

**Dispute Settlement Body  
29 November 2021**

**MINUTES OF MEETING**

HELD IN THE CENTRE WILLIAM RAPPARD  
ON 29 NOVEMBER 2021<sup>1</sup>

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

Prior to the adoption of the Agenda: (i) the Chairman welcomed all delegations participating in the meeting of the Dispute Settlement Body (DSB) both in-person and remotely; (ii) the Chairman said that he wished to recall a few technical instructions regarding the virtual participation of delegations. If a Member was unable to take the floor during the meeting because of a technical issue, the delegation could inform himself or the Secretariat and that Agenda item would remain open until the delegation could take the floor. In the alternative, the item would remain open temporarily, the meeting would proceed to the next Agenda item, and the DSB would revert to the open item after the technical issue had been resolved. If a technical issue remained unresolved, the delegation had the option to send the statement to the Secretariat with the request that it be read out by the Secretariat on behalf of that delegation during the meeting so that the statement could be reflected in the minutes of the meeting; and (iii) the Chairman made a short statement regarding item 4 of the proposed Agenda of the 28 April 2021 DSB meeting pertaining to the DS574 dispute. He said that, as Members recalled, this matter had been removed from the proposed Agenda to allow time for the Chairman's consultations with each interested party on this matter and that those consultations were ongoing.

The DSB took note of the statements and adopted the Agenda.<sup>2</sup>

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<sup>1</sup> The proceedings of this meeting were held in a hybrid format.

<sup>2</sup> Following the adoption of the Agenda, Tunisia raised its flag to indicate that it would wish to include an item under "Other Business" in order to report on its consultations with Morocco regarding the DS578 dispute. In light of this request, the Chairman asked if Members were in a position to amend the proposed Agenda in order to include the item proposed by Tunisia under "Other Business". No delegation objected to this way of proceeding and the Agenda was adopted, as amended.

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## **1 SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB**

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.221)

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.196)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.159)

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.43)

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States (WT/DS471/17/Add.35)

F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.27 – WT/DS478/22/Add.30)

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.221)**

1.2. The Chairman drew attention to document WT/DS184/15/Add.221, 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 18 November 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 latest status report and the statement made at the present meeting. Japan, once again, called on the United States to fully implement the DSB's 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.196)**

1.6. The Chairman drew attention to document WT/DS160/24/Add.196, 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 18 November 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 made 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.

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**C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.159)**

1.10. The Chairman drew attention to document WT/DS291/37/Add.159, 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 the 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 had acted in line with its WTO obligations and recalled that the EU approval system was not covered by the DSB's recommendations and rulings. To update the WTO Membership concerning the progress of the applications throughout the authorisation process, the European Union noted that: (i) the Standing Committee meeting was held online on 22 November 2021; (ii) the Commission presented a draft decision renewing the authorisation of GM cotton GHB614; and (iii) the vote on that draft decision was ongoing by written procedure.

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. The United States said that the European Union had recently cited "administrative procedures", such as a one-month public consultation period, as the reason that products had not made further progress through its comitology process in situations where the European Food Safety Authority (EFSA) had completed a risk assessment. The United States had previously noted that the European Union's "administrative procedures" and findings of "no opinion" at both the Standing Committee and Appeals Committee meetings created delays between the conclusion of an EFSA risk assessment and final approvals. It was the understanding of the United States that there were still approximately eight (8) biotech products for which the EFSA had successfully completed a risk assessment, yet which had not received final approval through comitology. 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.43)**

1.14. The Chairman drew attention to document WT/DS464/17/Add.43, 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 18 November 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 made at the present meeting. Korea again urged the United States to take prompt and appropriate steps to implement the DSB recommendations for the "as such" measures 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. 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 United States' 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.35)**

1.19. The Chairman drew attention to document WT/DS471/17/Add.35, 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 18 November 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, China was disappointed 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. Prompt compliance was critical to the effectiveness and credibility of the dispute settlement system, which was in the best interests of the entire Membership. China urged the United States to meet its obligation under Article 21.1 of the DSU by bringing full compliance in this dispute without further delay.

