

**Dispute Settlement Body
27 September 2021**

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 27 SEPTEMBER 2021¹

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

Prior to the adoption of the Agenda: (i) the Chairman welcomed all delegations participating in the virtual meeting of the DSB, both in person and remotely, and said that he wished to recall a few technical instructions regarding this virtual meeting. 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. In the alternative, the item would remain open temporarily, the meeting would proceed to the next Agenda item, and the DSB would revert to the open item after the technical issue had been resolved. If a technical issue remained unresolved, the delegation had the option to send the statement to the Secretariat with the request that it be read out by the Secretariat on behalf of that delegation during the meeting so that the statement could be reflected in the minutes of the meeting; (ii) the Chairman made a short statement regarding item 4 of the proposed Agenda of the 28 April DSB meeting pertaining to the DS574 dispute. He said that, as Members recalled, 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 he continued to consult with each interested party on this matter and that those consultations were ongoing; and (iii) China requested the inclusion of an item under "Other Business" in order to make a statement concerning due process in panel compositions.

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

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

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F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.28 – WT/DS478/22/Add.28)

1.1. The Chairman said 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, the Chairman invited 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.219)

1.2. The Chairman drew attention to document WT/DS184/15/Add.219, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.3. The representative of the United States said that the United States had provided a status report in this dispute on 16 September 2021, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations of the DSB that had yet to be addressed, the US Administration would confer with the US Congress with respect to the appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that Japan thanked the United States for its 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 dispute.

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.194)

1.6. The Chairman drew attention to document WT/DS160/24/Add.194, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.7. The representative of the United States said that the United States had provided a status report in this dispute on 16 September 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. The European Union wished to resolve this case as soon as possible.

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

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.157)

1.10. The Chairman drew attention to document WT/DS291/37/Add.157, 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 United States frequently referred to products that had successfully passed the European Food Safety Authority's (EFSA) risk assessment, but not yet received final approval through comitology. The European Union wished to point out that there were administrative procedures between the publication of EFSA's favourable opinion and the comitology vote that had to be respected. These included, among others, procedures related to transparency, such as a one-month public consultation. The European Union failed to see how these procedures could be characterised as "undue delay". The European Union acted in line with its WTO obligations. The European Union recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.12. The representative of the United States thanked the European Union for its status report and its statement made at the present meeting. The European Union had previously suggested that, with respect to these delays, the fault lay with the applicants. The United States disagreed; the US concerns related to delays at every stage of the approval process resulting from the actions or inactions of the European Union and its member States. The United States had described these problems in detail, at nearly every monthly meeting of the DSB since the European Union began submitting reports on the status of its implementation. While it had been welcome to see the European Union issue approvals and renewals in August, the persistent delays in the European Union's biotech approval system had yet to be addressed. For example, the average approval time for the seven biotech crops approved in August was approximately 72 months (6 years) – from the time that European Food Safety Authority (EFSA) accepted the dossiers for review to the approvals granted the previous month. One of those products had been within the EU's approval system for over nine years. It was the US understanding that there were still approximately eight products for which EFSA had successfully completed a risk assessment, yet which had not received final approval through comitology. Several of those products had also been under EU evaluation since before 2010. The United States continued to engage with the European Union in good faith 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 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.

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.41)

1.14. The Chairman drew attention to document WT/DS464/17/Add.41, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning anti-dumping and countervailing measures on large residential washers from Korea.

1.15. The representative of the United States said that the United States had provided a status report in this dispute on 16 September 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" DPM in investigations with respect to foreign companies and continued to collect cash deposits from foreign exporters on the basis of this WTO-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 declared that it continued to consult with interested parties. Furthermore, the continued use of the DPM by the United States had obliged Members to resort to several dispute settlement proceedings concerning this measure. This was an inefficient and unnecessary use of WTO dispute settlement resources. Canada remained deeply concerned at the US continued failure to comply with the DSB's recommendations and rulings in "US – Washing Machines". This 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.33)

1.19. The Chairman drew attention to document WT/DS471/17/Add.33, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning certain methodologies and their application to anti-dumping proceedings involving China.

1.20. The representative of the United States said that the United States had provided a status report in this dispute on 16 September 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 most recent status report. However, it was disappointing that more than 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. China urged the United States to honour its obligation under Article 21.1 of the DSU by bringing itself into full compliance with its obligations 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.28 – WT/DS478/22/Add.28)

1.23. The Chairman drew attention to document WT/DS477/21/Add.28 – WT/DS478/22/Add.28, 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 submitted its status report in accordance with 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 had been 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 in complying

with the recommendations and rulings of the DSB had been performed through amendments to the relevant Ministry of Agriculture and Ministry of Trade Regulations. Those adjustments also included the removal of disputed measures, *inter alia*: harvest period restriction, import realization requirements, six-months harvest requirement, and reference price. Indonesia was committed to engaging with New Zealand and the United States and reaffirmed its commitment to implementing the recommendations and rulings of the DSB in these disputes.

1.25. The representative of the United States said that the United States was continuing to review Indonesia's new laws and regulations in light of Indonesia's recent statements and status reports. The United States also reiterated the question it had asked the previous month. It seemed that Indonesia was 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 indicated that it would appreciate further clarity on which regulations presently comprised Indonesia's import licensing regimes and on forthcoming regulations that would affect the regimes. The United States remained willing to work with Indonesia to fully resolve this dispute.

1.26. The representative of New Zealand said that New Zealand thanked Indonesia for its status report, and acknowledged Indonesia's commitment to comply fully with the DSB's recommendations and rulings. Both compliance deadlines had, however, long since expired, and a number of measures remained non-compliant. New Zealand continued to review recent legislative adjustments in order to assess what impact this would have on Indonesia's compliance, in particular in respect of Measure 18. New Zealand understood that Indonesia was in the process of issuing new regulations under the recently enacted Law No. 11/2020 on Job Creation, which would impact this assessment. New Zealand invited Indonesia to provide further details as soon as possible. New Zealand 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 renewed its call on the United States to abide by its obligation under Article 21.6 of the DSU to submit status reports on implementation in this dispute, as the issue remained unresolved. If the United States did not agree that the issue remained unresolved, nothing prevented the United States 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 – had been 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 prior 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. Under the next Agenda item, the United States would discuss a dispute in which the European Union, as a responding party, applied a standard different from the standard it applied to the United States in the present 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 reached an "Understanding on a cooperative framework for Large Civil Aircraft." This 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. These efforts would help their 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. 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 European Union's own behaviour. The United States would continue to engage bilaterally with the European Union on the tension created by its position under these two items. The United States wished to reinforce its more cooperative relationship and focus its attention on bilateral challenges and opportunities.

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

reports" to the DSB in those circumstances. That was what differentiated the situation in this case from the situation in the Byrd Amendment case discussed under the previous Agenda item. Unlike the EU position in Airbus, the United States had not requested reverse compliance proceedings in the Byrd Amendment case, so the issue of compliance was not *sub judice*. As there were no compliance proceedings pending in the Byrd Amendment case, the EU approach was that under Article 21.6 of the DSU, the issue of implementation had to remain on the DSB's Agenda until the issue was resolved. In the Byrd Amendment case, the European Union did not agree with the assertion that the United States had implemented the DSB recommendations and rulings. This meant that the issue remained unresolved for the purposes of Article 21.6 of the DSU. The European Union hoped that the spirit underlying 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 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)

4.1. 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.

4.2. The representative of Costa Rica said that at the DSB meeting on 30 August 2021, Costa Rica had presented its request for the establishment of a panel in the dispute "Panama - Measures Concerning the Importation of Certain Products from Costa Rica", contained in document WT/DS599/4. At that meeting, Panama had objected to the establishment of a panel and the DSB agreed to revert to the matter at a future meeting. On 15 September 2021, Costa Rica had requested, pursuant to Article 6 of the DSU, re-consideration of the panel request at the present meeting. Costa Rica wished to reiterate a few points relating to this dispute. As neighbouring countries, Costa Rica and Panama were strategic allies who shared a history and common interests. They had maintained long-standing and prosperous trade relations. They both aspired to economic integration and the growth of trade between their two countries as a source of development and well-being. Over the previous two years, Panama had implemented a series of measures that had resulted in a ban on Costa Rican exports of agricultural produce such as bananas, plantains, pineapples, and strawberries. All of these products had been exported to Panama for decades and Costa Rica considered that the decision to ban their entry was scientifically unfounded, as there had been no change in the national phytosanitary status, which would imply a change in their phytosanitary risk. Furthermore, in June 2020 - amid the international crisis caused by the COVID-19 pandemic - Panama allowed the approvals for Costa Rican companies exporting animal products to expire, despite repeated renewal requests submitted on time and in due form. Again, there had been no change to the sanitary status, nor had any other situation arisen regarding the risk posed by these products. The decision not to renew the approval of these plants had greatly affected the export of milk products, pork, beef, processed poultry meat, cured meats, fish food and pet food.

4.3. The concerns due to these restrictions on Costa Rican exports led Costa Rica to raise this issue - in the first instance - before the Committees on Agriculture and Sanitary and Phytosanitary Measures and the Council for Trade in Goods. This did not, however, result in the restrictions being lifted. For that reason, Costa Rica had decided, in January 2021, to request consultations with Panama pursuant to Articles 1 and 4 of the DSU, Article 19 of the Agreement on Agriculture, Article 11 of the SPS Agreement, and Article XXII of the GATT 1994. Unfortunately, the consultations held in February 2021 did not result in any joint solution that made it possible to settle the dispute. In parallel to that request for consultations, Costa Rica had also tried to engage in dialogue with the Panamanian authorities in order to understand their reasoning and find mutually satisfactory solutions. However, Costa Rica had been unsuccessful in reaching a mutual understanding that would secure the reopening of the Panamanian market to these products, even though the Costa Rican exporting companies had complied with all the regulations applicable to exports and had met the highest international sanitary, phytosanitary and quality standards.

4.4. In this situation, while there had been no changes to Costa Rica's sanitary or phytosanitary status that justified these measures right in the middle of the pandemic, the Panamanian authorities were still failing to provide any reasoned explanations or scientific basis for implementing measures that were contrary to their international trade commitments. That was why Costa Rica considered that the measures implemented by Panama were inconsistent with its obligations under the SPS Agreement, the Agreement on Agriculture and the GATT 1994. Costa Rica acknowledged and appreciated the willingness of the Panamanian authorities to engage in constructive dialogue and seek solutions during the consultations and on the various occasions when they came into contact and were able to exchange information and points of view. However, in the absence of a satisfactory solution after months of discussion, it was imperative to take the next step and request the establishment of a panel. Considering the above-mentioned facts and having exhausted various means of dialogue, while its exporters suffered economic damage due to the implementation of unjustified measures that prevented its products from accessing the Panamanian market, Costa Rica respectfully requested the establishment of a panel pursuant to Articles 4.7 and 6 of the DSU, Article 19 of the Agreement on Agriculture, Article 11.1 of the SPS Agreement, and Article XXIII of the GATT 1994.

4.5. The representative of Panama said that, as on previous occasions, Panama wished to express that the dispute brought by Costa Rica arose from the Costa Rican authorities' refusal to initiate the process to renew the expired plant authorizations, thereby allowing the aforementioned products to be exported from Costa Rica to the Panamanian market. Panama was entitled to require such authorizations. This requirement was also necessary given that – as was clear from Costa Rica's very request – prior to the measures, Panama informed Costa Rica that it had detected residues, pests and disease risks in products originating in Costa Rica. The authorizations sought to safeguard food safety, human life and health and Panama's animals and plants, in accordance with the rules in force and in conformity with WTO Agreements. Since the expiry of the Costa Rican processing plants' authorizations, the Panamanian sanitary and phytosanitary authorities had maintained ongoing and open dialogue with their Costa Rican counterparts in order that they initiate and carry out the corresponding authorization procedures. The Costa Rican authorities had stated in response that Panama's concerns and requirements were unwarranted, and that it should immediately open its market. For the sake of their neighbourly ties, and to facilitate trade, Panama had temporarily extended the processing plants' authorization periods, in the expectation that Costa Rica would initiate the process for new evaluations or inspections. This was not carried out. Temporarily extending expired authorizations neither invalidated nor reduced WTO Members' rights and obligations under the SPS Agreement. Panama regretted that Costa Rica decided to proceed with its panel request under these circumstances. Panama nevertheless expressed its willingness to participate in a timely manner and in good faith in these proceedings, as required by the DSU.

