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Dispute Settlement Body
30 August 2021

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 30 AUGUST 2021[1]

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

Prior to the adoption of the Agenda: (i) the Chairman welcomed all delegations participating in the meeting of the Dispute Settlement Body (DSB) both in-person and remotely; (ii) the Chairman said that he wished to recall a few technical instructions regarding the virtual participation of delegations. If a Member was unable to take the floor during the meeting because of a technical issue, the delegation could inform himself or the Secretariat and that Agenda item would remain open until the delegation could take the floor. Hopefully any technical issue would be quickly resolved. In the alternative, the item would remain open temporarily, the meeting would proceed to the next Agenda item, and then 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 (iii) the Chairman made a short statement regarding item 4 of the proposed Agenda of the 28 April DSB meeting pertaining to the DS574 dispute. He said that as Members recalled, this matter had been removed from the proposed Agenda to allow time for the Chairman's consultations with each interested party regarding this Agenda item. At the present meeting, the Chairman informed delegations that he continued to consult with each interested party on this matter and that those consultations were ongoing.

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

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

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.218)

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.193)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.156)

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.40)

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States (WT/DS471/17/Add.32)

F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.27 – WT/DS478/22/Add.27)

1.1. The Chairman noted that there were six sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. As Members recalled, Article 21.6 requires that: "Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and shall remain on the DSB's Agenda until the issue is resolved." Under this Agenda item, he wished to invite delegations to provide up-to-date information about their compliance efforts. He also wished to remind delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record."

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.218)

1.2. The Chairman drew attention to document WT/DS184/15/Add.218, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.3. The representative of the United States said that the United States had provided a status report in this dispute on 19 August 2021, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations of the DSB that had yet to be addressed, the US Administration would confer with the US Congress with respect to the appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that Japan thanked the United States for the latest status report and its statement at the present meeting. Japan once again called on the United States to fully implement the DSB recommendations and rulings so as to resolve this matter.

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

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.193)

1.6. The Chairman drew attention to document WT/DS160/24/Add.193, 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 19 August 2021, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

1.8. The representative of the European Union said that the European Union thanked the United States for its status report and its statement at the present meeting. The European Union referred to its previous statements and 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.156)

1.10. The Chairman drew attention to document WT/DS291/37/Add.156, 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 on 17 August 2020, the Commission had adopted seven authorisations for genetically modified organisms (GMOs) for food and feed use. Those authorisations concerned 3 new GMOs of maize[2], 2 new GMOs of soybeans[3], 1 new GMO of oilseed rape[4] and 1 new GMO of cotton.[5] On that date the Commission also renewed two GMOs of maize[6] and one GMO of oilseed rape.[7] The United States frequently referred to European Union member States' justifications issued during the meetings of the Standing Committee and Appeal Committee as being "political" and "not science-based". The European Union wished to stress that the comitology procedure, including when measures were referred to the appeal committee, was an intrinsic and important part of the European Union's decision-making process, and that its application was not limited to the authorisation procedure of GMOs. In addition, the European Union wished to underline that the final decision taken on the authorisation was clearly science-based as those GMOs were authorised where the European Food Safety Authority (EFSA) had finalised its scientific opinion and concluded that there were no safety concerns. Efforts to reduce delays in authorisation procedures were constantly maintained at a high level at all stages of the authorisation procedure. However, it was worth noting that, when applicants did not act expeditiously in certain applications, this had a knock-on effect on the overall average time needed for risk assessment. It was important to recognize the increased transparency in the EFSA's scientific assessment of GMOs, resulting from the new Transparency Regulation[8], which should help to reinforce trust in the safety of the authorised GMOs. The European Union acted in line with its WTO obligations. The European Union recalled that its approval system was not covered by the DSB's recommendations and rulings.

1.12. The representative of the United States thanked the European Union for its status report and its statement made at the present meeting. The United States understood that on 17 August this year, the European Union had approved seven biotech crops – three for corn, two for soybeans, one for canola, and one for cotton – and issued three renewals for previously authorized crops – two for corn and one for canola. The United States was pleased to see that the European Union had moved to issue approvals for these products. However, it was the United States' understanding that there were still approximately eight products for which the European Food Safety Authority (EFSA) had successfully completed a risk assessment, yet which had not received final approval through comitology. This was illustrative of the undue delays in the EU's biotech approval process. The United States had described these problems in detail at nearly every monthly meeting of the DSB since the European Union began submitting status reports more than thirteen years prior. The United States had also discussed these concerns in the recent EU-US Biotechnology Consultation on Friday 18 June 2021, a venue intended to normalize trade in biotech products. The United States continued to engage in good faith in those Consultations, and had provided recommendations on several occasions as to how the European Union could address the undue delays in its approval procedures. The United States requested that the European Union move to issue final approvals for all products that had completed science-based risk assessments at EFSA, including those products that were with the Standing Committee and Appeals Committee.

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

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[2] Maize MON 87427 x MON 87460 x MON 89304 x 1507 x MON 87411 x 59122 and sub-combinations, maize 1507 x MON 810 x MIR162 x NK603 and sub-combinations, maize MZIR098.

[3] Soybean DAS-81419-2, soybean DAS–81419–2 x DAS–44406–6.

[4] Oilseed rape Ms8xRf3xGT73.

[5] Cotton GHB119 x GHB614 x T304-40.

[6] Maize Bt11, maize MON 88017 x MON 810.

[7] Oilseed rape GT73 (only renewed for feed, renewal for food currently at EFSA).

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

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.40)

1.14. The Chairman drew attention to document WT/DS464/17/Add.40, 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 19 August 2021, in accordance with Article 21.6 of the DSU. On 6 May 2019, the US Department of Commerce published a notice in the US Federal Register announcing the revocation of the anti-dumping and countervailing duty orders on imports of large residential washers from Korea (84 Fed. Reg. 19,763 (6 May 2019)). With this action, the United States had completed implementation of the DSB recommendations concerning those anti-dumping and countervailing duty orders. The United States would consult with interested parties on options to address the recommendations of the DSB relating to other measures challenged in this dispute.