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

#### **F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.30 – WT/DS478/22/Add.30)**

1.23. The Chairman drew attention to document WT/DS477/21/Add.30 – WT/DS478/22/Add.30, 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 pursuant to Article 21.6 of the DSU. Indonesia wished to reiterate its commitment to implementing the recommendations and ruling of the DSB in these disputes. With regard to measure 18, as reported at previous DSB meetings, Indonesia had removed all Articles in the relevant Laws that were found to be inconsistent with WTO rules, through the enactment of Law No. 11/2020 on Job Creation. With respect to measures 1-17, Indonesia wished to reassure that, significant adjustments in

complying with the recommendations and rulings of the DSB had been carried out 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 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 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 Law No. 11/2020 on Job Creation, which would impact this assessment. This included the recently-released Ministry of Trade Regulation 20/2021. New Zealand sought clarity on how the implementation of this 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.

1.27. 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 the European Union wished to refer to its previous statements made 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 referred to its own prior statements 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 referred to its previous statements under this agenda item regarding Article 21.6 of the DSU. The United States wished to



simply note 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 wished to refer to its previous statements made under this Agenda item.

3.4. The DSB took note of the statements.

#### **4 RUSSIAN FEDERATION – CERTAIN MEASURES CONCERNING DOMESTIC AND FOREIGN PRODUCTS AND SERVICES**

##### **A. Request for the establishment of a panel by the European Union (WT/DS604/2)**

4.1. The Chairman drew attention to the communication from the European Union contained in document WT/DS604/2, and he invited the representative of the European Union to speak.

4.2. The representative of the European Union said that in the framework of the WTO, the Russian Federation had taken certain commitments as regards procurements of State-related entities for commercial purposes, including not to discriminate between domestic and imported products and between services from Russian and foreign entities. However, for several years, the Russian Federation had developed several measures seriously disadvantaging EU companies when selling goods and services to Russian State-related enterprises and other entities through procurement for commercial purposes. The European Union had raised this issue a number of times bilaterally and in WTO fora. Unfortunately, without solving the problem. In 2019, the value of published tenders by State-owned enterprises amounted to RUB 23.5 trillion (approximately EUR 290 billion) the equivalent of around 20% of Russia's GDP. The European Union had requested consultations with the Russian Federation on this matter on 22 July 2021. A consultations meeting had taken place on 13 September 2021. The meeting was useful in clarifying certain points, but did not resolve the dispute. The European Union urged the Russian Federation to withdraw the measures in question or to make them compliant with its WTO obligations. To that end, the European Union requested the establishment of a panel to fully examine the measures.

4.3. The representative of the Russian Federation said that the Russian Federation regretted the decision of the European Union to request establishment of a panel in the dispute DS604 "Russian Federation – Certain Measures Concerning Domestic and Foreign Products and Services". She recalled that the European Union had requested consultations on 22 July 2021. Following that request, the Russian Federation had engaged constructively in consultations and provided detailed explanation of its laws and regulations at issue with a view to resolving this dispute. The Russian Federation was confident that its measures were in compliance with its WTO obligations. At the same time, the Russian Federation was ready and willing to continue to consult with Brussels on this matter. In light of that, the Russian Federation was not in a position at the present meeting to support the request for the establishment of a panel.

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

#### **5 DOMINICAN REPUBLIC – ANTI-DUMPING MEASURES ON CORRUGATED STEEL BARS**

##### **A. Request for the establishment of a panel by Costa Rica (WT/DS605/2)**

5.1. The Chairman drew attention to the communication from Costa Rica contained in document WT/DS605/2, and he invited the representative of Costa Rica to speak.