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

4.7. The representatives of Australia, Brazil, Canada, China, the European Union, Honduras, India, Mexico, Nicaragua, the Russian Federation, the United Kingdom and the United States reserved their third-party rights to participate in the Panel's proceedings.

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

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

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

5.2. The representative of Japan said that, at the present meeting, Japan would not wish to reiterate its position on this matter as this had been explained, in detail, in Japan's panel request and in its statement made at the 30 August 2021 DSB meeting. Japan recalled that this case concerned China's measures to impose anti-dumping duties on imports of stainless steel products from Japan. His country considered China's measures to be inconsistent with its obligations under the GATT 1994 and the Anti-Dumping Agreement, as set out in Japan's panel request. That panel request appeared on the Agenda of the previous DSB meeting. As Japan continued to see that the inconsistency had not been removed, Japan once again was requesting, pursuant to Article 6 of the DSU, that a panel

be established to examine the matter, as set out in Japan's panel request, with standard terms of reference in accordance with Article 7.1 of the DSU.

5.3. The representative of China said that China regretted that Japan had decided to proceed with its panel request in this dispute. China maintained its domestic anti-dumping regime in line with relevant WTO rules, and the Investigating Authority, by adhering to its legal mandate. China had conducted a transparent, thorough and fair investigation in relation to the imports concerned from Japan. It finally determined the existence of dumping and found these trade distortions had caused material injury to China's domestic industry. As a necessary remedial step, certain anti-dumping measures had been imposed by the Chinese Investigating Authority. As it had stated at the August DSB meeting, China had engaged with Japan in good faith and provided upon its request information with regard to the challenged measures. China was also open to further consultations through appropriate channels aiming at exploring a satisfactory solution. Therefore, China believed that Japan's request for the establishment of a panel was premature.

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

5.5. The representatives of Australia, Brazil, Canada, the European Union, India, Korea, the Russian Federation, Saudi Arabia, the United States and Viet Nam reserved their third-party rights to participate in the Panel's proceedings.

6 CHINA – ANTI-DUMPING AND COUNTERVAILING DUTY MEASURES ON WINE FROM AUSTRALIA

A. Request for the establishment of a panel by Australia (WT/DS602/2)

6.1. The Chairman drew attention to the communication from Australia contained in document WT/DS602/2 and he invited the representative of Australia to speak.

6.2. The representative of Australia said that, on 22 June 2021, the Australian Government had requested WTO dispute settlement consultations with China with respect to provisional and definitive anti-dumping and countervailing duty measures on bottled wine in containers of 2 litres or less imported from Australia. China had imposed definitive anti-dumping duties of up to 218.4%, and calculated countervailing duties of up to 6.4%. The measures were set forth in Notice No. 59 of 2020 (issued on 27 November 2020); Notice No. 58 of 2020 (issued on 10 December 2020); and Notices No. 6 and 7 of 2021 (both issued on 26 March 2021) by the Ministry of Commerce of the People's Republic of China. In Australia's view, China's measures were inconsistent with China's obligations under the Anti-Dumping Agreement, the SCM Agreement and the GATT 1994. Prior to the imposition of these duties, China had been Australia's most valuable wine export market in 2019-20, 37% of Australia's total wine exports, by value, were exported to China. However, Australian wine exports to China had declined significantly since anti-dumping duties had been imposed, effectively closing the market for Australian producers. Australia had expressed its concerns to China on numerous occasions bilaterally and at the WTO, including on 27 and 28 April 2021 at the WTO Subsidies and Anti-Dumping Committees respectively, and most recently, bilaterally on 2 June 2021. Australia and China had held consultations on 9 August 2021. Unfortunately, those consultations had failed to resolve this matter. As no concrete steps had been taken to date to respond to its concerns, Australia was now requesting the establishment of a WTO panel to examine this matter with standard terms of reference. Australia valued China and Australia's strong economic and community ties and remained open to further discussions in good faith with China with a view to resolving the issues Australia had raised.

6.3. The representative of China said that China regretted that Australia had decided to request that a panel be established in this dispute. At the present meeting, China was not in a position to support such request. China maintained its domestic anti-dumping and countervailing regime in line with the relevant WTO rules. Specifically, in this dispute, through a transparent and fair investigation, the Chinese Investigating Authority had determined the existence of dumping as well as material injury it had caused to China's domestic industry, and decided to impose anti-dumping duties on the Australian products. To avoid a double remedy, China had decided not to impose countervailing duties on the imports concerned from Australia. China noted that Australia did not include in the panel request matters related to countervailing duties, and believed that this was a constructive

move for settlement of this dispute. China had engaged with Australia in good faith during the consultation and had provided required information with respect to the challenged measures. China recalled that both sides had agreed that the consultations were constructive. Therefore, China believed that it was premature to establish a panel in this dispute, and stood ready to further engage with Australia on this matter.

6.4. 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 MOROCCO REGARDING THE PANEL REPORT IN THE DISPUTE: "MOROCCO – DEFINITIVE ANTI-DUMPING MEASURES ON SCHOOL EXERCISE BOOKS FROM TUNISIA" (DS578)

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

7.2. The representative of Morocco said that, with regard to the dispute on anti-dumping measures applied to school exercise books and the statement made by Tunisia at the 30 August DSB meeting Morocco would like to make some points of clarification. He said that with regard to an appellate review, the appellant was bound by Rule 21(1) of the Working Procedures for Appellate Review whereby the appellant shall, on the same day as the date of the filing of the Notice of Appeal, file with the Secretariat a written submission, and provide a copy of the submission of the other parties to the dispute. However, in this case, Morocco had not yet filed a written submission to the Appellate Body due to the fact that there was no functioning Appellate Body and there was no jurisdiction to receive such a submission under Rule 21 of the Working Procedures. Therefore, no submission could be provided by the appellant to the other party to this dispute, namely, Tunisia. Morocco's written submission to the Appellate Body would be filed once the Appellate Body became operational following the appointment of its members and in accordance with the working procedures. Once a Notice of Appeal was filed with the DSB, the adoption of the panel report was automatically suspended, pursuant to Article 16.4 of the DSU. The DSB could no longer consider such a report for adoption until after the completion of the appeal. Therefore, until such time as the Appellate Body circulated its report, adoption of the Panel Report depended neither on Tunisia nor on the DSB, including the Chair of the DSB. For that reason, the request made by Tunisia for the Chair of the DSB to become involve could not be justified, since the DSB Chair had no jurisdiction over this report. Contrary to Tunisia's claim, there was no provision regarding the automatic adoption of a panel report if the deadline for completion of an appeal under the DSU had expired. Moreover, the DSB Chair did not have the right to place such a panel report for adoption on the DSB Agenda. In Morocco's view, Tunisia's statement demonstrated a subjective and extraneous reading of the DSU provisions. If Tunisia's interpretations were accurate, the Appellate Body deadlock would not in any way have affected the functioning of the WTO dispute settlement system since panel reports would have been automatically adopted 90 days after the date of filing of the Notice of Appeal. This would be irrespective of whether such reports were reviewed by the Appellate Body. Morocco had not violated Rule 21(1) of the Working Procedures for Appellate Review since it had not filed a written submission. That would be done in accordance with the Appellate Body's working procedures once the Appellate Body became operational. The Panel Report was subject to an appellate review. Pursuant to Article 16.4 of the DSU, the Report shall not be considered for adoption until after completion of the appeal. Thus, consideration by the DSB of a report whereby an appeal had not been completed would be a clear violation of Article 16.4 of the DSU. Consequently, the report in question was outside the purview of the DSB and the DSB Chair. Tunisia's proposed reading of the provisions of the DSU had serious systemic implications for the rights and obligations of the parties to this dispute. Morocco was and remained ready to settle this dispute with Tunisia through bilateral consultations, but was opposed to the proposed mediation by the DSB Chair. As Morocco had indicated on several occasions and most recently to Tunisia, technical consultations at the bilateral level would allow both parties to resolve the substantive issues in this dispute.

7.3. The representative of Tunisia said that Tunisia noted the clarifications made by Morocco. First, Tunisia wished to again thank the Chairman for having responded favourably to Tunisia's request to invite the parties to hold discussions under his supervision. Tunisia also wished to thank the Secretariat for having swiftly made contact with the parties. In this respect, although Tunisia was surprised by Morocco's change of position regarding the Chairman's involvement, and its preference for bilateral consultations at this stage, Tunisia was ready to use all available means to reach common ground and had agreed to re-engage in bilateral discussions, provided that the parties

engaged in good faith. With that in mind, the parties had met on 22 October 2021 to set out the most important elements regarding their discussions and had agreed that the parties should look at the conclusions of the panel report. He said that the consultations were likely to continue over the coming weeks. At the next regular DSB meeting in October, Tunisia would propose to review the progress of those bilateral consultations and, if necessary, it would request that the Chair of the DSB be involved should the parties be unable to reach an agreement. In Tunisia's view, the Chairman's involvement would be very useful in reaching common ground in this dispute.

7.4. Tunisia also wished to respond to Morocco's criticism of Tunisia's interpretation presented at the 30 August 2021 DSB meeting. Tunisia did not understand why Morocco had raised this matter at the present meeting while bilateral consultations were ongoing. Tunisia had already explained its interpretation, which it deemed appropriate in accordance with Articles 3.3, 3.7, 3.10, 16.4 and 17.5 of the DSU. In its view, Tunisia believed that it could request, under the negative consensus rule, the adoption of the panel report at the 29 November 2021 DSB meeting. Tunisia also believed that, at this point, it was premature to discuss Tunisia's right to request the adoption of the panel report since the parties had entered into negotiations to reach an agreement, either on settlement of the dispute, or possibly on the appeal procedure. Such an agreement would enable the parties to avoid a request for the adoption of the panel report at the November DSB meeting. He hoped that, like Tunisia, Morocco would engage in good faith in these negotiations

7.5. The representative of the European Union noted that this was another dispute that demonstrated the grave consequences of the blockage of Appellate Body appointments since 2017. That blockage frustrated the basic rights of Members that had been agreed multilaterally. Under the DSU, the parties to a dispute had the right to appeal a panel report and to have their case heard by the Appellate Body. At the same time, under the DSU, the complainant was entitled to the resolution of the dispute through adjudication. In this case, Morocco had formally notified the DSB of its decision to appeal. Therefore, pursuant to Article 16.4 of the DSU, the panel report must not be considered for adoption by the DSB until after completion of the appeal. The fact that Morocco had not filed an appellant's submission in accordance with Rule 21 of the Working Procedures for Appellate Review was irrelevant in that respect. It would be for the Appellate Body, once the work on this appeal resumed, to decide on any procedural consequences related to the absence of filing of an appellant's submission on the same day as the date of the filing of the Notice of Appeal. The European Union expected that, in the interest of fairness, the Appellate Body would, in those exceptional circumstances, modify the relevant time-periods set out in the Working Procedures for Appellate Review.

7.6. The European Union also noted that the parties had expressed certain views on the effect of the passage of 90 days without an Appellate Body report in this case. The European Union wished to underscore that Article 16.4 of DSU was clear: "... the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal". While Article 17.5 of the DSU provided for certain time-frames for appellate proceedings, it attached no procedural consequences to the fact that those time-frames were exceeded. Consequently, there was no basis in the DSU for the assertion that a panel report that was under appeal could be adopted by the DSB after the expiry of the 90-day period following the notice of appeal. This was all the more so in the exceptional circumstances where the Appellate Body was unable to function. Indeed, the lack of at least three Appellate Body members was not a legal bar to a Member exercising its right to an appeal, and this was the right of any WTO Member under the DSU. At the same time, Members should be mindful that, in the present specific circumstances where the Appellate Body was not operational, the decision by a respondent to appeal a panel report might amount in effect to dispute resolution through adjudication being blocked, unless that respondent agreed to the appeal being adjudicated through appeal arbitration under Article 25 of the DSU. This was precisely why the European Union and many other Members had put in place the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), to allow the above-mentioned rights to be preserved in a balanced manner, despite the blockage of the Appellate Body appointments. In particular, the MPIA preserved the right to an appeal review of the panel report and the right to have the dispute resolved through adjudication. The standard default appeal arbitration procedures could also be used on an *ad hoc* basis by Members who did not participate in the MPIA. In the absence of a functioning Appellate Body, the European Union invited Members engaged in appeals to resort to appeal arbitration procedures, such as those foreseen in the MPIA, which preserved the rights under the DSU for both parties in a balanced manner. In any case, the European Union supported consultations between the parties to this dispute, which would help them to find a way forward in a manner that was balanced for both parties.