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

1.17. The representative of Canada said that the United States continued to fail to comply with the DSB's ruling, arising out of the Appellate Body report in "US - Washing Machines", that the "differential pricing methodology" (DPM) was "as such" inconsistent with the WTO Agreements. The United States had also ignored the DSB's recommendation that it must comply with its obligations. Instead, the United States continued to apply the "as such"-inconsistent DPM in investigations with respect to foreign companies and continued to collect cash deposits from foreign exporters on the basis of this inconsistent methodology. The reasonable period of time to implement the recommendations relating to the "as such" WTO-inconsistency of the DPM had expired more than three years prior. However, in its latest status report, the United States had declared that it continued to consult with interested parties. The continued use of the DPM by the United States had obliged Members to resort to several dispute settlement proceedings concerning that measure. This was an inefficient and unnecessary use of WTO dispute settlement resources. Canada remained deeply concerned about the US continued failure to comply with the DSB's recommendations and rulings in "US - Washing Machines". That failure seriously undermined the security and predictability of the multilateral trading system.

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

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States (WT/DS471/17/Add.32)

1.19. The Chairman drew attention to document WT/DS471/17/Add.32, 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 19 August 2021, in accordance with Article 21.6 of the DSU. As explained in that report, the United States would consult with interested parties on options to address the recommendations of the DSB.

1.21. The representative of China said that China thanked the United States for its latest status report. However, it was disappointing that three 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. Prompt compliance was critical to the effectiveness and credibility of the dispute settlement system, which was in the best interests of the entire Membership. China urged the United States to honour its obligation under Article 21.1 of the DSU by bringing its measures into full compliance in this dispute without further delay.

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

F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.27 – WT/DS478/22/Add.27)

1.23. The Chairman drew attention to document WT/DS477/21/Add.27 – WT/DS478/22/Add.27, 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 submitted its status report pursuant to Article 21.6 of the DSU. Indonesia wished to reiterate its commitment to implementing the recommendations and ruling of the DSB in these disputes. On measure 18, as reported in previous DSB meetings, Indonesia had removed all Articles in the relevant Laws that were found to be inconsistent with WTO rules through the enactment of Law No. 11/2020 on Job Creation. With respect to measures 1-17, Indonesia wished to reassure that significant adjustments, to comply with the recommendations and rulings of the DSB, had been caried out through amendments of the relevant Ministry of Agriculture and Ministry of Trade Regulations. Those adjustments included the removal of disputed measures including, *inter alia*, the: harvest period restriction; import realization requirements; six-months harvest requirement; and reference price. Indonesia was committed to engage with New Zealand and the United States and reaffirmed its commitment to implementing the recommendations and rulings of the DSB in these disputes.

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

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

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

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

A. Statement by the European Union

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

2.2. The representative of the European Union said that despite long-standing reassurances of the United States that the DSB's recommendations and rulings were fully implemented by adopting the Deficit Reduction Act, disbursements under the Continued Dumping and Subsidy Offset Act (CDSOA) had been made every year since then. Every disbursement that still took place under that legal basis was clearly an act of non-compliance with DSB recommendations and rulings. For the item to be considered resolved and removed from the DSB's surveillance, the United States had to fully stop

transferring collected duties. The European Union maintained that such full compliance was needed, independently of the cost resulting from the application of such limited duties. The European Union also renewed its call on the United States to abide by its obligation under Article 21.6 of the DSU to submit implementation reports in this dispute, as the issue remained unresolved. If the United States did not agree that the issue remained unresolved, nothing prevented it from seeking a multilateral determination through a compliance procedure.

2.3. The representative of the United States said that as the United States had noted at previous DSB meetings, the Deficit Reduction Act – which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 – was enacted into law more than 15 years prior, in February 2006. The Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, more than 13 years prior. Accordingly, the United States had long ago implemented the DSB's recommendations and informed WTO Members of its implementation. At the previous DSB meeting, the European Union had once again stated its view that the United States had an "obligation" under Article 21.6 to submit a status report in this dispute. Notably, the European Union did not call on any other Member in any other dispute to abide by this so-called "obligation," despite the fact that several Members – including the European Union – were in the same situation as the United States. As the United States had explained repeatedly, there was no obligation under the DSU for a Member to provide further status reports once that Member informed the DSB that it *has implemented* the DSB recommendations. The widespread practice of Members – including the European Union as a responding party – confirmed this understanding of Article 21.6. Through its actions, the European Union, once again, demonstrated that it did not truly believe that there was an "obligation" under Article 21.6 to submit a status report after a party had claimed compliance. The European Union had simply invented a rule for this dispute, involving the United States, that it did not apply to other disputes involving other Members. Under the next Agenda item, the United States would raise another such dispute.