5.2. The Representative of Costa Rica said that, for Costa Rica, the good functioning of the multilateral trading system, which was open, transparent and rules-based, was fundamental for complying with its trade and investment policy objectives. For that reason, Costa Rica was firmly committed to strengthening the system and to acting in compliance with its WTO commitments. Part of this related to the possibility of resorting to the dispute settlement mechanism when necessary. This had been, was, and continued to be, a pillar and a very important element of this

Organization, and an important tool for Members in their efforts to find balanced solutions to actions, which they considered to undermine their rights and had an impact on their trade interests. With this objective, and being aware of the options provided for by the dispute settlement mechanism, Costa Rica had requested the inclusion of this matter on the Agenda of the present meeting. This dispute concerned definitive anti-dumping duties imposed by the Dominican Republic on imports of corrugated or deformed steel bars or rods from Costa Rica. In Costa Rica's view, this measure was not compatible with the obligations of the Dominican Republic under Article VI of the GATT 1994 and of the Agreement on Implementation of Article VI of the GATT 1994 ("Anti-Dumping Agreement"). Costa Rica considered that the investigation conducted prior to the application of the anti-dumping duty, initiated on 30 July 2018 at the request of a Dominican producer, did not meet the minimum requirements of the Anti-Dumping Agreement. This was because, following an investigation containing innumerable flaws, the Regulatory Commission on Unfair Trade Practices and Safeguard Measures of the Dominican Republic issued a final determination providing for the application of definitive anti-dumping measures, despite the fact that there was no evidence of dumping, injury or causation.

5.3. Therefore, on 23 July 2021, Costa Rica had requested consultations with the Dominican Republic, in line with Articles 1 and 4 of the DSU, Article 17 of the Anti-Dumping Agreement, and Article XXII of the GATT 1994. The consultations between the two countries had taken place on 20 September 2021. However, the consultations had failed to settle this dispute. Costa Rica thanked the Dominican Republic for its readiness to hear questions and requests for information put forward by Costa Rica during the consultations. However, the serious concerns of Costa Rica about the investigation and the anti-dumping duties imposed still remained. Given that, Costa Rica respectfully requested that a panel be established pursuant to Articles 4.7 and 6 of the DSU, Article 17.4 of the Anti-Dumping Agreement, and Article XXIII of the GATT 1994, to examine this matter. Costa Rica also requested that the panel be given standard terms of reference provided for in Article 7.1 of the DSU.

5.4. The representative of the Dominican Republic said that the Dominican Republic regretted Costa Rica's decision to request the establishment of a panel to examine this matter. The Dominican Republic considered that this request was premature because the parties had not exhausted all possibilities to reach an amicable solution. In fact, the Dominican Republic was surprised by Costa Rica's decision to request the establishment of a panel at that time, since the Dominican Republic had shown that it was ready and willing to engage in further rounds of consultations to try to settle this dispute amicably. At the present meeting, the Dominican Republic was not in a position to agree to the establishment of a panel. The Dominican Republic reiterated that it was ready to continue to coordinate and cooperate with Costa Rica in an effort to finding an amicable solution and thus avoid a panel procedure.

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

## **6 PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/689)**

6.1. The Chairman drew attention to document WT/DSB/W/689 which contained a new nomination proposed by Qatar for inclusion on the Indicative List of Governmental and Non-Governmental Panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the name contained in document WT/DSB/W/689.

6.2. The DSB so agreed.



**7 APPELLATE BODY APPOINTMENTS: PROPOSAL BY AFGHANISTAN; ANGOLA; ARGENTINA; AUSTRALIA; BANGLADESH; BENIN; PLURINATIONAL STATE OF BOLIVIA; BOTSWANA; BRAZIL; BURKINA FASO; BURUNDI; CABO VERDE; CAMBODIA; CAMEROON; CANADA; CENTRAL AFRICAN REPUBLIC; CHAD; CHILE; CHINA; COLOMBIA; CONGO; COSTA RICA; CÔTE D'IVOIRE; CUBA; DEMOCRATIC REPUBLIC OF CONGO; DJIBOUTI; 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.20)**

7.1. 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.20, and invited the representative of Mexico to speak.

