

**Dispute Settlement Body
26 October 2021**

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 26 OCTOBER 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 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, this 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) Tunisia requested the inclusion of an item under "Other Business" in order to make a report regarding the consultations with Morocco concerning the DS578 dispute.

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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1.1. The Chairman noted that there were six sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. As Members recalled, Article 21.6 required that: "Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and shall remain on the DSB's Agenda until the issue is resolved." Under this Agenda item, the Chairman wished to invite delegations to provide up-to-date information about their compliance efforts. The Chairman 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.220)

1.2. The Chairman drew attention to document WT/DS184/15/Add.220, 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 14 October 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 matter.

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

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.195)

1.6. The Chairman drew attention to document WT/DS160/24/Add.195, 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 14 October 2021, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

1.8. The representative of the European Union thanked the United States for its status report and its statement at the present meeting. The European Union referred to its previous statements and reiterated that it wished to resolve this case as soon as possible.

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

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.158)

1.10. The Chairman drew attention to document WT/DS291/37/Add.158, 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. Those included, among others, procedures related to transparency, such as a one-month public consultation. The European Union failed to see how those procedures could be characterised as "undue delay". The European Union reiterated that it acted in line with its WTO obligations and 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 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. It was the US understanding that there were still approximately eight biotech products for which the European Food Safety Authority (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. While it was welcome to see the European Union issue certain approvals and renewals in August 2021, the persistent delays in the EU's biotech approval system had yet to be addressed. 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.42)

1.14. The Chairman drew attention to document WT/DS464/17/Add.42, 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 14 October 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. 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 had to 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 that WTO-inconsistent methodology. He said that 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 most recent 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 about 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 representative of the United States said that the United States took note of Canada's statement and would convey it to capital. As it had noted at the present meeting, the United States had completed implementation of the DSB recommendations concerning the anti-dumping and countervailing duty orders on large residential washers from Korea. The United States continued to consult with interested parties on options to address the recommendations of the DSB relating to other measures challenged in this dispute. That internal process was ongoing. The United States recalled that Canada commenced a dispute settlement proceeding against the United States concerning the use of a differential pricing analysis and zeroing. Canada had lost that dispute before the panel. The panel had rejected Canada's arguments because they were unpersuasive and did not make sense of the text of the Anti-Dumping Agreement.

1.19. 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.34)

1.20. The Chairman drew attention to document WT/DS471/17/Add.34, 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.

1.21. The representative of the United States said that the United States had provided a status report in this dispute on 14 October 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.

1.22. The representative of China said that China thanked the United States for its most recent status report. 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 by bringing its measures into conformity without further delay.

1.23. 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.29 – WT/DS478/22/Add.29)

1.24. The Chairman drew attention to document WT/DS477/21/Add.29 – WT/DS478/22/Add.29, 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.

1.25. 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 rulings of the DSB in these disputes. On measure 18, as updated in previous DSB meetings, Indonesia had removed all Articles in the relevant Laws that were found to be inconsistent with the 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 included the removal of disputed measures including, *inter alia*: harvest period restriction; import realization requirements; six-months harvest requirement; and reference price. Indonesia was committed to engage with New Zealand and the United States and reaffirmed its commitment to implementing the recommendations and rulings of the DSB in these disputes.

1.26. 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 said that it would appreciate further clarity on which regulations presently comprised Indonesia's import licensing regimes and on forthcoming regulations that would affect those regimes. The United States remained willing to work with Indonesia to fully resolve this dispute.

1.27. 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 that assessment. This included Ministry of Trade Regulation 20/2021 – which New Zealand understood was currently in draft form – and New Zealand sought clarity on whether that regulation would amend Indonesia's import licensing system. New Zealand invited Indonesia to provide further details as soon as possible and looked forward to further bilateral engagement to that end.

1.28. 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 the European Union wished to refer to its previous statements under this Agenda item.

2.3. The representative of the United States said that the United States took note of the European Union's statement. In that regard, the United States wished to refer to its prior statements made under this Agenda item regarding Article 21.6 of the DSU.