2.4. The DSB took note of the statements.

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

A. Statement by the United States

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

3.2. The representative of the United States said that the United States had placed this item on the agenda of the present meeting to highlight that the European Union had once again not provided Members with a status report concerning the dispute *EC – Large Civil Aircraft* (DS316). As Members were aware, on 15 June 2021, the United States and the European Union had reached an "Understanding on a cooperative framework for Large Civil Aircraft". That agreement sought to forge a more cooperative future by suspending the tariffs related to this dispute for five years, agreeing to clear principles that any financing for the production or development of large civil aircraft would be on market terms, and committing to joint collaboration to address non-market practices in this sector. Those efforts would help the US and EU companies and workers compete fairly, and the United States welcomed the collaboration with its European partners. As part of this significant effort to enhance cooperation, the United States intended to discuss its concerns relating to outstanding EU support measures with the European Union bilaterally. The United States was therefore disappointed to again see the European Union inscribe the preceding agenda item for DS217, and call for a US status report, while not submitting an EU status report for DS316. The United States had put this item on the agenda as an opportunity for the European Union to explain its contradictory approach to the application of Article 21.6 of the DSU. In both disputes, the responding party had claimed that it had implemented the DSB recommendation. In both disputes, the complaining party did not agree with that claim. But the European Union persisted in calling for a status report and agenda item for DS217 – where it was the complaining party – while not providing such a report to the DSB in DS316 – where it was the responding party. The US position on status reports had been consistent across disputes: under Article 21.6 of the DSU, once a responding Member announced to the DSB that it had complied, there was no further "progress" on which it could report, and therefore no further obligation to provide a status report. As noted under the previous item, the United States considered this understanding to be based on the text of the DSU and reflected in every responding

Member's behaviour in other WTO disputes – including the EU's own behaviour. The United States would continue to engage bilaterally with the European Union on the tension created by the EU's position under these two items. The United States wished to reinforce their more cooperative relationship and focus their attention on bilateral challenges and opportunities.

3.3. The representative of the European Union said that the European Union also welcomed the fact that the parties had reached an Understanding on a Cooperative Framework for Large Civil Aircraft that allowed the parties to suspend their respective retaliation measures for five years. In relation to the US criticism of the European Union for not submitting a status report in the Airbus dispute, the European Union noted, again, that, in the Airbus case, the European Union had notified a new set of compliance measures to the DSB. That new set of compliance measures was subject to an assessment by a compliance panel and that panel report had been issued on 2 December 2019. As noted in its statement at the December 2020 meeting of the DSB, the European Union was of the view that significant aspects of the compliance panel report could not be regarded as legally correct and were very problematic from a systemic perspective when it came to assessing compliance with the subsidy disciplines of the WTO Agreements. In order to have those legal errors corrected, the European Union had filed an appeal against the compliance panel's report on 6 December 2019. Whether or not the matter was "resolved" in the sense of Article 21.6 was the very subject matter of that ongoing litigation. The defending party was not required to submit "status reports" to the DSB in those circumstances. The European Union hoped that the Understanding on a Cooperative Framework for Large Civil Aircraft would allow the parties to resolve their disagreement also in relation to the provision of status reports to the DSB in the Airbus case.

3.4. The DSB took note of the statements.

4 CHINA – TARIFF RATE QUOTAS FOR CERTAIN AGRICULTURAL PRODUCTS

A. Recourse to Article 21.5 of the DSU by China: Request for the establishment of a panel (WT/DS517/20)

4.1. The Chairman recalled that the DSB had considered this matter at its meeting on 26 July 2021 and had agreed to revert to it should a requesting Member wish to do so. He then drew attention to the communication from China contained in document WT/DS517/20 and invited the representative of China to speak.

4.2. The representative of China said that on 15 July 2021, China had submitted its request for the establishment of a compliance panel in "China – Tariff Rate Quotas for Certain Agricultural Products" (DS517), pursuant to Article 21.5 of the DSU. At the DSB meeting of 26 July 2021, China had clarified the background and reason for this request. To recall, as the original respondent, China had been reluctant to take this unusual action. China did so in light of the US failure to initiate compliance proceedings under Article 21.5 of the DSU to review China's implementation of the recommendations and rulings of the DSB in this dispute. As set out in its status report to the DSB of 17 February 2020, and as detailed in its request for the establishment of a compliance panel, China had fully implemented the recommendations and rulings of the DSB concerning the administration of its TRQs for wheat, corn, and rice. Nevertheless, on 15 July 2021, the United States proceeded with filing a request under Article 22.2 of the DSU requesting authorization to suspend concessions or other obligations with respect to China in an amount to be determined via a formula "that relates to the value of the unfilled portion of any tariff-rate quota (TRQ) for wheat, rice, or corn, as set out in China's WTO Schedule." The United States had failed to specify on what basis it considered China's implementation to fall short of full compliance. The United States had further refused to engage with China on reaching a sequencing agreement, as was customary practice in dispute settlement, and the "logical way forward" to resolve any disagreement between the parties regarding China's compliance measures. China was deeply concerned by the systemic implications of the US approach. In light of the US refusal to engage with China to resolve any disagreement regarding China's implementation of the DSB's recommendations and rulings in the usual manner, China had been forced to take the unusual step of submitting its request. The representative of China emphasized that the unusual procedural posture of this request did not shift the burden of proof. It remained the US burden to establish the WTO-inconsistency of China's compliance measures. China strongly believed that the compliance panel would confirm China's full compliance.

4.3. The representative of the United States said that the United States was not in a position to agree with China that it had come into compliance with the DSB recommendations in this dispute. To recall, the DSB had found that China failed to administer its wheat, rice, and corn TRQs on a transparent, predictable, and fair basis, using clearly specified requirements and administrative procedures, and in a manner that would not inhibit the filling of each TRQ under China's Protocol of Accession, to the extent that it incorporated Paragraph 116 of the *Report of the Working Party on the Accession of China*. The United States had reserved its right to suspend concessions under Article 22.6 of the DSU, and the matter had been referred to arbitration. The parties had paused that arbitration. The United States understood that China did not seek further litigation but had requested a panel to preserve its rights under Article 21.5 of the DSU. The United States was willing to work together with China to reach a resolution to this dispute. In its statement, China stated that the United States had failed to specify on what basis China's implementation fell short of compliance. The United States was under no obligation to present claims and arguments under this agenda item. The United States had engaged bilaterally with China on these issues on a regular and ongoing basis, and would continue to do so. For the purpose of the present meeting, the United States noted the lack of transparency in China's system, which highlighted the underlying challenge to the United States and other WTO Members of understanding China's administration of basic import laws and regulations. Beyond that, the United States simply noted that, including because of China's lack of transparency, the TRQ measures notified by China in February 2020 and subsequent TRQ measures published in 2021 did not themselves demonstrate that China presently administered its wheat, rice, and corn TRQs on a transparent, predictable, and fair basis, using clearly specified requirements and administrative procedures, and in a manner that would not inhibit the filling of each TRQ. Indeed, several of the panel's findings had been based on the discrepancy between what China's legal instruments stated *would* be done, and what China asserted – during the course of the litigation – *was in fact* done in practice.