7.2. The representative of Mexico, speaking on behalf of the co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.20, said that the delegations in question had agreed to submit the joint proposal, dated 18 November 2021, to launch the selection processes for the vacancies of the Appellate Body members. First of all, Mexico wished to welcome Cambodia as a new co-sponsor of this proposal. On behalf of those 122 Members, Mexico wished to state the following. The extensive number of Members submitting this joint proposal reflected a common concern with the current situation in the Appellate Body that was seriously affecting the overall dispute settlement system, against the best interest of its Members. WTO Members had a responsibility to safeguard and preserve the Appellate Body, the dispute settlement system, and the multilateral trading system. Thus, it was their duty to proceed, without further delay, with the launching of the selection processes for the Appellate Body members, as submitted to the DSB at the present meeting. The proposal sought to: (i) start seven selection processes (one process to replace Mr Ricardo Ramírez-Hernández, whose second term had expired on 30 June 2017; a second process to fill the vacancy resulting from the resignation of Mr Hyun Chong Kim with effect from 1 August 2017; a third process to replace Mr Peter Van den Bossche, whose second term had expired on 11 December 2017; a fourth process to replace Mr Shree Baboo Chekitan Servansing, whose four-year term of office expired on 30 September 2018; a fifth process to replace Mr Ujal Singh Bhatia, whose second term had expired on 10 December 2019; a sixth process to replace Mr Thomas Graham whose second term had expired on 10 December 2019; and a seventh selection process to replace Ms Hong Zhao, whose first four-year term of office had expired on 30 November 2020); (ii) to establish a Selection Committee; (iii) to set a deadline of 30 days for the submission of candidates; and (iv) to request that the Selection Committee issue its recommendations 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.

7.3. 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 important issues.

7.4. The representative of Iceland said that as one of the many co-sponsors to this proposal, Iceland was concerned about this Organisation'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 resolve this impasse without further delay.

7.5. The representative of the European Union said that the European Union wished to refer to its previous statements made on this issue. 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.

7.6. The representative of China said that China warmly welcomed Cambodia's decision to co-sponsor the joint proposal. China supported the statement made by Mexico on behalf of 122 co-sponsors and called upon other Members to join this proposal. China referred to its previous statements on this urgent matter and reiterated its firm commitment to an independent and impartial two-tier dispute settlement system. The paralysis of the Appellate Body had posed a serious challenge to the multilateral trading system, and more than a dozen cases had been appealed into the void. This unsustainable situation not only deprived Members' right to defend their interests, but also jeopardized the security and predictability of this rules-based organization. China appreciated the hard work undertaken by Members under the capable leadership of the General Council Chair in preparation for the MC12 outcome document, in particular the progress made on paragraph 8 on the dispute settlement system. In spite of postponement of MC12, China urged all Members to maintain the positive momentum and engage in constructive discussions with a view to having a fully and well-functioning dispute settlement system.

7.7. The representative of Hong Kong, China said that Hong Kong, China wished to join Mexico and other Members including the new co-sponsor, Cambodia, to express its deep concern about the Appellate Body impasse and the dysfunctional dispute settlement system in the WTO. Hong Kong, China wished to reiterate its commitment to engaging in constructive discussions, including on any necessary reforms, to resolve this problem, with a view to restoring a fully functioning dispute settlement system as soon as possible. Despite the postponement of MC12, Hong Kong, China considered that Members should continue to press ahead with any discussion and reform to achieve the said goal.

7.8. The representative of Japan said that Japan referred to its statements made at the previous DSB meetings and supported the 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. Therefore, 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 meanwhile, a number of cases had been appealed into the void. Furthermore, Japan considered it essential that every WTO Member re-start constructive discussions on the reform of the dispute settlement system, including on how to address the concerns surrounding the Appellate Body. Japan would spare no efforts to collaborate with all WTO Members to that end.