7.7. The representative of Morocco thanked Tunisia and the European Union for their respective statements. Morocco did not wish to create any legal controversy, but to underline a few points as to why the adoption of a panel report by the DSB was not possible after the automatic expiry of the 90 days. It was important for Morocco that bilateral consultations had been launched in a constructive manner and a brotherly frame of mind with a goal-oriented approach. Morocco hoped that the consultations would soon lead to a solution and the parties would keep the DSB informed of the results of these consultations.

7.8. The representative of the Russian Federation said that, first, the Russian Federation welcomed the bilateral consultations between the parties to this dispute. Second, the Russian Federation wished to refer to its statement made at the 30 August 2021 DSB meeting with respect to the practice of appealing into the "void". The Russian Federation reiterated its disappointment with the fact of filing appeals, notwithstanding the Appellate Body's critical state, with the effect of leaving the cases unresolved. The Russian Federation wished to highlight that unfortunately such actions threatened the effectiveness of the dispute settlement mechanism and undermined confidence in the relevance of the WTO.

7.9. The Chairman noted that bilateral technical consultations had been launched by the parties to this dispute with a view to finding a mutually agreeable solution. He encouraged the parties to pursue such consultations and stood ready to assist the parties to this dispute if they both so wished.

7.10. The DSB took note of the statements.

8 STATEMENT BY CHINA REGARDING THE PANEL REPORT IN THE DISPUTE: "UNITED STATES – SAFEGUARD MEASURE ON IMPORTS OF CRYSTALLINE SILICON PHOTOVOLTAIC PRODUCTS" (DS562)

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

8.2. The representative of China said that China appreciated the opportunity to express its deep concern with the systemically harmful findings made by the panel report in the dispute: "United States – Safeguard Measure on Imports of Crystalline Silicon Photovoltaic Products" (DS562). Over the past 26 years of the WTO, all of the safeguard measures challenged prior to this case had been found to violate the WTO rules. However, the panel report in the DS562 dispute had severely deviated from this jurisprudence and substantially lowered the threshold of imposing safeguard measures. The erroneous and dangerous signal sent by this panel report to WTO Members would lead to abuse of safeguard measures and thus seriously undermine the rules-based multilateral trading system. In China's view, the panel report contained serious legal errors, including a gross misreading of legal requirements for imposing safeguard measures, as well as a major misunderstanding of a panel's proper role in examining trade remedy investigations. China wished to take this opportunity to address some of the obvious errors of the panel report, because of the systematically harmful implications for WTO safeguard disciplines.

8.3. He said that China had initiated this dispute because the United States had imposed safeguard measures on crystalline silicon photovoltaic (CSPV) products in violation of the disciplines set forth in Article XIX of GATT 1994 and the Agreement on Safeguards. Under these agreements, it had long been recognized that safeguard measures were exceptional remedies for extraordinary situations only. In particular, because safeguard measures were adopted to restrict trade in the absence of any unfair trade practices, and applied globally to imports from all sources, their imposition had to meet very high thresholds. This included demonstrating an unforeseen development that led to the surge in imports, establishing a causal relationship between increased imports and serious injury, and ensuring that the injuries caused by other factors were not attributed to the increased imports through a non-attribution analysis. The United States International Trade Commission (USITC) met none of these requirements in its CSPV safeguard investigation challenged by China in DS562. During its investigation, the USITC had failed to demonstrate "unforeseen" developments leading to the increase in CSPV imports, failed to establish a causal link between increased imports and serious injury, and failed to separate and distinguish other factors' injurious impact on its domestic industry. These factors included failure of domestic producers to focus on the utility sector of the market, quality and service problems of domestic producers, and wider market trends leading to a decline in the market price. Essentially, the United States was using the safeguard measure to save a domestic

industry, not from imports, but from its own bad performance and poor business decisions. Regrettably, the panel had failed to address these issues as raised by China and many third parties in its report. Instead, the panel report suffered from three most severe legal errors.

8.4. First, the panel's decision impermissibly lowered the legal standards for safeguard measures under the established WTO disciplines. For example, the panel had dismissed the argument that when an overall coincidence in trends does not exist, the competent authority's explanation for the existence of a causal link must be "compelling", contrary to the decisions made on this same issue in many prior WTO cases. This mistaken reading of the applicable legal standards had allowed the panel to uphold the USITC's causation finding, even though the domestic industry showed a number of positive developments in fundamental injury factors during the period of investigation. As another example, despite the fact that the Agreement on Safeguards required, and prior cases emphasized, the importance of examining conditions of competition in a causation analysis, the panel had refused to take into account evidence that the CSPV market in the United States was highly segmented, and that the domestic industry did not focus on the utility market segment which experienced the highest growth. As a result, the panel's finding had failed to consider how the domestic industry's lack of participation in the utility segment affected its performance. Instead, the panel's erroneous application of the legal standard had made imports the scapegoat for the domestic industry's poor business decisions.

8.5. Second, the panel had failed to observe its duty under Article 11 of the DSU to conduct an objective assessment of the matter before it. The panel had simply failed to make an objective assessment of China's claim on causation, including any factual issues underlying China's claim. In many places, the panel had deferred to the findings of the USITC as valid without any further inquiry of its own. A typical example was the panel's treatment of the issue of unforeseen developments. The USITC asserted that, somehow, the industrial policies in China created a global increase in CSPV production. It did not demonstrate what these alleged industrial policies were, nor establish any linkage between industrial policies in China and the increase in imports, which predominately came from the rest of the world. While acknowledging these factual and logical deficiencies, the panel nevertheless had upheld the USITC's findings without further inquiry. The panel's failure to observe Article 11 of the DSU was also apparent from its findings on non-attribution. During the CSPV safeguard investigation, the respondents had explicitly argued that the domestic industry suffered injury from a number of other factors, including lack of participation in the utility sector, the falling raw material price, the pressure to attain grid parity, quality and service issues, and changes in government incentive programs. Despite evidence on the record, which was overlooked by the USITC, the panel had simply upheld the findings of the USITC. The panel report was replete with other examples where the findings of the USITC were confirmed, without any concrete assessment into the alternative views presented by the respondents during the investigation. Instead of evaluating whether the USITC provided reasoned and adequate explanation in its report, the panel turned itself into a rubber stamp for the USITC's determinations.

8.6. Third, the panel report had completely disregarded the proper standard of review of trade remedy measures. In all trade remedy cases, the report of the investigating authority had to be examined as it was published at the time. A Member could not offer additional rationalization for the conclusions and determinations set forth in the report. However, in the present dispute, the panel allowed the United States to remedy omissions or deficiencies in the USITC's report during the proceedings, refurbishing the USITC report through impermissible *post hoc* justifications. The panel's approach created a harmful practice: it allowed an investigating authority to make an unsound determination and impose WTO-inconsistent trade remedy measures, and allowed the Member of that investigating authority to rescue that decision during the dispute settlement proceedings.

8.7. China said that lowering the applicable standards for safeguard measures; deferring to the investigating authority's determination without objective assessment; allowing a Member to rescue a deficient decision through *post hoc* rationalization – through each of these steps, the panel had normalized the safeguard measure from an exceptional remedy to a convenient tool for trade protectionism, which could be put to use whenever a domestic industry wished to complain about imports, even when imports were not to blame for the domestic industry's own failures. The systematically harmful impact of these findings and the troubling logic behind them had to be pointed out, not just for safeguard cases, but for all trade remedy disputes. As provided in Article 3.2 of the DSU, security and predictability were core values of the dispute settlement system. It was of systemic importance that the principle of security and predictability had to be upheld through ensuring the quality of panel reports, especially under the severe situation of paralysis of the

Appellate Body since the end of 2019. By sharply deviating from the WTO disciplines and the established jurisprudence, the panel had not only upset this fundamental objective, but had also undermined the trust of all Members in the dispute settlement mechanism and had created irreversible damage to the multilateral trading system.

8.8. Once again, China wished to remind Members that safeguard measures were extraordinary measures for extraordinary situations. Safeguard measures could not be used as a convenient tool to rescue a domestic industry in bad shape because of its own business decisions and injuries caused by other factors not attributed to the increased imports. Any other characterization of the safeguard measure than a measure subject to stringent legal threshold could open the door to the dangerous use of safeguard measures for protectionist purposes. However, this panel report amounted to an approval of doing just that, which in consequence would seriously undermine the rules-based multilateral trading system. In closing, China recalled that in the WTO's 26 years of existence, this was the first time in a dispute when all challenges against a global safeguard measure had been rejected. In a step that sharply deviated from existing WTO jurisprudence, the panel had issued a report that not only misunderstood the proper role served by safeguards in the WTO system, but also misconstrued the duties of an investigating authority and the proper role of a WTO panel in trade remedy cases. China reminded all Members of the dangerous situation this might create if future investigating authorities were allowed to impose trade restriction measures without satisfying stringent requirements. China had already notified the DSB of its decision to appeal and would await further instructions from the division of the Appellate Body, when it might eventually be composed, regarding any further steps to be taken by China in this appeal.

8.9. The representative of the United States said that China as a WTO Member had the right to bring a matter to the attention of the DSB. Why China should want to highlight for Members that China was the first complaining party ever to lose a WTO challenge to a safeguard action – or the second, if Members counted China's own previous loss in its challenge to the China-specific tires safeguard – was a matter for Beijing alone to consider. But in bringing this matter forward, China should focus on what mattered. First, it mattered that the WTO panel had found the US safeguard to be consistent with WTO rules. The United States welcomed those findings – but could not pass without mentioning the very high cost of that victory. A thriving US industry was essentially crushed by China's massive non-market excess capacity – and this formed the factual basis for the US safeguard action. So, while the United States welcomed the panel report findings, this dispute demonstrated, perversely, that WTO rules did not effectively constrain China's damaging non-market behaviour. Second, it mattered that China, once again, had sought to use the WTO dispute settlement system as a vehicle to create new rules that would limit a Member's ability to defend itself from China's non-market practices. The United States had expressed grave concerns with Appellate Body interpretations that went well beyond the terms of WTO safeguards rules. But in this dispute, China sought to go even beyond those erroneous interpretations. China had encouraged the panel to read Article XIX of the GATT 1994 and the Agreement on Safeguards as creating a procedural minefield with no realistic path for Members seeking to use a safeguard measure for its intended purpose. The panel had rightly rejected every single one of China's misplaced arguments.

8.10. The United States said that China tried to depict the uniform failure of its arguments as evidence that the panel must have been wrong or that the panel committed certain missteps. But the panel's thorough evaluation demonstrated that it was China that committed fundamental errors in its approach to this case. In particular, China attempted to read the relevant WTO safeguard provisions in a way that was inconsistent with the text of the covered agreements, and in a way that no competent authorities or no Member could ever meet in practice. That, and not some malfeasance by the panel, was why China lost this dispute. It was China's burden to establish a *prima facie* case that the US solar safeguard measure was inconsistent with one of the enumerated provisions of the GATT 1994 or the Agreement on Safeguards. The panel held China to that burden. It had addressed each of China's arguments, and explained why China failed to discharge that burden in each instance. The United States would focus on just a few of those rejected arguments in its statement at the present meeting.

8.11. Before the panel, China had conceded that the US competent authorities correctly found that the domestic industry was suffering from serious injury. That was beyond dispute, as numerous US producers had exited the industry, and remaining producers suffered profitability losses and declining investment. China had conceded that imports were increasing from multiple sources, or that import prices were decreasing over the course of the period covered by the investigation. This was exactly the situation that Article XIX of the GATT 1994 and the Safeguards Agreement were

designed to address. And, after a massive investigation with multiple parties and thousands of pages of evidence and arguments, the US International Trade Commission (USITC) had found that increased imports had caused serious injury. In its challenge, China instead had sought to avoid the logical implication of these facts by attacking the competent authorities. It had asked the panel to essentially conduct a new investigation and issue a new determination, uncritically accepting the views of Chinese producers and rejecting out of hand any contrary evidence and argument. The panel had correctly rejected this view of its role. In line with the terms of the Safeguards Agreement, it had evaluated the report of the competent authorities and whether the report provided findings and reasoned conclusions in support of the ultimate determination. The panel had properly declined to make new findings or a new determination.