4.4. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel the matter raised by China in document WT/DS517/20. The panel would have standard terms of reference.

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

5 PANAMA – MEASURES CONCERNING THE IMPORTATION OF CERTAIN PRODUCTS FROM COSTA RICA

A. Request for the establishment of a panel by Costa Rica (WT/DS599/4)

5.1. The Chairman drew attention to the communication from Costa Rica contained in document WT/DS599/4 and he invited the representative of Costa Rica to speak.

5.2. The representative of Costa Rica said that historically speaking, Costa Rica had always placed its trust in the multilateral trading system because this system allowed Members to abide by clear, predictable, and transparent rules. Therefore, Costa Rica had been compliant with all its commitments as a Member of the WTO. This meant that Costa Rica could have recourse to the dispute settlement mechanism when it deemed that there had been a failure to comply with the established rules. This was a fundamental pillar of the WTO. It was absolutely necessary so that all Members and parties could reach balanced outcomes when disputes arose regarding the implementation of their WTO commitments. As neighbouring countries, Costa Rica and Panama were strategic allies. They shared common history and interests. Likewise, they both aspired to economic integration and enhancing trade between their countries as a source of development and wellbeing. Even among countries sharing the same goals who have enjoyed long and prosperous trade relations, disputes might arise requiring impartial views. For this reason, Costa Rica had deemed it appropriate to include this Agenda item and request the establishment of a panel to settle this dispute. Costa Rica wished to stress that it acknowledged the Panamanian authorities' willingness to proceed to constructive dialogue and a quest for solutions during the consultation phase, and a series of rapprochements that had enabled them to exchange information and viewpoints. Nevertheless, the lack of a satisfactory solution after months of consultations prompted Costa Rica to take this next step.

5.3. Costa Rica said that over the past two years, Panama had implemented a series of measures, the result of which had been to ban Costa Rican imports of products such as plantain, banana, pineapple and strawberry. All these products had been exported to Panama for decades. Costa Rica felt that the decision to ban their entry lacked any scientific evidence, because there had been no change in the national phytosanitary situation that would imply that there were any risks. Panama had withdrawn the ability of certain Costa Rican establishments to continue to export despite repeated requests to do so, and currently they found themselves in the midst of the COVID-19 worldwide crisis. Once again, there had been no changes in the phytosanitary status nor any increase in associated risks for Costa Rican products, yet Panama's limitations on Costa Rican exports had affected milk products, beef products, pork, cured beef, pork, poultry, aquatic animal food, pet food, and so on since June last year.

5.4. The concerns resulting from those export restrictions on Costa Rican products had led Costa Rica to present the issue initially at the SPS and Agriculture Committees and also before the CTG. Yet the restrictions had not been lifted. For that reason, in January 2021, Costa Rica had decided to hold consultations with Panama in accordance with Articles 1 and 4 of the DSU, as well as Article 19 of the Agriculture Agreement, Article 11 of the SPS Agreement, and Article XXII of the GATT 1994. The consultations took place on 8 February 2021, but it was not possible to reach a joint outcome so as to settle this dispute. In addition, and in parallel with the request for consultations, Costa Rica had sought to establish dialogue with the Panamanian authorities to understand their reasoning and find mutually satisfactory solutions. However, it was not successful in reaching a common understanding that would allow reopening the Panamanian market to Costa Rica's products, despite the fact that Costa Rican firms complied with all applicable regulations to export and also complied with the highest possible international SPS standards. Given that there had been no change in Costa Rica's phytosanitary situation and that the Panamanian authorities continued to remain silent in terms of scientific evidence or any reason for applying these measures, which were counter to its international trade commitments, Costa Rica considered that Panama's measures were inconsistent with its obligations under the SPS Agreement, the Agriculture Agreement, and the GATT 1994. In light of all this, and in view of the economic losses experienced by Costa Rican firms because of these unjustified measures preventing the entry of their products into the Panamanian market, Costa Rica was requesting that a panel be established in accordance with Articles 4.7 and 6 of the DSU, Article 19 of the Agriculture Agreement, Article 11.1 of the SPS Agreement and Article XXIII of the GATT 1994.

5.5. The representative of Panama said that Panama regretted that, despite its openness to dialogue and the hard work carried out by the competent authorities to ensure that their countries maintained a flow of trade in agricultural products that guaranteed adequate protection levels for both countries' phytosanitary resources, Costa Rica had taken this decision. However, Panama maintained its readiness to reach a solution that would be satisfactory to both countries in order to end this trade dispute. If this dispute were to be submitted to the dispute settlement system it would require both countries to invest a considerable amount of time and resources. Therefore, Panama objected to Costa Rica's panel request, as set out in document WT/DS599/4.

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

6 CHINA – ANTI-DUMPING MEASURES ON STAINLESS STEEL PRODUCTS FROM JAPAN

A. Request for the establishment of a panel by Japan (WT/DS601/2)

6.1. The Chairman drew attention to the communication from Japan contained in document WT/DS601/2 and he invited the representative of Japan to speak.

