitious schedule in place, but they had to be ambitious if they were to deliver on the MC12 commitment. Indeed, those discussions had to pave the way for agreement on dispute settlement reform at MC13. In the meantime, the European Union was concerned with 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.

5.31. The representative of Guatemala, speaking on behalf of the 128 co-sponsors, regretted that for the sixty-fifth occasion, Members had not been able to launch the selection processes for the vacancies of the Appellate Body. Thus, Members continued to fail fulfilling their duties as WTO Members. He noted that Article 17.2 of the DSU clearly stated that: "vacancies shall be filled as they arise". He said that 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 the vacancies as they arose. The co-sponsors 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.

5.32. The Chairman thanked all delegations for their statements. He said that, as in the past, the DSB would take note of the statements expressing the respective positions, which would be reflected in the minutes of the present meeting. Once again, the Chair took the 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. At this point, he also wished to note that informal discussions on this matter, at the technical level, were ongoing and at the previous DSB meeting in March the representative of Guatemala, Mr Marco Tulio Molina, speaking in his personal capacity and under his own responsibility, had provided a report on this matter for transparency purposes. That was also an opportunity for many delegations to express their views on this matter for the record. The Chairman encouraged all delegations to work together with Mr Molina on these important issues. He thanked Mr Molina for his tremendous efforts in this regard. Finally, he recalled that the issue of dispute settlement reform was also raised at the previous TNC meeting, held on 19 April 2023, in the context of the preparations for MC13. He said that he hoped that collectively Members would be able to find a solution to this matter. He then proposed that the DSB take note of the statements made under this Agenda item.

5.33. The DSB took note of the statements.

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