8.12. The panel had also correctly focused on the substance of the USITC's findings, and had rejected China's efforts to portray Article XIX of the GATT 1994 and the Safeguards Agreement as mandating formulaic cookie-cutter approaches to the analysis. One can see a good example of this correct approach in the panel's handling of whether the United States had showed that increased imports were a result of US tariff concessions. There was no dispute that the US bound rate on CSPV solar products was zero, or that the binding prevented the United States from raising tariffs in response to the documented surge in imports. China had nonetheless argued that the United States had failed to satisfy the obligation because the USITC did not couch its findings in the exact words used in Article XIX. The panel had correctly focused on substance over form, finding that:

[T]he USITC identified the United States' domestic tariff treatment of CSPV products when it observed that CSPV products covered by the safeguard measure "are provided for in subheading 8541.40.60 of the U.S. Harmonized Tariff Schedule [and] have been free of duty under the general duty rate since at least 1987". Although we recognize that this statement does not explicitly establish that such tariff treatment was required under the United States' WTO obligations, we consider that the supplemental report appropriately demonstrates that this was the implication of the USITC's statement.²

8.13. That was exactly what a panel should do in evaluating a safeguard measure. It should examine the totality of the competent authorities' findings, and not fasten on quibbles over phrasing as excuses to reject their conclusions. The United States was disappointed that China had now decided to press onward by appealing the panel report in spite of overwhelming evidence of the damaging effects of China's non-market practices, instead of focusing its energy on changing those practices that were harming workers and businesses worldwide. Indeed, it was important to recall why the United States had imposed the solar safeguard in the first place. The safeguard measure served to support the US domestic industry's efforts to adjust to import competition, after global excess solar cell and module capacity pushed the US industry to the brink of extinction. Chinese producers in China and around the world were largely responsible for this excess capacity, fueled by China's non-market practices, which were in direct contradiction to the commitments China made when it joined the WTO in 2001. Meanwhile, China's solar industry had attempted to undercut US anti-dumping and countervailing measures on imports from China for years by shifting operations to other countries. The United States would not stand idly by while China continued trying to undermine the solar safeguard measure and to continue harming US solar producers and indeed market-oriented solar producers worldwide.

8.14. The representative of the European Union said that this was yet another dispute that illustrated the grave consequences of the blockage of Appellate Body appointments since 2017. That blockage undermined the essential rights of Members that had been agreed multilaterally under the DSU. In that regard the European Union had referred to its statements made under the previous Agenda item as well as under item 7 of the DSB meeting on 28 September 2020, where the European Union had elaborated on these consequences and on the possibility of appeals being adjudicated upon through appeal arbitration under Article 25 of the DSU, consistently with the principles of the DSU. The European Union did not wish to reiterate those points under this Agenda item. The DSB, therefore, was not to adopt the panel report at this stage. The European Union had participated as a third party in this dispute and looked forward to commenting further at the appellate stage when the proceedings would resume. In the meantime, as it was uncertain when appellate proceedings would resume, the European Union noted with interest certain aspects of the approach which this panel had taken to the interpretation and application of the WTO disciplines on multilateral safeguards in this case. This panel report would appear to be the first completely successful defence

² Panel Report, *US – Safeguard Measure on PV Products (China)*, para. 7.53.

of a multilateral safeguard measure (subject to the pending appeal proceedings). Therefore, the European Union considered that this panel report and its approach to the WTO rules on multilateral safeguards deserved close attention.

8.15. The representative of China said that China did not wish to comment on the substance of this dispute, but wished to respond to the US comments made at the present meeting. It was not China's intention to take advantage of the appeal to delay the adoption of the panel report in this dispute. It was also not China's intention to create new rules, or establish new rules, but China sought the interpretation of the WTO rules in a fair and reasonable way and for panels to respect the jurisprudence. As Members were aware, China was one of the active proponents for swiftly launching the AB selection process and restoring the normal functions of the Appellate Body. China was also one of the proponents in WT/DSB/W/609/Rev.19 and also worked with other parties to establish the MPIA as a contingent measure during the present time of a defunct Appellate Body. China looked forward to the early resumption of the Appellate Body to hear this appeal and was also open to the other channels provided under Article 25 of the DSU, if the United States so wished. Also, China wished to emphasize that it was a staunch supporter of the multilateral trading system in the dispute areas. With regard to rulings, which were fair and reasonable even if they were not in favour of China, it would faithfully implement such rulings and recommendations as it had done during the previous cases. However, China would not hesitate to defend its interests when the ruling was biased and erroneous.

8.16. The representative of Canada said that Canada wished to address the context in which the appeal of the panel report had been made in this dispute. Canada noted that in this dispute, the panel had not found the measures of the respondent to be inconsistent with its obligations. Canada also noted that it was the complainant that had appealed this panel report to the non-functioning Appellate Body. Those circumstances were different than those that Members had previously seen when a party had appealed panel reports to the non-functioning Appellate Body. However, the DSU provided that a disputing party has the right to appellate review of panel reports, and this right remained in the circumstances at issue in this dispute. Since 11 December 2019, the Appellate Body had effectively been non-functioning. Canada reiterated that finding a solution to the Appellate Body impasse was of the highest importance. Article 3.10 of the DSU provided that, where a dispute arose, Members would engage in dispute settlement procedures in good faith and in an effort to resolve the dispute. The inability of the Appellate Body to carry out its appellate review responsibilities had undermined the established process under the DSU for dispute settlement. But the obligation under Article 3.10 of the DSU to make good faith efforts to resolve the dispute still stood.

8.17. The DSB took note of the statements.

9 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)

9.1. 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.

9.2. 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 to the DSB at the present meeting. The proposal sought to: (i) start seven selection processes (one process to replace Mr Ricardo Ramírez-Hernández, whose second term had expired on 30 June 2017; a second process to fill the vacancy resulted from the resignation of Mr Hyun Chong Kim with effect from 1 August 2017; a third process to replace Mr Peter Van den Bossche, whose second term had expired on 11 December 2017; a fourth process to replace Mr Shree Baboo Chekitan Servansing, whose four-year term of office 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 candidates; 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.

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

9.4. The representative of the European Union said that the European Union referred to its previous statements 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 a meaningful reform was needed in order to achieve this objective. The European Union therefore renewed its call on all WTO Members to engage in a constructive discussion as soon as possible in order to restore a fully functioning WTO dispute settlement system. The European Union thanked all Members that had co-sponsored the proposal to launch the appointment processes.

9.5. The representative of Canada said that Canada supported Mexico's statement and shared the concerns expressed by other Members at the present meeting. 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 that 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 said that it 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 MPIA as a contingency measure. This measure sought to safeguard their rights to binding dispute settlement 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 they collectively found a permanent

solution to the impasse in the Appellate Body. Canada was available to discuss the MPIA with any interested Member.

9.6. The representative of Brazil said that Brazil thanked Mexico for the presentation of the proposal on behalf of the co-sponsors and wished to refer to its previous statements made under this Agenda item. Members needed to restore the multilateral integrity of the dispute settlement system, as demonstrated by the two previous Agenda items. The current situation was affecting Members' ability to enforce their rights under the WTO Agreements. Moreover, it was also threatening to undermine the credibility of the multilateral trading system. Brazil stood ready to engage with all Members to seek a rapid resolution to this impasse.

9.7. The representative of Indonesia said that Indonesia wished to refer to its previous statements made on this matter at previous DSB meetings. Indonesia wished to avail itself of this opportunity to urge all Members to give their serious attention, willingness, and commitment towards immediate appointments of new Appellate Body members.

9.8. The representative of Hong Kong, China said that Hong Kong, China supported Mexico's statement. Hong Kong, China wished to join Mexico and other Members who also supported the statement to reiterate the importance of according priority to restoring a fully functioning two-tier WTO dispute settlement system, which was a key pillar of the rules-based multilateral trading system. In Hong Kong, China's view, it was essential that Members could agree on a work programme by the MC12 in order to resolve the Appellate Body impasse.

9.9. The representative of India said that India wished to refer to its previous statements made on this matter and requested all Members to start the Appellate Body appointment processes urgently.

9.10. The representative of China said that China supported the statement made by Mexico on behalf of 121 co-sponsors and called upon more Members to join the AB proposal. China wished to refer to its previous statements made 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 mentioned 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 date. China also wished to echo the statements made by other delegations, and called upon Members to join the MPIA as a contingent arrangement during the Appellate Body deadlock.

9.11. The representative of Japan said that Japan referred to its statements made at the previous DSB meetings and supported the AB proposal. Japan shared the sense of urgency for reform of the dispute settlement system. As Japan had stated consistently, Japan considered it the utmost priority to achieve an expeditious reform that would contribute to a long-lasting solution to the structural and functional problems of the dispute settlement system. 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 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.

9.12. The representative of the United Kingdom said that the United Kingdom continued to support this Agenda item to launch the selection processes 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 the fair and timely resolution of disagreements and preserve the rights and obligations of Members. As Members headed towards the Twelfth Ministerial Conference, the United Kingdom welcomed all engagement 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.

9.13. The representative of Korea said that Korea thanked Mexico and reiterated its support for the joint proposal. Korea wished to refer to its previous statements made on this matter. The WTO dispute settlement system had been a central element in providing security and predictability to the multilateral trading system and Korea was ready to engage constructively in relevant discussions with a view to accommodating the needs of WTO Members. Korea also wished to point out that Members should strive for a workplan to reform the dispute settlement system by the 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.

9.14. The representative of Switzerland said that Switzerland referred 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 be given to rapidly resolve the impasse that Members had been facing for too long. Switzerland remained ready to work towards this objective, and strongly encouraged all Members to engage constructively in seeking concrete solutions to unlock the current situation.

9.15. The representative of Norway said that Norway referred to its previous statements under this Agenda item. Norway fully supported the joint proposal presented by Mexico, and co-sponsored by 121 Members. Norway wished to thank Mexico for its continued leadership on this matter. Norway again underlined the urgent need to fulfil Members' duty as Members of the WTO and start the selection processes to fill the vacancies in the Appellate Body, in accordance with the DSU. The consequences of the ongoing blockage of the appointment of members to the Appellate Body had been thoroughly illustrated in the cases discussed under the two previous Agenda items. Norway had at the same time noted the request to discuss how to improve the functioning of the Appellate Body and had on numerous occasions confirmed and re-confirmed its readiness to engage in such discussions to identify possible solutions. Norway was, therefore, encouraged by the confirmation that the United States was back at the table in international fora and was ready to engage in constructive dialogue.

9.16. The representative of Iceland said that as one of the many co-sponsors of the proposal, Iceland was concerned over the WTO's long-standing lack of progress in filling the vacancies of the Appellate Body. Iceland was of the view that the two-step WTO dispute settlement system played a central role in providing predictability within the multilateral trading system and securing a fair playing field for all participants – large and small. Iceland therefore called on all Members to engage constructively and solve this impasse without further delay.

9.17. The representative of Nigeria, speaking on behalf of the African Group, said that the Group wished to refer to its previous statements made on this matter. The African Group continued to regret that up until now, the DSB had failed in the performance of its functions under Article 17.2 of the DSU despite the overwhelming number of Members co-sponsoring this joint proposal. The fact that the Appellate Body could not hear new appeals remained a concern. All WTO Members had a shared responsibility to safeguard the two-tiered dispute settlement system so as to prevent undermining the multilateral trading system, in particular through a number of cases where some Members had appealed into the void. Therefore, the African Group urged the DSB to urgently fulfil its obligation under the DSU, which was to fill vacancies as they arose, as contained in the AB proposal, so as to maintain the two-tiered dispute settlement system. This would ensure predictability within the multilateral trading system. Finally, the African Group encouraged all Members to engage constructively with each other in addressing the specific concerns raised against the functioning of the Appellate Body, with a view to finding a solution. The African Group believed that procedural issues might be addressed along with substantive issues. The African Group urged all Members who were yet to co-sponsor the AB proposal to do so as soon as possible.

9.18. The representative of New Zealand said that New Zealand reiterated its support for the co-sponsored AB proposal and referred to its previous statements made on this matter. New Zealand continued to urge all Members to constructively engage on the issues with a view to addressing this situation as a priority. Members had to work to refocus their collective effort on finding a solution that worked for all Members.