6.2. The representative of Japan said that this case concerned China's measures imposing anti-dumping duties on imports of stainless steel products from Japan. Japan considered China's measures to be inconsistent with its obligations under the GATT 1994 and the Anti-Dumping Agreement, as explained in Japan's panel request. First, Japan was of the view that, amongst other things, China's price effect analysis was flawed because China treated three different products, namely, slabs, coils, and plates, as a single product, and hence did not properly analyse the effect of the subject imports on domestic prices. Such price effect analysis was inconsistent with Articles 3.1 and 3.2 of the Anti-Dumping Agreement. Second, China cumulatively assessed the

impact of the imports from four WTO Members, namely Japan, the European Union, Korea, and Indonesia, that were not in a competitive relationship with each other. Such cumulative assessment was inconsistent with Articles 3.1 and 3.3 of the Anti-Dumping Agreement. Third, Japan believed that China's assessment was insufficient to demonstrate the causal relationship between the subject imports and the injury to the domestic industry, which was inconsistent with its obligations under Articles 3.1 and 3.5 of the Anti-Dumping Agreement. Furthermore, Japan considered that China had failed to comply with several obligations set forth in Articles 3.4, 4.1, 6.5, 6.5.1, 6.9, 12.2, and 12.2.2 of the Anti-Dumping Agreement. Notwithstanding Japan's repeated expression of its concern regarding China's measures on numerous occasions, for an extended period of time, China continued to impose the measures. Therefore, Japan had requested consultations under the WTO Agreement on 11 June 2021. Those consultations had been held on 19 July 2021, with a view to reaching a mutually satisfactory solution. However, it was regrettable that the parties had been unable to resolve their differences through those consultations. Japan, therefore, requested, pursuant to Article 6 of the DSU, that a panel be established to examine this matter, as set out in its panel request, with standard terms of reference, in accordance with Article 7.1 of the DSU.

6.3. The representative of China said that China regretted that Japan had decided to request the establishment of a panel in this dispute. China was not in a position at the present meeting to support such request. China maintained its domestic anti-dumping regime in line with relevant WTO rules. Specifically, in this dispute, the Chinese Investigating Authority, by adhering to its legal mandate, conducted a transparent and fair investigation in relation to the imports concerned from Japan. It finally determined the existence of dumping and found that those trade distortions had caused material injury to the domestic industry. As a necessary remedial step, certain anti-dumping measures had been duly imposed by the Chinese Investigating Authority. While China was confident of its measures' WTO-consistency, it had engaged with Japan in good faith, both during and after the consultations, with the view to solving this dispute in an amicable way. China was willing to continue to do so through appropriate channels. Given the overall circumstances, China believed it was premature to establish a panel in this dispute.

6.4. The representative of Japan said that Japan took note of China's statement and appreciated China's engagement in consultations thus far to seek a mutually satisfactory solution. However, Japan wished to highlight that since Japan and China had been unable to reach such a solution despite various consultations for a long period of time. Japan had requested the establishment of a panel in accordance with WTO rules. Japan recognized, pursuant to Article 3.7 of the DSU, that the aim of the dispute settlement mechanism was to secure a positive solution to a dispute. Japan thus remained available to find, at any time, a mutually agreed solution that would eliminate the measures at issue.

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

7 STATEMENT BY TUNISIA REGARDING THE PANEL REPORT IN THE DISPUTE: "MOROCCO – DEFINITIVE ANTI-DUMPING MEASURES ON SCHOOL EXERCISE BOOKS FROM TUNISIA"

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

7.2. The representative of Tunisia thanked the members of the panel who had served on this dispute for their flexibility in holding virtual and hybrid meetings. Tunisia also wished to thank the members of the WTO Secretariat for their availability and responsiveness, as well as their efforts to provide as normal conditions as possible for panel hearings under the present circumstances due to the COVID-19 pandemic. Tunisia considered it appropriate to make a statement at the present meeting in order to take stock of the situation, given the most recent developments in this regard. Tunisia recalled that on 27 July 2021, the Panel had circulated its report to WTO Members, the conclusions of which confirmed the basis for Tunisia's claims under Articles 2.2, 2.2.2, 2.4, 3.1, 3.2, 3.4, 3.5 and 5.3 of the Anti-Dumping Agreement. The following day, Morocco had notified its decision to appeal under Article 16.4 of the DSU in a Notice of Appeal circulated in document WT/DS578/5. Morocco did not, however, provide an appellant's submission "on the same day as the date of the filing of the Notice of Appeal", contrary to Rule 21(1) of the Working Procedures for Appellate Review. In response, Tunisia, which would have liked Morocco to comply with the conclusions of the Panel Report, was obliged to submit a letter on 16 August 2021, stating that it was not in a position to

respond to Morocco's arguments, as Morocco had not provided its appellant's submission within the required time-frame. Tunisia was entitled, pursuant to Article 16.4 of the DSU, to request the adoption of the Panel Report in this dispute in accordance with the negative consensus rule. Furthermore, in Tunisia's view, this right might be suspended should Morocco decide to appeal. In that case, the Panel Report shall be adopted after "completion of the appeal", as set out in Article 16.4 of the DSU. For that reason, Tunisia was not requesting at the present meeting that the DSB adopt the Panel Report in this dispute. However, the suspension of Tunisia's right to request the adoption of the Panel Report was not boundless. In particular, Article 17.5 of the DSU provided for a general time-frame of 60 days for completion of the appeal, and the last sentence stated that "[i]n no case" shall the appeal proceedings "exceed 90 days". Therefore, and in light of Tunisia's reading of Article 17.5, the "completion of the appeal" referred to in Article 16.4 could not exceed 90 days from notification of the decision to appeal. It followed, therefore, that the suspension of the right to request the adoption of the Panel Report had to be lifted 91 days after the date of formal notification of appeal. From that point forward, either party should be entitled to request the adoption of the Panel Report in accordance with the negative consensus rule. Morocco had notified its decision to appeal on 28 July 2021, such that the 91st day would fall on 27 October 2021. Therefore, Tunisia would be able to request that the DSB adopt the Panel Report at its meeting on 29 November 2021. Nevertheless, Tunisia, which had spared no effort in seeking the conclusion of this case, intended, before 29 November 2021, to exhaust all available means to resolve this dispute. In order to do so, Tunisia hoped that the Chair would agree to convene a meeting with the parties as soon as possible with a view to reaching an agreement under his leadership, either on the merits of the dispute or on an *ad hoc* appeal procedure. Tunisia hoped that his prompt involvement would be very useful in reaching common ground in this dispute.