7.9. The representative of Norway said that Norway fully supported the joint proposal presented by Mexico on behalf of 122 co-sponsors. Norway also welcomed Cambodia as a new cosponsor of the proposal. A fully functioning dispute settlement mechanism was an indispensable part of the multilateral trading system. Members urgently need 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 provisions. New developments that had taken this very weekend were no doubt an anti-climax. The postponement of the Ministerial Conference was, however, the right decision given recent developments. Health and safety had to always come first. As the Director-General nonetheless underlined, momentum that had been established should be maintained. Norway was ready to

continue discussions to ensure the re-establishment of the dispute settlement system as soon as possible.

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

7.11. The representative of India said that India wished to refer to its statements made on this matter at previous DSB meetings and also welcomed Cambodia in supporting the proposal for the Appellate Body appointments. Finally, India 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.

7.12. The representative of Indonesia said that Indonesia wished to refer to its previous statements delivered at the previous DSB meetings with regard to this agenda item. Indonesia wished to again avail itself of this opportunity to urge all Members to attach their serious attention, willingness, and commitment towards the immediate appointment of the Appellate Body members.

7.13. The representative of the Russian Federation said that the Russian Federation wished to thank Mexico and co-sponsors for their continuous and faithful commitment to the appointment processes of the Appellate Body members. The Russian Federation wished to warmly welcome Cambodia as a new co-sponsor. Russia reiterated its strong support for launching the appointment processes immediately. At the same time, the Russian Federation called upon all Members to engage in urgent constructive discussions towards a fully functioning dispute settlement system as soon as possible.

7.14. The representative of Singapore said that Singapore thanked Mexico for its statement and welcomed Cambodia's co-sponsorship of the joint proposal. Singapore wished to reiterate its previous statements on this matter and urged all Members, including the United States, to commence constructive discussions with a view to finding a lasting multilateral solution in order to restore a fully functioning dispute settlement system as soon as possible.

7.15. The representative of the United Kingdom said that the United Kingdom continued to support this agenda item to launch the process for appointments to the Appellate Body and welcomed Cambodia as a new co-sponsor. The impasse in appointments was continuing to prevent the dispute settlement system from being of proper utility to Members consistently securing positive solutions to their disputes. The United Kingdom said that it was the time for the whole WTO Membership to commit urgently to ensuring the full functioning of the dispute settlement system, and to collaborate with action and energy to deliver. As others had stated, Members had to maintain the momentum they had started to build. Members needed to work together to understand what a well and fully functioning system looked like for all Members and to bring that into being, without delay. An effective dispute settlement system benefited all Members. It ensured that the rules Members had negotiated were enforceable, and in doing so, contributed to realising the benefits of trade liberalisation. It served as a backstop against WTO inconsistent trade practices, and it helped to create a more predictable and stable trading environment. The United Kingdom would continue to work with all Members on this important matter.

7.16. The representative of Canada said that Canada supported Mexico's statement and shared the concerns expressed by other Members at the present meeting. Canada congratulated Cambodia for having joined this proposal and invited those WTO Members who had not yet endorsed the proposal to consider joining the 122 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 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.

7.17. The representative of New Zealand said that New Zealand wished to reiterate its support for the co-sponsored proposal and to refer to its previous statements. New Zealand also welcomed Cambodia as the latest co-sponsor of this proposal. New Zealand continued to urge all Members to constructively engage on the issues with a view to addressing this situation as a priority.

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

7.19. The representative of Thailand said that Thailand thanked Mexico for its statement and welcomed Cambodia as the newest co-sponsor. Thailand wished to refer to its previous statements and reiterated its strong concerns over the long absence of a functioning Appellate Body and the importance of a two-tier binding dispute settlement system, which was an integral part of the core elements of the WTO. Thailand remained fully committed to a solution-oriented discussion and renewed its call on all Members to continue their constructive engagement with a view to finding ways to solve this impasse.