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

9.20. The representative of Zambia said that Zambia supported preserving and restoring the full functioning of the two-tier system of the dispute settlement mechanism at the WTO in order to have a predictable multilateral trading system. Zambia supported the position of the African Group of the need to have substantial issues raised by the United States be addressed together with the launch of the selection process to fill the vacancies of the Appellate Body. In addressing the concerns raised by the United States, Zambia wished to stress the need for giving due consideration to the aspirations of developing countries, especially least developed countries (LDCs), in order to facilitate their participation and utilization of the dispute settlement system. With that said, Zambia wished to acknowledge and appreciate the existing efforts that were presently in place to enable developing countries as LDCs to participate in the WTO dispute settlement system. These efforts included, among others, the existence of the Advisory Centre on WTO Law (ACWL) which had recently celebrated its 20th anniversary and had been instrumental in ensuring that the LDCs participated in the WTO dispute settlement system. Over the years, Zambia had been a beneficiary of the ACWL technical support and that support had gone a long way in building as well as strengthening the capacity of Zambia's delegates on WTO matters. Zambia was, therefore, happy to join others in celebrating the ACWL for its many achievements over the last 20 years. Zambia expressed its best wishes and warmest congratulations on this milestone.

9.21. The representative of Malaysia said that Malaysia wished to reiterate its strong support for the open, fair and non-discriminatory rules-based, multilateral trading system. Malaysia strongly believed in the two-tier dispute settlement system as an indispensable pillar of this institution. All Members of the WTO had the responsibility to preserve the system in order to maintain the credibility and predictability of the multilateral trading system. In December 2021, two years would have elapsed since the Appellate Body had its quorum for the last time to review new appeals. The present situation in the Appellate Body was seriously affecting the long-term interests of all Members which might also show a lack of credibility in the WTO. With more than 70% of the WTO Membership co-sponsoring this joint proposal, this clearly reflected a common concern about the current situation of the Appellate Body. In this regard, Malaysia wished to join others in urging all Members to exercise the necessary flexibility to enable the expeditious unblocking of the Appellate Body selection process. Malaysia reiterated its firm commitment to the multilateral trading system and its rules. Malaysia called again for all Members to launch the Appellate Body selection processes in an efficient manner and adopt the decision regarding this matter immediately.

9.22. The representative of Thailand said that Thailand wished to join many other delegations in supporting the statement made by Mexico on behalf of the co-sponsors. Referring to its previous statements, Thailand wished to reiterate its concerns over the long absence of a fully functioning Appellate Body and renew its call on all Members to continue and intensify their efforts as Thailand stood ready to work closely with others in finding ways and means to solve this impasse.

9.23. The representative of the Russian Federation said that the Russian Federation wished to thank Mexico for its statement. The Russian Federation referred to its statements made at previous DSB meetings and reiterated its strong support for the proposal to launch the appointment processes immediately. Russia urged Members to prioritize the restoring of the proper operation of the dispute settlement system and renewed its readiness to cooperate and engage constructively in any discussions on the matter with a view to reaching an agreement acceptable for all.

9.24. The representative of Chad, speaking on behalf of the LDC Group, thanked Mexico for its statement and shared the concerns expressed under this Agenda item by other Members. The Group reiterated its call for the DSB to discharge its obligation under the DSU. It was a very urgent matter to unblock the current situation so as to ensure the predictability of the multilateral trading system and to strengthen the WTO's credibility. This was something the LDC Group needed because its Members were the most vulnerable and needed a functioning dispute settlement mechanism and the Appellate Body if they were to make any progress. It was indeed very urgent to resolve the current impasse and find a consensus-based solution with regards to the functioning of the Appellate Body. The Group counted on the flexibility of Members and on the Chairman's leadership to bring Members together to an acceptable, realistic and consensus-based solution.

9.25. The representative of Mexico, speaking on behalf of the 121 co-sponsors, regretted that for the forty-sixth occasion, Members had still not been able to start the selection processes for the vacancies of the Appellate Body, and had thus continuously failed to fulfil their duty 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 this body and dispute settlement in general. There was no legal justification for the current blocking of the selection processes, which was causing concrete nullification and impairment for many Members. As Article 17.2 of the DSU clearly stated, "vacancies shall be filled as they arise". No discussion should prevent the Appellate Body from continuing to operate fully and Members shall comply with their obligation under the DSU to fill the vacancies. Mexico noted with deep concern that by failing to act at the present meeting, the Appellate Body would continue to be unable to perform its functions against the best interest of all Members.

9.26. The representative of Mexico said that for more than two years, Members had been requesting that the AB proposal be approved by the DSB in order to preserve their right to appeal. Mexico referred to its previous statements on this matter and continued to express its deep concern as Members were faced with an unprecedented situation, namely non-functional Appellate Body. As Members had seen at the present meeting and in previous DSB meetings, all ongoing disputes were being affected by not having a fully functioning two-tier dispute settlement system, putting at risk prompt compliance and adoption of panel reports. This matter required an urgent attention and Mexico therefore called on Members who had not done so to join the AB proposal. Mexico remained ready to work constructively on a real and multilateral solution.

9.27. The Chairman thanked delegations for their statements and 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. As Members were all aware, this matter required political engagement on the part of all WTO Members, and he hoped that Members would be able to find a solution to this matter as soon as possible. He recalled that the Chair of the General Council briefly reported on his consultations on this matter carried out under the General Council in the context of the preparations for the upcoming Ministerial Conference. Finally, he said that his door was open to any Member wishing to contact him directly on this matter.

9.28. The DSB took note of the statements.

10 STATEMENTS BY AUSTRALIA AND GUATEMALA REGARDING THE TWENTIETH ANNIVERSARY OF THE ADVISORY CENTRE ON WTO LAW (ACWL)

10.1. The Chairman said that this item was on the Agenda at the request of Australia and Guatemala, and invited the respective representatives to speak.

10.2. The representative of Guatemala said that Guatemala was a founding Member of the ACWL. Guatemala welcomed this opportunity to commemorate the 20th anniversary of the ACWL and to draw the attention of the DSB to the importance that the ACWL played in the rules-based multilateral trading system. Over the previous 20 years, Guatemala had been a frequent user of the WTO dispute settlement system. Its successful participation had been, in great part, thanks to the support and services provided by the ACWL. Without the ACWL's assistance, at non-commercial rates, Guatemala would not have been in a position to participate in, and actively learn from, the dispute settlement system. Additionally, Guatemala had been actively involved in the institutional management of the ACWL. He said that the Ambassador of Guatemala had served on the ACWL Management Board. The representative of Guatemala said that he, personally, was honoured to serve as Vice-Chairman of the General Assembly.

10.3. He said that Guatemala had witnessed first-hand the growth of the ACWL and its evolution into an essential pillar of the rules-based multilateral system, both through Guatemala's use of its services as well as Guatemala's active participation in its management bodies. Back in 2001, the founding members designed the ACWL as an active supporter of developing countries and LDCs in their efforts to effectively use the WTO dispute settlement system. This support levelled the playing field so that developing countries could be on an equal footing to developed-country Members that were better equipped. This had proven to be the case. The ACWL had been involved in 68 disputes, representing approximately 20% of the total number of WTO disputes. Currently, 81 countries – roughly half of the Membership of the WTO – were entitled to the services of the ACWL. These were

38 developing country Members and all of the 43 LDCs that were Members of the WTO or in the process of accession, who are automatically eligible to access the services of the ACWL. Beyond support in dispute settlement proceedings, the legal advice of the ACWL had been instrumental in assisting developing countries, like Guatemala, in the effective implementation of WTO disciplines at the national level. Every year, the ACWL prepared over 200 tailor-made and strictly confidential legal opinions. In 2020, 34 developing countries and 15 LDCs requested legal opinions on the whole spectrum of WTO disciplines. These opinions provided a solid basis for governments to ensure that they were complying with their WTO obligations as well as a thorough analysis of the issues when they needed to represent national interests at the WTO. Solid and substantive legal advice played a crucial role in preventing WTO disputes and benefited the whole Membership.

10.4. Over the past 20 years, the ACWL had become a public good that combined and catalysed experience and practice in WTO dispute settlement. The ACWL enabled its members to draw on that expertise to better understand and defend their rights and obligations under WTO law. Furthermore, the ACWL played a pivotal role in developing and delivering technical assistance for Geneva- and capital-based delegates. The training programmes were excellent, as they combined both substantive and practical approaches, based on their abundant experience. Guatemala wished to express its appreciation to developed country Members that had provided funding for the ACWL since 2001. Those Members had taken a step forward and recognized that the full and effective integration of developing country and LDC Members into the WTO benefited everyone. Access to expert legal advice was essential to achieve a high level of integration, where all Members – regardless of their size – could benefit from legal advice on domestic implementation and use the dispute settlement system with confidence. Guatemala also wished to commend donors for respecting the independence and impartiality of the ACWL, which had been essential for its success and well-functioning and for building trust among its users. Finally, Guatemala wished to note that the ACWL was embarking on a new five-year financing plan. Guatemala hoped that the donor community would be in a position to continue their generous and visionary support for the ACWL. At this particular juncture in time, when the WTO needed to be inclusive and foster growth and economic recovery, Guatemala wished to encourage developed country Members to take a closer look at the results and benefits that the ACWL brought to the rules-based multilateral trading system as a whole and consider the possibility to contribute to the financing efforts of this important institution.

10.5. The representative of Australia said that she wished to take this opportunity on behalf of Australia, and personally as Chair of the ACWL General Assembly, to warmly congratulate the ACWL on its 20th anniversary. The ACWL had played a vital role for developing countries and LDCs in the multilateral trading system. It had helped strengthen their trade policy expertise to realise their WTO rights, respect their WTO obligations, participate fully in trade negotiations, and enable them to benefit from the open, rules-based global trading system. The ACWL should be particularly commended for its agile approach during COVID-19. During this difficult period, it had continued to provide timely legal advice, critical training, seminars, and secondments for developing countries and LDCs to help build in-house capacity. Australia had been a proud contributor to the ACWL since 2010 and a member of the ACWL for the previous decade since 2011. Australia saw the ACWL as a valuable component of the multilateral trading system, which helped enable full and effective participation of all WTO Members, irrespective of size or resourcing. The ACWL therefore provided benefits to all Members because the essential nature of the multilateral trading system was enhanced when it was open to all. Australia looked forward to continuing its active contribution, and strongly encouraged other Members to support this important institution.

10.6. The representative of Tunisia said that Tunisia wished to thank Australia and Guatemala for placing this item on the Agenda, and was pleased to join them in congratulating the ACWL on its 20th anniversary and to wish it well with its increasingly vital work for Members. Tunisia was particularly interested to note at the ACWL General Assembly in July that the ACWL had maintained an above-average level of activity, despite the constraints of the pandemic. Tunisia also appreciated its swift and effective adaptation, with a view to continuing its advisory and training activities. As such, through its extensive cooperation with the ACWL in recent years, Tunisia could confirm the results of the satisfaction surveys which indicated that users were fully satisfied with the ACWL's services. That so many delegations continued to turn to the ACWL illustrated the degree of credibility it had attained, the quality of its legal advice and the great expertise of its staff. In this regard, Tunisia wished to welcome Germany as a full member of the ACWL. Moreover, Members appeared to remain interested in using the dispute settlement system to resolve trade concerns that could not be resolved through negotiation. Tunisia hoped that Members sustained that positive momentum in

order to restore a fully functional dispute settlement system. Finally, Tunisia underlined its commitment to its collaboration with the ACWL, which it intended to step up in the coming years, particularly in the area of training and assistance.

10.7. The representative of Niger wished to congratulate the ACWL on its 20th anniversary. Niger wished to express its sincere thanks on this occasion. Niger welcomed the efforts of the ACWL over the past few years to respond to Niger's requests for legal advice and support Niger's negotiations at the WTO. As an LDC which had benefited from the services of the ACWL, Niger had used its services in a very satisfactory way. The ACWL lawyers had made every effort to ensure that Niger's needs were met and Niger welcomed their active participation at the fourth South-South dialogue on the LDCs and Development that took place on 16-17 September in Montreux. Niger hoped to collaborate even more closely with the ACWL in the future in order to explore capacity-building and assistance activities through the missions in Geneva and through measures that could help Niger to have a better understanding of the rules and their implementation and coherence with Niger's policies so that in the medium term Niger would be able to strengthen its trade-related institutions. Niger hoped to strengthen its collaboration with the ACWL over the next few years.