7.3. The representative of the Russian Federation said that the Russian Federation wished to refer to its previous statements made with regard to the practice of appealing into the "void". The Russian Federation wished to reiterate its disappointment with the fact that WTO Members continued to file appeals, notwithstanding the critical state of the Appellate Body, thereby leaving those cases unresolved. The Russian Federation deeply regretted that such actions threatened the continued effectiveness of the dispute settlement mechanism and inevitably undermined confidence in the WTO.

7.4. The representative of Canada said that, since 11 December 2019, the Appellate Body had no longer operated in practice. Article 3.10 of the DSU provided that, if a dispute arose, Members would engage in dispute settlement procedures in good faith in an effort to resolve the dispute. The Appellate Body's inability to assume its appellate review responsibilities had undermined the DSU process, but the obligation under Article 3.10 to make good faith efforts to resolve the dispute was still valid. No Member should seek to derive an unfair advantage from the current impasse. In the context of specific disputes, solutions existed to emerge from the current impasse of the Appellate Body. In particular, the parties to the dispute might agree to use procedures such as those set out in Annex 1 of the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) to complete the appeal process. Canada considered that it was essential that all parties to the dispute abided by their good-faith commitment under Article 3.10 of the DSU by making every effort to find an acceptable solution. If they were unable to find such a solution, there was the possibility of them resorting to self-assistance measures, which in turn would erode confidence in the rules-based system for governing international trade. No Member would benefit from this situation in the long term. A Member acting in good faith should find no consolation in benefiting from an unfair, short-term advantage which it possessed owing to the absence of an operational Appellate Body. Canada reiterated its invitation to Morocco and Tunisia to consider joining the MPIA in order to safeguard the binding rules including the possibility of an appeal procedure in disputes involving them and the other MPIA participants.

7.5. The representative of Morocco thanked Tunisia for its statement. Morocco had taken note of Tunisia's statement and recalled that following the circulation of the Panel Report, Morocco had wished to continue bilateral consultations with Tunisia with a view to reaching an agreement given the situation of the Appellate Body, however unfortunately this had not been possible. Morocco remained open to continue consultations on this matter with the mediation of the Secretariat and the DSB Chair in order to reach an agreement or understanding on this matter in the light of the paralysis of the Appellate Body. At the present meeting, Morocco wished to confirm its notice of appeal and reserved its right to respond to Tunisia's statement at the next DSB meeting.

7.6. The Chairman said that the DSB would take note of the statements made and of Tunisia's request that the Chair of the DSB hold consultations with the parties to this dispute in order to find a mutually agreeable solution. He noted that Morocco had stated that it was open to such consultations. He said that he would contact the parties to this dispute regarding this matter as soon as possible.

7.7. The DSB took note of the statements.

8 APPELLATE BODY APPOINTMENTS: PROPOSAL BY AFGHANISTAN; ANGOLA; ARGENTINA; AUSTRALIA; BANGLADESH; BENIN; PLURINATIONAL STATE OF BOLIVIA; BOTSWANA; BRAZIL; BURKINA FASO; BURUNDI; CABO VERDE; CAMEROON; CANADA; CENTRAL AFRICAN REPUBLIC; CHAD; CHILE; CHINA; COLOMBIA; CONGO; COSTA RICA; CÔTE D'IVOIRE; CUBA; DEMOCRATIC REPUBLIC OF CONGO; DJIBOUTI; DOMINICAN REPUBLIC; ECUADOR; EGYPT; EL SALVADOR; ESWATINI; THE EUROPEAN UNION; GABON; THE GAMBIA; GHANA; GUATEMALA; GUINEA; GUINEA BISSAU; HONDURAS; HONG KONG, CHINA; ICELAND; INDIA; INDONESIA; ISRAEL; KAZAKHSTAN; KENYA; REPUBLIC OF KOREA; LESOTHO; LIECHTENSTEIN; MADAGASCAR; MALAWI; MALAYSIA; MALDIVES; MALI; MAURITANIA; MAURITIUS; MEXICO; REPUBLIC OF MOLDOVA; MOROCCO; MOZAMBIQUE; NAMIBIA; NEPAL; NEW ZEALAND; NICARAGUA; NIGER; NIGERIA; NORTH MACEDONIA; NORWAY; PAKISTAN; PANAMA; PARAGUAY; PERU; QATAR; RUSSIAN FEDERATION; RWANDA; SENEGAL; SEYCHELLES; SIERRA LEONE; SINGAPORE; SOUTH AFRICA; SWITZERLAND; THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU; TANZANIA; THAILAND; TOGO; TUNISIA; TURKEY; UGANDA; UKRAINE; UNITED KINGDOM; URUGUAY; THE BOLIVARIAN REPUBLIC OF VENEZUELA; VIET NAM; ZAMBIA AND ZIMBABWE (WT/DSB/W/609/REV.19)

8.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Mexico, on behalf of a number of delegations. He then drew attention to the proposal contained in document WT/DSB/W/609/Rev.19 and invited the representative of Mexico to speak.