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 wished to refer to its previous statements made under this Agenda item regarding Article 21.6 of the DSU. The United States simply noted at the present meeting that, as Members were aware, on 15 June 2021, the United States and the European Union had reached an "Understanding on a cooperative framework for Large Civil Aircraft." The United States looked forward to engaging with its European partners to bring about a more level global playing field.

3.3. The representative of the European Union said that the European Union referred to its previous statements under this Agenda item.

3.4. The DSB took note of the statements.

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

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

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

4.2. 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 two litres or less imported from Australia. Unfortunately, those consultations, held on 9 August 2021, had failed to resolve this matter. At the DSB meeting on 27 September 2021, Australia had requested the establishment of a WTO dispute settlement panel to examine the definitive anti-dumping duty measures. China did not agree to that request. While Australia remained ready to engage in bilateral discussions with China, Australia was disappointed that it had still not seen any concrete steps to respond to its legitimate concerns. As a result, Australia was again 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 with China with a view to resolving the issues raised by Australia.

4.3. The representative of China said that China regretted that Australia had decided to proceed with its panel request with regard to this dispute. China referred to its statement delivered at the 27 September DSB meeting. China would vigorously defend its legitimate measures in the following proceedings and was confident that its challenged measures were consistent with relevant WTO rules. Having said that, China remained open to further engage with Australia in good faith with a view to resolving this dispute in a positive manner.

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

4.5. The representatives of Brazil; Canada; the European Union; India; Japan; New Zealand; Norway; the Russian Federation; Singapore; Switzerland; Chinese Taipei; Turkey; Ukraine; the United Kingdom; the United States and Viet Nam reserved their third-party rights to participate in the Panel's proceedings.

5 ADOPTION OF THE 2021 DRAFT ANNUAL REPORT OF THE DISPUTE SETTLEMENT BODY (WT/DSB/W/686)

5.1. The Chairman said that, under this Agenda item, he was submitting for adoption the draft text of the 2021 Annual Report of the DSB contained in document WT/DSB/W/686. He said that he was doing so pursuant to the Procedures for an Annual Overview of WTO Activities and for Reporting under the WTO, contained in document WT/L/105. This Report covered the work of the DSB since the previous Annual Report contained in document WT/DSB/81. In other words, it covered meetings of the DSB from 18 December 2020 through 27 September 2021. The Report contained a brief summary of DSB meetings during the period under review. As in the past, following the adoption of the Annual Report at the present meeting, the Secretariat would update the Report under its own responsibility in order to include the actions taken by the DSB at the present meeting. Subsequently, the updated Annual Report would be submitted for consideration by the General Council at its meeting scheduled for 22 and 23 November 2021. Consequently, the Chairman proposed that the DSB adopt the draft Annual Report of the DSB contained in document WT/DSB/W/686 on the understanding that it would be further updated by the Secretariat.

5.2. The DSB took note of the statement and adopted the draft Annual Report of the DSB contained in document WT/DSB/W/686 on the understanding that it would be further updated by the Secretariat.²

² Subsequently, the Annual Report of the DSB was circulated in document WT/DSB/83.

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

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

6.2. The representative of Mexico, speaking on behalf of the co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.19, said that the delegations in question had agreed to submit the joint proposal, dated 7 December 2020, to launch the selection processes for the vacancies of the Appellate Body members. On behalf of those 121 Members, Mexico wished to state the following. The extensive number of Members submitting the joint proposal reflected a common concern with the current situation in the Appellate Body that was seriously affecting the overall dispute settlement system, against the best interest of its Members. WTO Members had a responsibility to safeguard and preserve the Appellate Body, the dispute settlement system, and the multilateral trading system. Thus, it was their duty to proceed, without further delay, with the launching of the selection processes for the Appellate Body members, as set out in the joint proposal, which 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 take into account the urgency of the situation. The proponents continued to urge all Members to support the joint proposal in the interest of the dispute settlement mechanism and the multilateral trading system.

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

6.4. 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 important issues.