10.8. The representative of Sri Lanka said that Sri Lanka wished to thank Australia and Guatemala for including this item on the Agenda of the present meeting. Sri Lanka joined previous speakers to express its appreciation for the services rendered by the ACWL. The ACWL was now seen as a fundamental pillar of the rules-based, multilateral trading system. The ACWL's assistance to developing countries and LDCs in dispute settlement proceedings had helped create a level playing field in WTO disputes. The ACWL's legal advice in dispute resolution, dispute prevention and sound implementation of international commitments enabled developing countries as well as LDCs to understand fully their rights and obligations under WTO law and to take full advantage of their participation in the WTO system. The ACWL had also played a crucial role in capacity building in WTO law in developing countries' and the LDCs' governments. In Sri Lanka's view, the ACWL showed the degree of credibility that the ACWL had attained. The quality of the legal aspects its legal opinions was also highly rated as well as spill-over effects on Sri Lanka's ability to defend itself in addressing certain trade concerns. Every time Sri Lanka faced an issue its capital requested the Mission to contact the ACWL for legal advice. With the ACWL's advice Sri Lanka had been able to adopt WTO-consistent measures and policies in a manner that complied with Sri Lanka's WTO commitments. While some thought of the WTO Agreement as dealing with multilateral issues, as trade negotiators most of Sri Lanka's colleagues valued the inputs of the ACWL even in bilateral matters. In Sri Lanka's view, that showed that there was no limitation to the extent to which developing countries could use the ACWL's advice. Regarding Geneva-based activities, Sri Lanka had participated in a number of training activities offered by the ACWL. While appreciating donor countries for their generous contributions to fund the ACWL's operations, which enabled the ACWL to provide its first-class legal advice with direct and indirect effects, Sri Lanka was convinced that those contributions should not be regarded as a burden but rather as an investment geared towards building the capacities of the neediest. Sri Lanka expressed its concerns over the uncertainty as to whether the ACWL would receive sufficient contributions to fund its budget for the period 2022-2026 and it would be tragic if the ACWL was compelled to curtail its activities due to lack of funds. Sri Lanka, therefore, respectfully appealed to the donors for contributions of financial assistance and involvement in order for the ACWL to be able to continue providing its services in generations to come.

10.9. The representative of Panama said that Panama wished to thank Australia and Guatemala for putting this item on the Agenda. As a founding member of the ACWL, Panama fully appreciated the value of its support and advice to Members and its support in the context of the dispute settlement procedures within the WTO. The ACWL support for resolving disputes was invaluable. The experience of the pandemic, with a number of proposals and initiatives within the WTO, had increased the need and the demand for the ACWL's services even more and Panama hoped that it could continue to provide the necessary support to help Members deal with trade restrictive measures that were affecting Members' efforts to try to overcome the crisis, and to help find solutions when questions were raised about those measures. The ACWL had helped Panama to design measures that could be as least trade restrictive as possible and consistent with WTO rules. The benefits of the work of the ACWL in this respect were felt by all WTO Members, not only those who had asked for the advice. Panama wished to underscore the importance of the ACWL and thank the voluntary contributions of donor countries to the ACWL, and encouraged them to continue to support the work of this institution. Without the necessary financing the ACWL would not be able to continue to provide

necessary support to LDCs and developing countries and very often the ACWL was the only one providing those Members with the advice they needed.

10.10. The representative of Chad, speaking on behalf of the LDC Group, also wished to thank Guatemala and Australia for having put this important item on the Agenda of the present meeting. For the LDCs, the ACWL was an extremely important institution. It had been invaluable in the support that it provided on legal issues connected with WTO agreements in all their respects and all of the legal matters it was involved in. Chad recalled that it had not participated often in the dispute settlement system. In fact, Chad had just once participated as a third party in the "US – Cotton" dispute. Chad was very grateful for the ACWL's support in preparing its written submission on the cotton issue. Chad had also noted that the ACWL, in the context of trade facilitation, provided free legal advice on all of the legal issues connected with the trade facilitation agreement, such as the interpretation and meaning of its provisions. On the dispute settlement system, the ACWL also supported LDCs regularly on many issues helping them to fully understand their rights and obligations. The ACWL also provided training activities for delegates in Geneva and from capital. Indeed, it also provided support for activities in capital to help strengthen institutional human capacities and learn from the experience and know-how of the ACWL lawyers. To conclude, the LDC Group was very grateful to the ACWL for its efforts to broaden the languages in which it provided support, in particular to French-speaking Members, and the LDC Group hoped that the ACWL would continue to make efforts in that regard so that they could benefit even further from the ACWL's work in the future. The LDC Group congratulated the ACWL on its first 20 years of supporting the LDCs and developing countries and wished the ACWL a very happy anniversary.

10.11. The representative of the Philippines said that the Philippines also thanked Australia and Guatemala for their statements and for bringing this matter before the DSB. The Philippines congratulated the ACWL on its 20th anniversary and commended the very good work it had done and the unquantifiable service it had given to developing countries in the WTO. The ACWL was a competent and reliable institution that had been indispensable to the Membership of the WTO. The ACWL was first and foremost a key player in dispute settlement, whether the ACWL worked to defend a case, or litigated against one. In either case, professionalism and objectivity permeated the conduct and decorum of the experienced ACWL staff. Equally importantly, the ACWL was a constant reservoir of information, advice and guidance for the Philippines. The advice that was most valuable was that which allowed the Philippines to resolve and avoid disputes settlement proceedings. The ACWL had been extremely useful to the Philippines and, the Philippines was sure, to many if not all other developing country Members as well. It was therefore concerning to see the contributions to the ACWL fall from CHF 20.36 million in 2012-2016, to CHF 14.96 million in 2017-2021, when the amount of work and the value of ACWL services had been far from diminished. Donors should look at their contributions to the ACWL not as mere contributions to a third party's project, but as an organization that they themselves had established 20 years prior to pursue the shared objective of enhancing the acceptability and credibility of the rules-based multilateral trading system. Over the next five years, the Philippines wished to see a return to the original, driving purpose that established the ACWL. The Philippines wished the ACWL all the best for the next 20 years.

10.12. The representative of Cuba said that Cuba was pleased that this item was on the Agenda of the present meeting. The ACWL had been established to help developing countries and the LDCs to overcome the limitations they faced in fully understanding the WTO legal system and to support them in their capacity-building efforts. Obviously, over the past 20 years the ACWL had acquired the influence and authority of a well-established international organization and its work responded to an ever-greater need for legal advice on the part of those countries. In particular, Cuba received technical advice on issues connected to the WTO that was extremely useful in its decision-making process. The legal advice received on a number of issues had been a key benchmark when Cuba took very important decisions in this respect. There remained a great deal of work to be done in order to improve Members' capacities to deal with the dispute settlement system of the WTO. Cuba reiterated its thanks to the ACWL for its work. Recognizing that one of the major challenges the ACWL still faced remained ensuring the financing of its activities, Cuba urged donors who contributed to the ACWL's important work to continue to support the ACWL, developing countries and LDCs.

10.13. The representative of Kenya said that Kenya joined other Members in congratulating the ACWL on its 20th anniversary, an important milestone date. Kenya also aligned itself with the statement that would be delivered on behalf of the African Group. Twenty years ago, several WTO Members established the ACWL to provide a means for developing countries and LDCs to enjoy permanent access to specialized legal services on WTO matters which were complex for many

delegations. Many WTO Members, due to capacity constraints, had difficulties applying their rights and obligations under the WTO to particular situations in the course of trade. The deficit was also a major handicap to these Members' contributions to multilateral trade operations and this had an impact on the credibility of the WTO. Mr Renato Ruggiero, the former Director-General of the WTO, on the occasion of the establishment of the ACWL, said that universal Membership of the WTO was not enough to achieve universality – this depended on the participation of its Members in the system. In this area, Kenya faced a serious challenge which was aggravated by the necessary complexity of the WTO rules and disciplines and the multiple areas it covered. If Members were not sensitive, this necessary complexity and comprehensiveness could well result in an instrument for the marginalization of those who lacked human resources and expertise. Twenty years later, it was evident that the ACWL had immensely contributed to the enhancement of the human resources and expertise of many developing countries and LDCs. This could be illustrated by the number of Geneva-based delegates who had benefited from the annual training courses as well as tailored seminars. There was a common programme for government lawyers – for more than 40 lawyers thus far – to not only join the ACWL legal team and learn from the experience trade law practitioners but also expose them to the actual practice of WTO law, the dispute settlement process and consequently broaden and deepen their aptitude for trade law. Kenya, as a beneficiary of the ACWL's services, commended this important institution for its central role in the multilateral trading system. The existence of the ACWL had been made possible by generous financial donations by some WTO Members. Kenya was therefore grateful for the donors and their invaluable contribution to the existence of the ACWL and encouraged them to continue to fund the organization.

10.14. The representative of Pakistan said that Pakistan wished to thank Australia and Guatemala for placing this item on the Agenda of the present meeting. As one of the founding Members of the ACWL, Pakistan wished to congratulate the ACWL for its 20th anniversary. In the twenty years of its existence, the ACWL had proven its worth and had demonstrated its capacity to provide a high level of expertise to countries to meaningfully and effectively participate in the multilateral trading system. The numerous disputes in which developing countries were able to successfully defend their interests with the assistance of the ACWL was one of the remarkable noble causes for which this institution was established and an example of the outstanding work it was doing. Pakistan therefore wished to thank the ACWL for the high quality of its services. Pakistan said that it would be remiss not to express its appreciation and thanks to the group of developed country members of the ACWL and donors who had taken on the biggest share of financial support of the ACWL. Without their contribution, Members' access to the much needed, high-quality technical and legal expertise required to fully participate in this multilateral forum would have been limited. Having said that, the budget proposals for the ACWL were concerning for Pakistan. For twenty years, the stellar legal services the ACWL had provided had been a contribution to the multilateral trading system. This had only been possible due to the excellent human and other resources the ACWL had been able to hire. Providing market-based remuneration and adequate financing was the only way that the ACWL could provide quality resources and state-of-the-art infrastructure, which had been its hallmark for the previous two decades. Insufficient financial support for the ACWL would not only lower the level of engagement and compromise the quality of services but also in turn exacerbate the imbalance in the playing field of the WTO and defeat the very purpose for which the ACWL was established. Pakistan therefore encouraged and urged Members and donors, who were taking stock of the excellent services delivered by the ACWL over the past twenty years, to seamlessly continue this much needed financial support. In recent times, with the COVID pandemic and a global economic crunch, the least Members could do was not create an imbalance in the trading system. Pakistan wholeheartedly supported the continued functioning of the ACWL for the purpose for which it was established and founded, and believed that the ACWL, its resources and its work had to be strengthened and further supported.

10.15. The representative of Mauritius thanked Australia and Guatemala for placing this item on the Agenda of the present meeting. Mauritius wished to be associated with the statement to be made by Nigeria on behalf of the African Group. Mauritius, like many previous speakers, wished to express its appreciation to the ACWL for its exceptional work. Looking at its twenty years of operation, Members were all impressed by the amount and quality of work carried out by the ACWL. Not only did a small country like Mauritius benefit from the advice from the ACWL, but since its accession to the ACWL in June 2003 its officials had increased their knowledge and consolidated their expertise on WTO law through the capacity-building programmes and training provided by the institution. Over the previous twenty years, 30 different African countries had obtained legal advice on a wide range of subjects from the ACWL. In 2020, 17 different African countries benefited from a total of 55 legal opinions, which, Mauritius understood, represented just over 25% of the ACWL's legal opinions, and

free of charge. These legal opinions helped African countries to better understand their rights and obligations under the WTO Agreements and to further their integration into the rules-based system of the multilateral trading system. As a small island developing state with limited resources, Mauritius often thought that it had limited capacity in understanding the complexities of the multilateral trading system. However, partners like the ACWL, with its programmes, helped breach the gap. To conclude, Mauritius conveyed its heartiest congratulations to the ACWL team for ensuring that the institution fulfilled its mandate with such dedication. Mauritius looked forward to continue working with the ACWL in the advancement of Mauritius' interests in the multilateral trading system.

10.16. The representative of Uruguay said that Uruguay wished to thank the delegations of Australia and Guatemala for placing this item on the Agenda of the present meeting and wished to commend the ACWL on their 20th anniversary and the very important role it had been playing for developing countries. In the case of Uruguay, even though it had not had any disputes since the establishment of the ACWL, it nevertheless considered the ACWL as a very important institution. Uruguay had used the ACWL's services a number of times to train delegates. Uruguay wished to thank various donors for their contributions to support the budget of the ACWL. It was fundamental to keep the ACWL up and running. In Uruguay's view, the ACWL provided an essential service to Members.