8.2. The representative of Mexico, speaking on behalf of the co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.19, said that the delegations in question had agreed to submit the joint proposal, dated 7 December 2020, to launch the selection processes for the vacancies of the Appellate Body members. On behalf of those 121 Members, Mexico wished to state the following. The extensive number of Members submitting the joint proposal reflected a common concern with the current situation in the Appellate Body that was seriously affecting the overall dispute settlement system, against the best interest of its Members. WTO Members had a responsibility to safeguard and preserve the Appellate Body, the dispute settlement system, and the multilateral trading system. Thus, it was their duty to proceed, without further delay, with the launching of the selection processes for the Appellate Body members, as submitted to the DSB at the present meeting. The proposal sought to: (i) start seven selection processes (one process to replace Mr Ricardo Ramírez-Hernández, whose second term had expired on 30 June 2017; a second process to fill the vacancy resulting from the resignation of Mr Hyun Chong Kim with effect from 1 August 2017; a third process to replace Mr Peter Van den Bossche, whose second term had expired on 11 December 2017; a fourth process to replace Mr Shree Baboo Chekitan Servansing, whose four-year term of office expired on 30 September 2018; a fifth process to replace Mr Ujal Singh Bhatia, whose second term had expired on 10 December 2019; a sixth process to replace Mr Thomas Graham whose second term had expired on 10 December 2019; and a seventh selection process to replace Ms Hong Zhao, whose first four-year term of office had expired on 30 November 2020); (ii) to establish a Selection Committee; (iii) to set a deadline of 30 days for the submission of candidacies; and (iv) to request that the Selection Committee issue its recommendation within 60 days after the deadline for nominations of candidates. The proponents were flexible in the determination of the deadlines for the selection processes, but Members should consider the urgency of the situation. The proponents continued to urge all Members to support this proposal in the interest of the dispute settlement and multilateral trading systems.

8.3. The representative of the European Union said that the European Union wished to refer to its previous statements made on this matter. 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 critical for a rules-based multilateral trading system. This was why the most urgent area of WTO reform involved finding an agreed basis to restore such a system and proceeding to the appointment of the members of the Appellate Body. This task should

be addressed as a priority. As the European Union had consistently noted, WTO Members had a shared responsibility to resolve this issue as soon as possible, and to fill the outstanding vacancies as required by Article 17.2 of the DSU. The European Union agreed that meaningful reforms were needed in order to achieve that objective. The European Union therefore renewed its call on all WTO Members to engage in a constructive discussion as soon as possible in order to restore a fully functioning WTO dispute settlement system. The European Union thanked all Members that had co-sponsored the proposal to launch the AB appointment processes.

8.4. The representative of Nigeria, speaking on behalf of the African Group, said that the Group wished to join other delegations who had supported the statement made by Mexico and referred to its previous statements made on this matter at previous DSB meetings.

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

8.6. The representative of Canada said that Canada supported Mexico's statement and shared the concerns expressed by other Members. Canada invited those WTO Members who had not yet endorsed the proposal to consider joining the 121 Members who were calling for the selection process to be launched. The critical mass of WTO Members who supported this proposal was a clear testimony to the importance they all attached to a fully operational Appellate Body as an integral part of the dispute settlement system. The fact that the Appellate Body could not hear new appeals was very worrying. Canada reiterated its interest in contributing to discussions aimed at finding solutions regarding the functioning of the Appellate Body. Canada would appreciate it if the United States would commit to those discussions and invited it to do so. It remained Canada's priority to find a lasting multilateral solution for all Members, including the United States. Meanwhile, Canada and 24 other WTO Members had endorsed the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) as a contingency measure that sought to safeguard their rights to binding dispute settlement rules including the possibility of appeal in disputes among themselves. The MPIA was open to all WTO Members. Canada invited all WTO Members to consider joining the MPIA in order to safeguard their dispute settlement rights to the greatest extent possible until Members could collectively find a permanent solution to the impasse in the Appellate Body. Canada was available to discuss the MPIA with any interested Member.

8.7. The representative of Japan said that Japan wished to refer to its statements made at previous DSB meetings and supported the AB proposal. Japan shared a sense of urgency for reform of the dispute settlement system. As Japan had consistently stated, Japan considered it the utmost priority to achieve an expeditious reform that would contribute to a long-lasting solution to the structural and functional problems of the dispute settlement system. For such a reform, every WTO Member, as the owner of the system, had to take seriously the current situation where the Appellate Body virtually ceased its operation a long time ago and, meanwhile, a number of cases had been appealed into the void. Furthermore, Japan considered it essential that every WTO Member restarted constructive discussions on the reform of the dispute settlement system, including on how to address the concerns surrounding the Appellate Body. Japan spared no efforts to collaborate with all WTO Members to that end.

8.8. The representative of China said that China supported the statement made by Mexico on behalf of 121 co-sponsors and called upon other Members to join the proposal. China referred to its previous statements on this urgent matter and reiterated its firm commitment to an independent and impartial two-tier dispute settlement system. The paralysis of the Appellate Body had posed a serious challenge to the multilateral trading system, and more than a dozen cases, including the one referred to at the present meeting, had been appealed into the void. This severe situation not only deprived Members of their right to defend their interests, but also jeopardized the security and predictability of this rules-based organization. Therefore, China called upon all Members to prioritize the restoring of the Appellate Body function, and to engage constructively in the solution-based consultations with a view to breaking the selection impasse at the earliest possible date. China also wished to echo the statements made by the European Union and Canada and called upon Members to join the MPIA as a contingent arrangement during the AB impasse.

8.9. The representative of Indonesia said that Indonesia wished to refer to its previous statements made at previous DSB meetings with regard to this important Agenda item. Indonesia continued to urge all Members to accord their serious attention, willingness and commitment for the immediate appointment of the Appellate Body members.

8.10. The representative of the United Kingdom said that the United Kingdom continued to support this Agenda item to launch the selection process for appointments to the Appellate Body, and referred to its previous statements on this issue. The dispute settlement system was a central pillar of the rules based multilateral trading system. Members had to restore a fully effective and binding system, to ensure that the rules that they had negotiated were enforceable, preserving the rights and obligations of Members. The United Kingdom would continue to engage with all Members to find common ground on this issue. The situation remained critical, and the United Kingdom stood ready to work together to find a long-term solution.