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

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

6.7. The representative of Korea said that Korea reiterated its support for the joint proposal and wished to refer to its previous statements 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, as a firm supporter of the multilateral system, was ready to engage constructively in relevant discussions to find a solution to enhance the functioning of the dispute settlement system with a view to accommodating the needs of WTO Members. Also, Korea wished to point out that there should be a work plan to reform the dispute settlement system at 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 by MC12.

6.8. The representative of Australia said that Australia remained strongly committed to finding a solution in the interests of all Members to revitalise and reform the dispute settlement system – and to ensure its binding, two-tier structure was again functioning effectively – as soon as possible. The longer the present situation remained, the greater the cost for the Membership. Currently, there were 21 notified appeals before the Appellate Body that could not be heard or resolved. That number would continue to grow. That left more stakeholders transacting business across borders without the predictability of an enforceable set of global trade rules. Members might increasingly see governments operate outside the WTO system when trade disputes arose if the system remained incapable of delivering a binding resolution. These were critical and urgent challenges for all Members, who had long valued and relied upon the level playing field that the WTO system provided for settling trade disputes independently and impartially. That was why Australia remained committed to working with all Members to agree a practical pathway for dispute settlement reform. Australia recognized that changes were required to ensure the system worked for all. To do that, Members needed a clear roadmap with a clear time-frame attached. Members should not miss the opportunity that the MC12 provided to make a credible start in finding the way forward. Australia therefore urged all Members to engage fully and constructively in agreeing on such a plan, so that they could all benefit from a stronger and more agile system for settling trade disputes.

6.9. The representative of China said that China supported the statement made by Mexico, on behalf of 121 co-sponsors, and called upon other Members to join the proposal. China referred to its previous statements on this urgent matter and reiterated its firm commitment to an independent and impartial two-tier dispute settlement system. The paralysis of the Appellate Body had posed serious challenges to the multilateral trading system and more than a dozen of cases 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. As the MC12 was fast approaching, China called upon all Members to prioritize the restoring of the Appellate

Body function, and to engage constructively in the solution-based consultations with a view to breaking the selection impasse at the earliest possible date. In China's view, political guidance and a work programme for further work in the MC12 outcome paper was imperative to restore the confidence of Members and send a positive signal to the outside. China stood ready to work with all Members in that regard.

6.10. The representative of Hong Kong, China said that Hong Kong, China wished to reiterate the importance of according priority to restoring a fully functioning WTO dispute settlement system, which was an integral part of the rules-based multilateral trading system. Hong Kong, China was committed as always to engaging in constructive discussions, including on any necessary reforms, to resolve the impasse.

6.11. The representative of Norway said that Norway wished to refer to its previous statements under this Agenda item. Norway fully supported the joint proposal presented by Mexico, and co-sponsored by 121 Members. A fully functioning dispute settlement mechanism was an indispensable part of the multilateral trading system. Members urgently needed to fulfil their duty as Members of the WTO and start the selection processes to fill the vacancies in the Appellate Body, in accordance with the DSU. Norway had at the same time noted the request to discuss how to improve the functioning of the Appellate Body and reiterated its readiness and commitment to engage in such discussions.

6.12. The representative of the United Kingdom said that the United Kingdom continued to support this Agenda item to launch the selection process for appointments to the Appellate Body, and referred to its previous statements on this issue. A fully functioning and binding dispute settlement system was the best means of enforcing the rules Members had negotiated and ensuring the fair resolution of disagreements. As Members headed towards the Twelfth Ministerial Conference, they had to work collaboratively towards dispute settlement reform which supported the diverse needs of all Members.

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

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

6.15. The representative of New Zealand said that New Zealand reiterated its support for the co-sponsored proposal and referred to its previous statements. 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.

6.16. The representative of Nigeria, speaking on behalf of the African Group, said that the African Group wished to refer to its previous statements on record on this very important issue. The African Group wished to join others in thanking Mexico for its statement on the proposal for Appellate Body appointments. 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 submitting that joint proposal. The fact that the Appellate Body could not hear new appeals remained a concern. Members had a shared responsibility to safeguard the two-tiered dispute settlement system so as to prevent undermining the multilateral trading system, particularly through a number of cases where Members had been noted to appeal 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 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 order to address the specific concerns raised against the functioning of the Appellate Body with a view to finding a solution. The African Group was also in support of developing a work plan to be adopted by the MC12. The African Group believed that procedural issues could be addressed along with substantive issues. The African Group urged all Members who had yet to co-sponsor the proposal to do so as soon as possible. The African Group stood ready to engage constructively with all Members.