7.20. The representative of Malaysia said that Malaysia wished to thank Mexico for presenting the proposal on behalf of the co-sponsors and wished to express its support for the statements made by Mexico. Malaysia also warmly welcomed Cambodia as the latest co-sponsor of this proposal. The fact that nearly 75% of the WTO Membership were co-sponsoring this proposal and the number of times the proposal had been tabled at the DSB underscored the importance of this issue to all Members. It was very unfortunate that no positive outcome had been achieved on this matter despite the overwhelming support from Members. Once again, Malaysia wished to state its strong support for a fair, open and non-discriminatory rules-based multilateral trading system. Members had to ensure the two-tier dispute settlement system remained as the central 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. Malaysia called upon all Members to exercise the necessary flexibility to enable and restore the Appellate Body selection process and requested that the Appellate Body members be appointed immediately.

7.21. The representative of Australia<sup>3</sup> said that Australia shared the disappointment of all Members that MC12 could not have been held, given the emergence of new pandemic concerns and restrictions. However, Australia remained strongly committed to finding a solution in the interests of all Members to revitalise and reform the dispute settlement system. Members had to harness the momentum and unity they achieved on this issue in drafting a Ministerial Declaration for MC12, which "recognize[d] the importance and urgency of addressing [the] challenges and concerns [with respect to the dispute settlement system], and commit[ed] to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by MC13". Australia urged Members to build on this constructive engagement in taking forward this commitment, so they could begin the critical work required to meet this shared objective.

7.22. The representative of Korea said that Korea thanked Mexico and reiterated its support for the joint proposal. Korea also welcomed Cambodia as a new co-sponsor and 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, as a firm supporter of the multilateral trading system, was ready to engage constructively in discussions in order to find a solution to enhance the functioning of the dispute settlement system with a view to accommodating the needs of WTO Members.

7.23. The representative of Mexico, speaking on behalf of the 122 co-sponsors, regretted that for the forty-eighth 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 fulfill their duty as Members of

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<sup>3</sup> The statement by Australia, who participated remotely and was unable to connect for technical reasons, was read out by the representative of the Secretariat.

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 nullified and impaired the rights of 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 obligations 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.

7.24. The representative of Mexico said that for more than two years, Members had been requesting that this proposal be approved by the DSB in order maintain their right to appeal, 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, namely, an inoperative 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 the prompt compliance with the recommendations of panel reports. Mexico wished to highlight that when the Ministerial Conference did take place this would be an opportunity to give a signal to start working on a real multilateral solution. This was an urgent matter and Mexico called on other Members who had not done so to join the proposal. Mexico remained ready to work constructively on a real and multilateral solution.

7.25. The representative of Chad, speaking on behalf of the LDC Group, thanked Mexico for its commitment and welcomed Cambodia, who as a member of Group, had become a co-sponsor of the document. The LDCs being the most vulnerable Members had an interest in ensuring the continued existence of the Appellate Body. Maintaining a solid and robust dispute settlement system with forms of legal control was an essential pillar of the WTO as a whole as it maintained the rule of law, which allowed trade disciplines to be effective. For this reason, a fully and well-functioning dispute settlement system was in the interest of all regardless of their level of development. It was particularly useful for least developed countries, the most fragile countries among Members. The Appellate Body crisis was weakening the rules of the WTO and it would seem clear that stronger Members were now in a better position to impose their views when faced with less powerful Members. Therefore, the Group supported the multilateral trading system and a fully functioning Appellate Body.

7.26. The representative of Nigeria, speaking on behalf of the African Group, said that the Group wished to refer to its previous statements and commended Mexico for its statement on the proposal for Appellate Body appointments. 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 appealed into the void. Therefore, the 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 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 urged all Members who had yet to co-sponsor the proposal to do so as soon as possible.