8.11. The representative of Korea said that Korea reiterated its support for the joint AB proposal and referred to its previous statements made on this issue. The WTO dispute settlement system had been a central element in providing security and predictability to the multilateral trading system. Korea, as a firm supporter of the multilateral trading system, was ready to engage constructively in relevant discussions to find a solution to enhance the functioning of the dispute settlement system with a view to accommodating the needs of WTO Members. Also, Korea wished to point out that Members should strive for a work plan to reform the dispute settlement system by MC12. Korea stood ready to work together with other Members and would continue to play an active and constructive part in relevant discussions with a view to reaching a tangible outcome.

8.12. The representative of Thailand said that Thailand wished to join others in supporting the statement made by Mexico on behalf of the 121 co-sponsors. Thailand referred to its previous statements delivered at the DSB meetings under this Agenda item and renewed its call on all Members to continue their constructive efforts in order to revive the fully functioning dispute settlement system.

8.13. The representative of the Russian Federation said that the Russian Federation wished to thank Mexico for its leadership and the other co-sponsors for the continued work on this issue. To avoid any repetition, the Russian Federation referred to its statements made at previous DSB meetings and reiterated its strong support for the proposal to immediately launch the AB appointment processes. Russia urged Members to prioritize restoring the proper operation of the dispute settlement system and renewed its readiness to cooperate and engage constructively in any discussions on the matter.

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

8.15. The representative of Norway said that Norway referred to its previous statements made under this Agenda item. Norway fully supported the joint AB proposal presented by Mexico and co-sponsored by 121 Members. Norway again underlined the urgent need to start the selection processes in order to fill the vacancies in the Appellate Body, in accordance with the DSU provisions. In Norway's view, the top priority should be to restore the fully functioning dispute settlement mechanism, and Norway continued to support all efforts in that regard. Norway reconfirmed its readiness to engage constructively in the discussions that needed to be initiated as soon as possible.

8.16. The representative of India said that India referred to its previous statements made on this matter and reiterated its serious concerns regarding the DSB's inability to comply with its legal obligation under Article 17.2 of the DSU to appoint Appellate Body members to fill the vacancies. India called on all Members to engage constructively to immediately start the AB selection process as a priority.

8.17. The representative of Hong Kong, China said that Hong Kong, China supported Mexico's statement and wished to join Mexico and other Members who reiterated the importance of resolving the Appellate Body impasse and restoring the fully functioning dispute settlement system. Hong Kong, China was committed to any constructive engagement for discussions on any necessary reform to make this happen.

8.18. The representative of Argentina said that Argentina wished to thank Mexico and the previous speakers for their statements. Argentina supported the joint statement and wished to refer to its previous statements regarding Argentina's concern about the undue delay in launching the selection processes for new Appellate Body members, which affected the functioning of the Organization. Therefore, Argentina invited all Members to explore all possible alternatives to find a structural and satisfactory solution to the current situation.

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

8.20. The representative of Iceland said that Iceland fully supported the statement made by Mexico. As a small nation and an open economy, Iceland was a strong supporter of the global framework governing international trade which was grounded in the rule of law. Iceland viewed the WTO's two-step dispute settlement mechanism as playing a central role in providing predictability within that system and securing a fair playing field for all participating Members. The organization's long-time lack of progress in filling the vacancies of the Appellate Body was therefore a source of great concern for Iceland. Iceland wished to use this opportunity to call on all Members to engage in a constructive manner to solve the AB impasse and to do so without further delay.

8.21. The representative of Switzerland said that Switzerland wished to refer to its statements made on this matter at previous DSB meetings. A fully functional appeals stage was in everyone's interest, and Switzerland hoped that fresh impetus could be achieved rapidly to resolve the impasse that Members had been facing for too long. Switzerland remained ready to work towards that objective, and strongly encouraged all Members to engage constructively in seeking concrete solutions to unlock the current situation.

8.22. The representative of Singapore said that Singapore thanked Mexico for its statement, which Singapore strongly supported. Singapore reiterated its previous statements on this matter and urged all Members to embark on the Appellate Body selection process immediately. Singapore looked forward to engaging constructively in discussions with all Members, including the United States, to find a lasting multilateral solution.

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

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

at the present meeting, the Appellate Body would continue to be unable to perform its functions against the best interest of all Members.

8.25. The representative of Mexico said that for over two years, 121 Members had been requesting the inclusion of the AB proposal for its approval by the DSB and for Members to be able to preserve their right to appeal, which was established in the DSU. Mexico wished to refer to its previous statements made on this matter. Mexico continued to be deeply concerned about this unprecedented situation whereby the Appellate Body was not able to function. All disputes currently underway were being affected because Members did not have a two-stage dispute settlement mechanism that was fully operational, which jeopardized the prompt adoption of reports by the DSB. Mexico urged Members who had not yet done so to join the proposal. Mexico continued to be prepared to work constructively to reach a real multilateral outcome in this area.

8.26. The Chairman thanked all delegations for their statements. He said that, as in the past, the DSB would take note of the statements expressing the respective positions of Members, which would be reflected in the minutes of this meeting. As Members were all aware, this matter required a political engagement on the part of all WTO Members, and he hoped that Members would be able to find a solution and common ground on this matter as soon as possible. As Members recalled, the Chair of the General Council (GC) had briefly reported on his consultations regarding the issue of restoration of a fully functional dispute settlement system at the July General Council meeting. The GC Chair's report was circulated in document JOB/GC/268. He said that he would take up this matter with the GC Chair in the coming days. He also said that his door was open to any delegation wishing to contact him directly on this matter.

8.27. The DSB took note of the statements.