6.17. The representative of Indonesia said that Indonesia wished to refer to its previous statements made at previous DSB meetings with regard to this Agenda item. Indonesia again availed itself of this opportunity to urge all Members to give their serious attention, willingness, and commitment to the immediate appointment of the Appellate Body members.

6.18. 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 AB appointment processes immediately. Russia urged Members to prioritize the restoring of the proper operation of the dispute settlement system and to renew its readiness to cooperate and engage constructively in any discussions on this matter with a view to reaching an agreement acceptable to all Members.

6.19. The representative of India said that India referred to its statements made on this issue at previous DSB meetings and requested all WTO Members to resolve this matter and work on filling the outstanding vacancies, as set out in Article 17.2 of the DSU.

6.20. 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 this proposal was a clear testimony to the importance they all attached to a fully operational Appellate Body as an integral part of the dispute settlement system. The fact that the Appellate Body could not hear new appeals was very worrying. Canada reiterated its interest in contributing to discussions aimed at finding solutions regarding the functioning of the Appellate Body. It remained Canada's priority to find a lasting multilateral solution for all Members, including the United States. Meanwhile, Canada and 24 other WTO Members had endorsed the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) as a contingency measure. 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 Members collectively found a permanent solution to the impasse in the Appellate Body. Canada was available to discuss the MPIA with any interested Member.

6.21. The representative of Malaysia said that Malaysia wished to thank Mexico for presenting the proposal on behalf of the co-sponsors. Malaysia also wished to refer to its previous statements on this matter. The overwhelming support presented by the co-sponsors of this proposal demonstrated the importance of the Appellate Body, which was significant for a fully functioning WTO dispute settlement system. Malaysia also wished to reiterate its strong support for a fair, open and non-discriminatory rules-based multilateral trading system. In Malaysia's view, a two-tier dispute settlement system was an essential pillar of this institution. It was the responsibility of all WTO Members to preserve the system and maintain the credibility and predictability of the multilateral trading system. Once again, Malaysia wished to urge Members to exercise the necessary flexibility to enable the unblocking of the Appellate Body selection process and called for the immediate appointment of the Appellate Body members.

6.22. The representative of Thailand said that Thailand supported the statement made by Mexico on behalf of the co-sponsors. Thailand referred to its previous statements under this Agenda item and shared its strong concern over the long absence of an effectively functioning dispute settlement system. Thailand remained fully committed to a solution-oriented discussion including on necessary reforms and renewed its call on Members to continue their constructive engagement with a view to finding ways to solve this impasse.

6.23. The representative of Singapore said that Singapore thanked Mexico for its statement, which Singapore strongly supported. Singapore reiterated its previous statements on this matter and looked forward to commencing constructive discussions with all Members, including the United States, to find a lasting multilateral solution in order to restore a fully functioning dispute settlement system.

6.24. The representative of Mexico, speaking on behalf of the 121 co-sponsors, regretted that for the forty-seventh 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 this Organization. The fact that a Member may have had concerns about certain aspects of the functioning of the Appellate Body could not serve as a pretext to impair and disrupt the work of this body and dispute settlement in general. There was no legal justification for the current blocking of the selection processes, which was causing concrete nullification and impairment for many Members. As Article 17.2 of the DSU clearly stated, "vacancies shall be filled as they arise". No discussion should prevent the Appellate Body from continuing to operate fully and Members shall comply with their obligation under the DSU to fill the vacancies. Mexico noted with deep concern that by failing to act at the present meeting, the Appellate Body would continue to be unable to perform its functions against the best interest of all Members.