10.17. The representative of Angola said that Angola wished to take this opportunity to express its strong support for the ACWL contribution over the past 20 years. Angola had had a long working relationship with the ACWL and considered it to an excellent partner in assisting Angola and other countries in facilitating training and capacity-building for a better understanding and framing of various issues related to legal provisions in the WTO. Angola commended the work of the ACWL and reiterated its will to continue to benefit more than ever from the experience and capacity-building provided by the ACWL.

10.18. The representative of Canada said that Canada wished to reiterate its support for the ACWL. The organization provided legal services to a large segment of WTO Members. Thanks to the ACWL, dispute settlement procedures were accessible to developing country members of the ACWL and to the LDC Members of the WTO. Those countries also had access to high-quality legal advice on the compliance of their planned trade measures with their WTO obligations. Finally, the various forms of training the ACWL provided to these countries was useful to building their capacity in WTO law. Through its activities, the ACWL supported the security and predictability of international trade. Thanks to the ACWL, developing country members of the ACWL and the LDC Members of the WTO had a further opportunity to deepen their understanding of their rights and obligations and were able to enforce them when necessary. Those countries' confidence in the system was vital for the WTO's success.

10.19. The representative of Brazil said that Brazil wished to thank Australia and Guatemala for placing this item on the Agenda of the present meeting. Brazil acknowledged the key role that the ACWL had played and continued to play in assisting developing countries and the LDCs to build and strengthen their capacity to participate fully in the WTO system, including in dispute settlement proceedings. Although Brazil was neither a donor nor a member of the ACWL, it had had the chance to interact with lawyers of the ACWL on a number of occasions. The ACWL had always been viewed as a first rate, highly competent team of professionals. Brazil was very pleased to commend the ACWL for its invaluable work on the occasion of its 20th anniversary.

10.20. The representative of Colombia said that Colombia wished to thank Australia and Guatemala for the inclusion of this item on the Agenda of the present meeting. Colombia viewed the ACWL as a highly relevant institution and wished to give the ACWL the recognition it deserved as it reached its twentieth year of existence. At the present meeting, Colombia wished to make three comments about the ACWL. First, Colombia had special ties with the ACWL. It was fair to say that the ACWL stemmed from a Colombian idea. It was Claudia Orozco, a Colombian national, now a member of the pool of arbitrators for the MPIA and a panelist who had served on the most cases. She had developed the original idea that later resulted, with the help of many, in the creation of the ACWL that Members were celebrating at the present meeting. At that time, Ms Orozco had served as Minister Counsellor with the Colombian delegation in Geneva. Inspired by the idea of fair access to justice and aware of the shortcomings of the alternatives provided for in Article 27.2 of the DSU, the Colombian Mission had proposed an institution that would be independent from the WTO Secretariat, financially self-sustained, and committed to ensuring fair access to justice as a cornerstone of the proper functioning of the WTO dispute settlement system. With special help from the Netherlands, the United Kingdom, Sweden, and other developed countries, the idea had gained ground. Colombia

could not have been prouder of this idea and of how well it had developed. Thanks to the Member countries, and with the support of the funding countries and the leadership of its Director and his excellent team, the ACWL had functioned remarkably well over the previous 20 years, not only for the benefit of Colombia, but for that of a large and ever-growing number of countries.

10.21. Second, beyond providing legal assistance to developing countries, the ACWL was currently part and parcel of the present multilateral trading system. This was not hyperbole. In fact, the ACWL had a systemic nature that sometimes went unnoticed by some Members. The proper implementation of the Uruguay Round disciplines and commitments depended in large part on the existence of mechanisms that allowed all countries to participate in proceedings on an equal footing. It served no purpose to have a large number of countries join the WTO if their respective delegations lacked the experience and expertise needed to use the tools provided by the agreements when trying to solve their worst trade issues. The ACWL had effectively assisted in a significant number of WTO disputes and averted many more. The ACWL had ensured that delegations that did not have access to the tools necessary to defend their rights could nevertheless adequately do so. It had helped the delegations of developing countries better understand their commitments as well as those of their peers. It had also advised on public policy regarding the implementation of the WTO Agreements, and had provided a surprising number of developing country officials with training. Finally, the ACWL had enabled the WTO Secretariat to maintain the distance and level of independence required in its relations with countries when helping to settle their trade disputes. The ACWL did not assist only some countries but, rather, it was a fundamental part of the multilateral trading system, which guaranteed the utility and effectiveness of the system for all, including third parties.

10.22. Third, the ACWL was one of the most elegant and constructive examples of international cooperation. In the present trading world, where interactions were tense and disagreements rampant, the ACWL showed how cooperation between developed and developing countries could and should function. It was not a matter of specific projects with short-term results that could be showcased on the political scene. This was true cooperation that was disinterested in the short term, and effective, constructive and systemic, in the long term. This system enabled most developed countries to ensure that developing countries could truly make use of the tools they had negotiated – tools to which all parties had been committed. Furthermore, throughout those years of intensive discussions regarding special and differential treatment, this cooperation had been one of the best expressions of such treatment. A certain number of Members, on a voluntary basis and because of their developing country status, had received a set of additional privileges for better application and understanding of trade rules. This was not a special treatment that weakened the rules, nor was it a mechanism that resulted in their inapplicability for a certain amount of time. On the contrary, it was an additional tool for better understanding and application of the rules and disciplines. That was why the countries using the services of the ACWL thanked the cooperating and funding countries, and congratulated them for moving forward with the purest form of international cooperation, namely, disinterested in short-term results, systemic, and aimed at enabling all Members to take better ownership of the rules. That was also why the ACWL served as a model for other projects, such as the recent idea brought forth by the Netherlands for a similar centre focused on investment.

10.23. Colombia said that these were the three comments that it wished to make at the present meeting: first, on Colombia's pride at having contributed to the founding idea; second, on the importance of recognizing the ACWL as a cornerstone of the multilateral trading system; and third, on the relevance of using the ACWL as an example of the right international cooperation between developed and developing countries. In light of the foregoing, the ACWL deserved the fullest celebration at the DSB stage, its natural stage, where for over 20 years, it had been a permanent, judicious, and discreet player. Colombia, once again, thanked Guatemala and Australia, as well as the ACWL and its staff.

10.24. The representative of Costa Rica said that Costa Rica wished to thank Australia and Guatemala for placing this item on the Agenda of the present meeting. Costa Rica wished to take this opportunity to congratulate the ACWL on its 20th anniversary, which was very important for developing countries such as Costa Rica. His country was a frequent user of the services of ACWL and was very happy to be able to underscore the high level of capacity and efficiency for the legal assistance and legal opinions the ACWL had provided in the various disputes that Costa Rica had become involved in. Costa Rica also attached a lot of importance to the major role played by the ACWL when it came to preventing or avoiding disputes and for helping their beneficiaries when it came to better compliance with WTO obligations. For all these reasons, Costa Rica wished to thank the donor countries for the contributions, which made possible for the ACWL to set up and become

a public good, and their work made it possible to promote the interests of all Members in the multilateral trading system. Likewise, Costa Rica wished to encourage the current donors and further future potential donors to continue making a contribution to secure the sustainability of the ACWL going forward.

10.25. The representative of Peru said that Peru wished to be associated with the statements made by Australia, Guatemala and other previous speakers. Peru considered that the work of the ACWL remained particularly relevant for developing countries and the LDCs, as it had allowed them to have real access to the WTO dispute settlement mechanism. Since its establishment, the ACWL had provided countries such as Peru with first rate advice on a number of issues related to the WTO's regulatory framework, which had undoubtedly contributed to Peru's internal assessments and facilitated Peru's participation in the work in the WTO bodies. Accordingly, Peru also wished to thank the donor Members for their contributions to the ACWL, which had given developing countries and LDCs invaluable support with the dispute settlement system procedures and negotiations in the WTO. Peru, therefore, encouraged the ACWL to continue to provide their invaluable support, which would undoubtedly result in a more participatory, supportive, transparent, and fair international trading system. This was particularly important during the COVID-19 pandemic, which had had a significant impact on developing countries' and the LDCs' economies. Peru congratulated the ACWL on its 20th anniversary, with the certainty that its hard work would continue to assist Peru for many more years to come.

10.26. The representative of Indonesia said that Indonesia wished to begin by thanking Guatemala and Australia for placing this item on the Agenda of the present meeting. Indonesia wished to extend its heartfelt congratulations to the ACWL for their 20th anniversary. Indonesia also congratulated the ACWL for its significant contributions to developing countries, particularly in the area of dispute settlement in the WTO. The work carried out by the ACWL had been a means to address challenges faced by developing members participating in the WTO dispute settlement process which, given its nature, demanded a lot of resources. Hence, the ACWL had been a fundamental part of the work of the WTO. Indonesia also highly appreciated the fact that the ACWL always maintained their high quality of its legal opinions, performing legal representation, amid escalating demands for their assistance. Indonesia remained committed to supporting the work of the ACWL and wished them the very best for their work ahead.

10.27. The representative of El Salvador said that El Salvador wished to thank Australia and Guatemala for including this item on the Agenda of the present meeting and to echo the views expressed by the previous speakers. El Salvador wished to congratulate the ACWL on the occasion of its 20th anniversary. El Salvador, over the years, had benefited on a number of occasions from the legal advice given by the ACWL which had enabled El Salvador to resort to the WTO dispute settlement mechanism. In addition, capital-based officials had received training and technical assistance in various activities organized by the ACWL. El Salvador wished to stress the importance of the work of the ACWL and hoped that donors would continue to support its activities in the future. El Salvador wished to congratulate the ACWL and its staff on this anniversary.

10.28. The representative of Switzerland said that Switzerland thanked Guatemala and Australia for placing this item on the Agenda of the present meeting. Switzerland wished to associate itself with the positive statements made by the previous speakers in their assessment of the work carried out by the ACWL. Through this undertaking, the participation of developing countries and the LDCs in WTO dispute settlement had been facilitated at all stages of the system. The ACWL thus contributed directly to the inclusiveness of the system. Confident of its relevance and added value, Switzerland had supported the ACWL since 2003.

10.29. The representative of Lesotho said that Lesotho commended Guatemala and Australia for placing this important item on the Agenda of the present meeting. Lesotho wished to be associated with the statement made by Chad, on behalf of the LDC Group, and with the statement to be made subsequently on behalf of the African Group. Lesotho expressed its appreciation for the work of the ACWL for the past 20 years, which had contributed to reinforcing the legal capacity of developing countries and especially of LDCs like Lesotho. The ACWL was a miracle in international law. Nobody would have thought in the 1990s that a number of Members would succeed in creating an independent office charged with assisting the legal needs of developing countries and LDCs. For that reason, Lesotho wished to pay tribute to those great minds who devised and successfully put in motion the project called the ACWL. Lesotho had never participated in WTO disputes, however it was worth mentioning that the assistance of the ACWL had gone beyond dispute settlement. The

ACWL had been on Lesotho's side with respect to many trade issues. Lesotho's government routinely sought assistance from the ACWL in understanding its WTO rights and obligations as well as the legal avenues to address any trade issues for Lesotho or issues Lesotho might have had with other Members. In addition, the ACWL was continuously providing capacity-building to Lesotho in at least three different ways, first through the courses in Geneva. Several delegates, the representative of Lesotho included, had benefited from the expertise of the ACWL lawyers. Second, Lesotho often requested the ACWL to organize virtual thematic sessions on selected WTO legal issues to train government officials. And third, at least two government officials had participated in the nine-month secondment programme that the ACWL organized and currently those individuals were senior officials in Lesotho's Ministry of Trade and thus applying at home what they had learned from the ACWL and its lawyers. In conclusion Lesotho wished to congratulate the ACWL on its 20th anniversary and wish the ACWL many more years of good institutional health.

10.30. The representative of Mexico said that Mexico thanked Australia and Guatemala for placing this item on the Agenda of the present meeting and congratulated the ACWL on its 20th anniversary. The mission of the ACWL and purpose remained crucial for developing countries, LDCs, and for the WTO in general, thanks to its legal assistance and contribution to access to the dispute settlement system and rules in various forms and modalities. The performance, experience and quality of the ACWL's staff – even for those Members, like Mexico, who were not members of the ACWL – made an important contribution. Mexico did not want to miss the opportunity under this item to show its appreciation to the ACWL, its members and staff on its anniversary.