7.27. The representative of Cambodia said that Cambodia supported the joint proposal contained in document WT/DSB/W/609/Rev.20 on Appellate Body appointments and highly appreciated the other co-sponsors, in particular Mexico, for their efforts and the work done thus far with the prime objective of addressing the crisis of the Appellate Body, which was one of the main pillars of the WTO. Cambodia remained a staunch supporter of the multilateral trading system and firmly believed that an effective dispute settlement system was indispensable for ensuring open and fair trade. Cambodia, as a new co-sponsor of the joint proposal, once again, wished to reiterate its support and encouraged more attention and commitment from all Members to support and join this proposal to uphold the central pillar of the multilateral trading system, which was rules-based, liberal, predictable and inclusive for all.

7.28. The Chairman thanked all delegations for their statements and said that, as in the past, the statements would be reflected in the minutes of the present meeting. As Members were all aware, this was a politically sensitive matter, which could only be resolved by constructive engagement on

the part of all Members. This matter was discussed in the context of preparations for the next Ministerial Conference. He noted that some delegations had mentioned the fact that the Ministerial Conference had to be postponed given the restrictions imposed by the host country, Switzerland, in order to face a rapid spread of the new mutation of the virus. He hoped that despite the postponement of the Ministerial Conference, Members would address this issue constructively in order to find a mutually satisfactory solution as soon as possible.

7.29. The DSB took note of the statements.

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

8.1. The representative of Tunisia, speaking under "Other Business", said that Tunisia wished to provide an update on its consultations with Morocco in order to find common ground between the parties in the dispute: "Morocco – Definitive Anti-Dumping Measures on School Exercise Books from Tunisia" (DS578). As Tunisia had explained at the 26 October 2021 DSB meeting, the parties had met for a second time on 22 October 2021 to discuss ways to implement the findings of the panel report. At that meeting, Morocco had undertaken to transmit to Tunisia, not later than 29 October 2021, a revised calculation of dumping margins for the two Tunisian exporters concerned. However, one month had gone by and Tunisia was still awaiting news from Morocco, despite the fact that Tunisia had, on more than one occasion, asked Morocco to transmit the revised calculation, as promised. However, Tunisia had not received any positive reply. In the absence of any response or explanation for that delay, Tunisia was concerned that the technical level discussions had already ended without reaching any positive outcome. Furthermore, at the 30 August 2021 DSB meeting, Tunisia had indicated that it intended to request the DSB to adopt the panel report in the DS578 dispute at the November DSB meeting. Some Members had approached Tunisia to discuss this matter, but Tunisia had stressed that it would only do this if consultations for an amicable settlement between the two countries failed to lead to a positive outcome. Giving priority to a consensus-based approach, Tunisia wanted to exhaust all possible avenues, in particular by giving Ministers from both sides the opportunity to discuss this matter on the margins of MC12, which unfortunately had been postponed. Tunisia thus refrained from requesting the adoption of the panel report at the present meeting. Furthermore, Tunisia, out of concern for the smooth running of MC12 believed that this was not the right moment for a legal discussion. In that context, Tunisia reaffirmed its conviction, that the Chairman's involvement in this process would be greatly appreciated in order to pursue the diplomatic route. In this regard, Tunisia was grateful for the recent efforts by the Chairman to ascertain the availability of the parties for a meeting. Tunisia had, of course, expressed its willingness to participate in such a meeting and hoped that Morocco would do the same. Hence, Tunisia reiterated its commitment to the process of seeking a final outcome to this dispute as soon as possible, by proposing a range of options. These options included bilateral discussions, pursuant to Morocco's wish, mediation by the DSB Chair and appeal proceedings, pursuant to Article 25 of the DSU, in order to allow Morocco to defend its position before a functioning Appellate Body so that it would not have to appeal into the void. To that end, Tunisia intended to make one last attempt to pursue the discussions on the basis of what had been put forward. However, if Morocco were to clearly renege on its commitments or failed to respond positively to the Chairman's efforts to invite the parties to a meeting at the diplomatic level, Tunisia would seriously consider requesting the adoption of the panel report by the DSB at its 20 December regular meeting. Tunisia stood ready to engage in discussions with interested Members regarding the approach taken by Tunisia in this dispute.

8.2. The DSB took note of the statement.

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