6.25. The representative of Mexico said that for more than two years, Members had been requesting that the joint proposal be approved by the DSB so that their right to appeal be preserved as set out in the DSU. Mexico wished to refer to its previous statements made on this matter and continued to express its deep concern as Members were faced with an unprecedented situation with a non-operational Appellate Body. Mexico noted that all ongoing disputes were being affected by not having a fully functional two-tier dispute settlement system, putting at risk the prompt compliance with and the adoption of panel/AB reports. The Ministerial Conference was one month away and this should be an opportunity to give a serious signal of a commitment to work in a multilateral context. This matter required urgent action and Mexico therefore called on Members who had not yet co-sponsored the joint proposal to do so. Mexico remained ready to work constructively on a real and multilateral solution.

6.26. The Chairman said that, as noted by Mexico, this was the forty-seventh occasion that this matter had been raised before the DSB. This demonstrated the interest that Members attached to this matter and the fact that this matter was important for a majority of Members. He said that, as in the past, the statements made by delegations on this matter would be reflected in the minutes of the present meeting. As Members were aware this was a very sensitive matter and required political engagement on behalf of all Members. He hoped that Members would be able to find a solution to this matter as soon as possible. As Members were also aware, the GC Chair continued to consult on this matter in the context of the preparations for the MC12 and had reported on his consultations at the stocktaking meeting held on 25 October 2021. He said that these consultations were ongoing. He hoped that Members would find a mutually satisfactory solution to this matter as soon as possible.

6.27. The DSB took note of the statements.

7 REPORT BY TUNISIA REGARDING THE CONSULTATIONS WITH MOROCCO CONCERNING THE DISPUTE: "MOROCCO – DEFINITIVE ANTI DUMPING MEASURES ON SCHOOL EXERCISE BOOKS FROM TUNISIA" (DS578)

7.1. The representative of Tunisia, speaking under "Other Business", said that his delegation wished to report on the consultations that had recently taken place with Morocco in the DS578 dispute. After the first meeting held on 24 September 2021, both parties had met for a second time on 21 October 2021. Prior to that meeting, Tunisia had forwarded to Morocco a written proposal outlining its view on the conclusions of the panel report. Morocco considered that it was not in a position to make a concrete proposal based on the conclusions of the panel report, but wished to discuss those conclusions in detail. At that meeting, Morocco and Tunisia had been able to cover all points in the report and Morocco had undertaken to revert with detailed proposals to remove or review anti-dumping rates before the end of the week. Tunisia said that it had adopted this approach with a view to reaching a satisfactory resolution of this dispute as soon as possible. For that reason, it had presented a package of options for a process that would include bilateral discussions in line with Morocco's preferences, mediation by the DSB Chairman on any outstanding issue on which no agreement could be reached, and, finally, an appeal procedure in accordance with Article 25 of the DSU to allow Morocco to defend its views before a functional appeals body and thus avoided

appealing into the void by Morocco. He said that Morocco was limiting itself, at this point, to engaging in bilateral discussions, which Tunisia hoped would be fruitful. However, this was not sufficient since it would not guarantee a quick resolution of the matter. Tunisia called upon Morocco to accept the package proposed by Tunisia so as to reach an understanding before the next DSB meeting to be held on 29 November 2021. It was Tunisia's intention to place the panel report for adoption by the DSB at its November meeting, in accordance with Articles 3.3, 3.7, 3.10, 16.4 and 17.5 of the DSU.

7.2. The representative of Morocco thanked Tunisia for its report on bilateral discussions held on 21 October 2021. He said that the parties to this dispute had jointly agreed to make a report on those discussions at the present meeting. Morocco reiterated its commitment to finding a solution through bilateral discussions, and hoped that these discussions would be fruitful and would lead to a mutually acceptable solution. Morocco said that the discussions had taken place in a very fraternal atmosphere and reiterated Morocco's high-level commitment to fruitful discussions to be carried out within a short period of time.

7.3. The Chairman said that he hoped that the two delegations would make real progress in the process underway with a view to finding a mutually satisfactory solution. As he had already mentioned at previous DSB meetings, he was available to assist the parties to this dispute, if both of them so wished.

7.4. The DSB took note of the statements.