10.31. The representative of Thailand said that Thailand wished to join Australia and Guatemala and the previous speakers in congratulating the ACWL on its 20th anniversary and expressing appreciation for the work done by the ACWL over the past two decades. The WTO was undergoing changes and there were many challenges lying ahead of Members. At the present critical juncture, the role of the ACWL had become even more crucial in ensuring that all Members, regardless of their level of development, could participate fully in the rules-based multilateral trading system. In that regard, Thailand wished to express its gratitude for those Members who had taken on most of the burden of financing this important institution and reiterated the importance of securing continued financing for the ACWL as well as encouraging Members to support the ACWL in the interest of all Members in the system.

10.32. The representative of Egypt said that Egypt wished to be associated with the statement to be made on behalf of the African Group. Egypt thanked Guatemala and Australia for placing this item on the Agenda of the present meeting. Egypt supported the statements made by previous speakers congratulating the ACWL on its 20th anniversary and wished to place on record its profound appreciation for the work the ACWL had done for the previous two decades. Egypt also extended its sincere thanks to the ACWL for its leadership and to each and every member of its staff for the dedication, commitment and the excellent quality of work they conducted. For more than 20 years, the ACWL had played a significant role in providing legal assistance to developing countries and LDCs within the framework of the dispute settlement system, as well as providing technical support and capacity building programmes for Geneva-based delegates and legal experts from capitals. Egypt believed that this contribution by the ACWL was essential in giving developing countries and the LDCs a fair opportunity to participate in the dispute settlement and to better understand the legal system of the WTO in general. As a developing country, Egypt thanked donors for their commitment towards the ACWL and hoped that they would continue to be equally committed in the future to guarantee that the ACWL would continue providing the highest level of performance and services to its Members.

10.33. The representative of Bangladesh said that Bangladesh thanked Australia and Guatemala for placing this item on the Agenda of the present meeting and for their statements. Bangladesh congratulated the ACWL for its successful completion of 20 years and its Executive Director Mr Niall Meagher and all staff members for their sincere efforts. The WTO law consisted of a complex wealth of agreements. The WTO law also included the General Agreement on Tariffs and Trade (GATT), other decisions adapted by the contracting parties of the GATT, and the jurisprudence of the adjudicatory bodies of the GATT and WTO. Countries which lacked human and financial resources and knowledge were in a difficult position to implement those complex laws, but due to different types of assistance from the ACWL, these countries had been benefiting from, and integrating into, the multilateral trading system. Since 2001, the ACWL had been assisting developing countries, especially the LDCs, through legal capacity building, which was necessary to enable them to take full advantage of the opportunities offered through the WTO. The ACWL also provided on demand

legal advice, assistance in WTO dispute settlement proceedings and training on WTO law, to developing country and the LDCs. The ACWL had provided assistance in 68 disputes since its inception and Bangladesh was among the beneficiary countries. Bangladesh thanked donors for their continuous contributions and appreciated the ACWL's activities and future initiatives.

10.34. The representative of the European Union said that the European Union greatly appreciated the work of the ACWL in contributing to the smooth and equitable operation of the WTO's dispute settlement system and to the WTO more generally. Equitable access to the WTO's dispute settlement system and, for that purpose, access to high-quality legal advice and representation in such procedures benefited the entire WTO Membership. It was part of the underpinnings of the rules-based multilateral trading system that should benefit all WTO Members, large and small. This was why the work of the ACWL was important. It provided developing countries, including LDCs, with access to specialist legal capacity and it played an important role in capacity-building on WTO law in developing country governments. The European Union, therefore, wished to congratulate the ACWL on this 20th anniversary and to wish the ACWL every success in the years to come. The European Union also wished to express its appreciation to the Members of the ACWL – among them several EU member States – for their role in supporting the activities of the ACWL.

10.35. The representative of India said that India wished to join other Members in congratulating the ACWL on its 20th anniversary. India appreciated the services and efforts made by the ACWL for developing countries and the LDCs, in particular by providing legal training, expertise and advice on WTO law. India wished all the ACWL all best in its future work and endeavours.

10.36. The representative of the United Kingdom said that the United Kingdom joined Australia and Guatemala in celebrating twenty years of the ACWL. The United Kingdom was pleased to continue to support the ACWL and its mission to ensure that all Members could take full advantage of the opportunities offered by the WTO. Through its expert legal advice, assistance in dispute settlement proceedings, and training opportunities, the ACWL helped in enabling developing countries and the LDCs to pursue their trade policy interests consistently with WTO rules, to enforce their rights, and to build capacity. This in turn contributed to the effectiveness and legitimacy of the multilateral trading system and the achievement of development objectives.

10.37. The representative of Mongolia said that Mongolia wished to thank Guatemala and Australia for placing this matter on the Agenda of the present meeting. Mongolia also joined other Members in congratulating the ACWL on its 20th anniversary. Since becoming a Member of the ACWL in 2020, Mongolian delegates and trade lawyers had already benefited from its tailor-made training programmes and legal advice on specific issues arising under the WTO law. The broad spectrum of services rendered by the ACWL helped Mongolia to better understand the WTO regime while ramping up its participation in the multilateral trading system. Mongolia also wished to express its sincere gratitude to the donor countries for their valuable financial contribution to the ACWL to date. Indeed, Mongolia saw that the contribution of the donor countries played an important role to ensure high-quality service in the operations of the ACWL. Therefore, it was Mongolia's hope that the donor countries would continue to make voluntary contributions with a view to supporting the outstanding performance of the ACWL in the years ahead.

10.38. The representative of Ukraine said that Ukraine wished to congratulate the ACWL on their 20th anniversary. Ukraine recognized the importance of the ACWL for the Members of the WTO. Ukraine had initiated the accession process to the ACWL in 2019 and had taken all the necessary steps to finalize it this summer, bringing the total number of developing country members to 39. Ukraine hoped that its membership would strengthen the activities of the ACWL and could benefit Ukraine. Ukraine wished the ACWL many more years of unparalleled success.

10.39. The representative of Nepal said that Nepal wished to thank Australia and Guatemala for placing this matter on the Agenda of the present meeting. Nepal wished to associate itself with the statement delivered by Chad on behalf of the LDC Group. On this prestigious occasion of the 20th anniversary of the ACWL, Nepal also wished to extend its heartfelt congratulations to the ACWL and thank the ACWL team for their valuable contributions in extending support to developing country and LDC Members of the WTO in various legal matters related to the WTO law. Furthermore, Nepal commended the ACWL for its continuous support in capacity building through various activities, including internships and training programmes. Support extended by the ACWL in the process of submissions of the group of LDCs and LLDCs remained crucial not only in improving their submissions, but also in negotiating with Members. Nepal wished to extend its thanks to all donors

and contributors for supporting the ACWL in its deserving mandate. Nepal stood ready to engage with the ACWL while designing and implementing its future work programme and the ACWL could count on Nepal's full support in its future endeavours.

10.40. The representative of Norway said that the importance of the ACWL in making the dispute settlement system more accessible, enabling all Members to defend their interests in WTO dispute settlement proceedings, and providing training on WTO law, could not be underestimated. It was a fundamental piece of the architecture of the multilateral trading system. Norway wished to thank Australia and Guatemala for placing this matter on the Agenda of the present meeting. Norway had been a member of the ACWL since its establishment and continued to highlight the importance of its work. Norway wished to commend the ACWL for effectively adjusting to the difficult circumstances brought on by the pandemic, without any significant interruptions in the services provided. Norway also noted with pleasure the high and increasing share of women participating in the ACWL's training courses, seminars, and secondment programmes. Finally, Norway warmly welcomed Germany's accession to the ACWL as a member as of early 2021.

10.41. The representative of Nigeria, speaking on behalf of the African Group, thanked Guatemala and Australia for placing this matter on the Agenda of the present meeting. The African Group wished to congratulate the ACWL on its 20th anniversary. The African Group fully supported the work of the ACWL in ensuring that sound and confidential legal advice was given to the countries who had requested their assistance. This was evidenced by the survey of satisfaction conducted annually by the ACWL, from the report on the meeting of the General Assembly of the ACWL. Responses showed that 100% of users were very satisfied with the ACWL's services. Regarding the ACWL's services provided to African countries, it was evident that over the previous 20 years, 30 different African countries had obtained expert strictly confidential legal advice from the ACWL, of which 17 different African countries were beneficiaries of a total of 55 legal opinions from the ACWL in 2020 alone. This constituted about 25% of the ACWL's legal opinions. Those legal opinions had assisted the beneficiary countries in better understanding their rights and obligations under the WTO Agreements and facilitated their integration into the rules-based multilateral trading system. This number also reflected an increasing awareness of the ACWL's role and activities. Since 2001, the ACWL achieved participation at WTO disputes in over 20% of WTO disputes. Through its legal advice to all WTO Members, the ACWL continued to be a motivation to African Group members who were otherwise constrained by their limited resources. The African Group acknowledged all efforts by the ACWL to provide access to knowledge and expertise to African members so as to enable them to obtain access to a similar level of knowledge as other big users of the dispute settlement system. These efforts would contribute to ensuring equal access and the reduction of the existing digital divide among WTO Members. It was commendable that, despite the pandemic, the work of the ACWL continued, which, among other things, enabled them to address many issues arising from the pandemic. The adaption of the training activities to an online platform indicated the institution's responsiveness, which had to be commended. Finally, the African Group reiterated its support for the work of the ACWL and looked forward to further utilizing its services. The African Group conveyed its heartiest congratulations to the ACWL's team for their impressive achievements over the 20 years of their existence and encouraged all Members to support the organization.

10.42. The representative of Argentina said that Argentina wished to thank Australia and Guatemala for placing this item on the Agenda. Argentina wished to acknowledge the role played by the ACWL in fostering access to justice for developing countries. The power of multilateralism and the power of rules was the only strength that developing countries had done and for that reason Argentina wished to join others in highlighting how relevant this institution was. The ACWL contributed to the WTO activities being fair in practice. There were still many challenges to achieve sustainable development. Argentina wished to stress all that the ACWL had done to provide access to justice and make that real. Argentina was not a member of the ACWL, but it did acknowledge how important the ACWL was for many developing countries as they built their capacity. Argentina also wished to thank the donors and believed that the ACWL would have a long and productive life.

10.43. The representative of the Russian Federation wished to congratulate the ACWL team on this very big occasion. The Russian Federation acknowledged the great importance of the ACWL for developing countries and the LDCs in dispute settlement proceedings and consequently its significant contribution made to the rules-based multilateral trading system. The Russian Federation wished to express its hope for the best for the ACWL and its team in the coming years.

10.44. The Chairman noted that 37 delegations had made statements under this Agenda item. He said that he did not wish to provide a full summary of all the points made, but only to underline a few recurring features that had been raised by delegations at the present meeting. The fact that so many delegations had made statements on this matter bore witness to the tremendous support that the ACWL enjoyed from the WTO community. Most delegations who had taken the floor had underscored the relevance and quality of the legal advice provided by the ACWL. Moreover, many delegations also underscored that the ACWL had enabled beneficiaries, in particular the LDCs, not just to benefit more from their rights, but also to better understand WTO rules and their meaning for domestic regulatory and legislative processes of Members.

10.45. The DSB took note of the statements.

11 STATEMENT BY CHINA REGARDING DUE PROCESS IN PANEL COMPOSITIONS

11.1. The representative of China, speaking under "Other Business", said that the composition of a panel was a crucial step in panel proceedings, and appointment of high-quality, independent and neutral panelists held the key to smoothly resolution of disputes. This was of paramount importance against the backdrop of defunct Appellate Body. China appreciated the support provided by the Secretariat in recommending the slates of candidates for the panel. At the same time, given China's recent experience, China wished to take this opportunity to emphasize the importance of due process, due diligence and due respect obligations that Members expected the Secretariat to provide when carrying out its assistance in the panel stage, especially in the composition of the panel. For example, in China's view, the Secretariat should make best efforts in identifying proper candidates in line with the criteria set out in the DSU and the parties, facilitating and respecting the parties' agreement on all or some panelists, timely checking and keeping the parties informed about the availability of the potential panelists, and further consulting with the parties when the agreed candidate was not able to serve. China believed that the more professional and neutral the Secretariat's service was, the more confident Members would be in the dispute settlement system and the multilateral trading system.

11.2. The DSB took note of the statement.
