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Dispute Settlement Body
28 April 2021

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 28 APRIL 2021[1]

Chairman: H.E. Mr Dacio Castillo (Honduras)

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 then drew attention to the proposed Agenda contained in document WT/DSB/W/680. He informed delegations that, with respect to item 4 of the proposed Agenda, the interested parties had agreed with his suggestion that the Chair of the DSB would engage in consultations with each interested party regarding this Agenda item. Accordingly, to allow time for consultations to take place, the Chair proposed that item 4 be removed from the proposed Agenda; (iii) Subsequently, the Chair asked if any Member wished to add any other items under "Other Business". The representative of Indonesia said that Indonesia wished to make a statement under "Other Business" regarding the dispute: "Australia – Anti-Dumping Measures on A4 Copy Paper" (DS529); and (iv) The Chairman said that, in accordance with past practice, the item concerning "The Election of Chairperson" would be taken up at the end of the meeting after "Other Business".

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

The representative of Venezuela said that his delegation wished to take the floor at this point in order to make the following statement. Venezuela wished to thank the Chairman for his diligent work and his leadership in the search for inclusive ways to deal with Venezuela's request for establishment of a panel, while safeguarding the proper functioning of the DSB, a fundamental pillar of dispute resolution. Venezuela accepted the Chairman's proposal for consultations as proof of its commitment to international law, multilateralism and diplomacy for peace. Venezuela did so in good faith confident that the system would be able to guarantee due respect for Venezuela and would be able to safeguard the fundamental principles of international law that govern peaceful relations between States. It would be up to the next Chair of the DSB to uphold those principles. At this point, Venezuela wished to take the opportunity to welcome Ambassador Didier Chambovey of Switzerland, who had already been assured of Venezuela's full support. Ambassador Chambovey's work leading the Group of Friends on Special and Differential Treatment in the complex fisheries negotiations had been publicly recognized and appreciated by Venezuela. Ambassador Chambovey was also the representative of a country that enjoyed significant international prestige for its ability to bring positions of countries closer together.

[1] The proceedings of this meeting were held in a virtual format only following the latest amendments to the COVID-19 related safety measures circulated by the WTO Health Task Force.

Venezuela regretted the fact that the United States had objected to Venezuela's panel request in the dispute: "United States – Measures Relating to Trade in Goods and Services" (WT/DS574/2/Rev.1, dated 16 March 2021). However, in the interest of enabling the important work of the DSB to continue, Venezuela accepted the Chair's proposal to consult on this matter and to allow the DSB to consider the other items on the Agenda of today's meeting. Nevertheless, Venezuela strongly emphasized that it wished to reserve the right to revert to this matter at future DSB meetings. Venezuela encouraged the United States to allow these consultations to be conducted in a fair manner, consistent with multilateral principles. Venezuela hoped to be able to sit down around the same table under the auspices of the WTO. As a technical and legal matter, Venezuela claimed that certain US laws and regulations relating to goods of Venezuelan origin, the liquidity of the Venezuelan public debt, transactions in Venezuelan digital currencies and the Specially Designated Nationals and Blocked Persons List ("SDN List") were inconsistent with the WTO General Agreement on Tariffs and Trade of 1994 (GATT 1994) and the General Agreement on Trade in Services (GATS). Venezuela claimed that the acts and measures of the United States violated a number of WTO obligations, including: the most-favoured-nation (MFN) clause, which obliged the United States to treat Venezuela in a manner no less favourable than any other country; the national treatment obligation, which obliged the United States to treat Venezuela's goods and services in a manner no less favourable than the goods and services of the United States; the United States' obligation to administer its measures in an "impartial and reasonable manner"; and the concessions entered into by the United States in its Schedules of concessions on goods and services.

Venezuela said that the US economic sanctions discriminated against goods of Venezuelan origin and denied fair imports into Venezuela. In addition, the United States offered benefits to other countries and domestic producers through economic sanctions. Venezuela claimed that the MFN and national treatment principles – two important standards for conducting non-discriminatory trade among WTO Members – had been violated. In addition, the United States had included certain persons linked to the Venezuelan Government on the US "SDN List". Persons included on that list were prohibited from entering the United States and could not use foreign assets. The United States was in violation of Article I:1 of the GATT 1994 because the United States did not subject other WTO Members to similar trade-restrictive measures. Venezuelan products also faced regulations with respect to who was authorized to import goods, and faced unfair market opportunities after importation. The United States had violated Article III:4 of the GATT 1994 because it accorded to products of Venezuelan origin less-favourable treatment than to those of domestic origin. In addition, Venezuelan products faced greater regulatory burdens and unfair market opportunities as a result of the coercive trade-restrictive measures. The United States was also violating Article V:2 of the GATT 1994 because it required the detention and seizure of certain goods of Venezuelan origin transiting through the United States to other WTO Members. Those sanctions were restrictions other than those permitted by Article XI:1 of the GATT 1994 because the United States imposed quantitative restrictions on Venezuelan exports. Venezuela said that the US sanctions on debt and electronic currency effectively prohibited trade in certain securities and other negotiable instruments as well as financial assets (i.e. Venezuela's Government debt and Venezuelan digital currency) in violation of Article II:1 of the GATS. At first glance, the US measures at issue prohibited trade in certain Venezuelan financial services, according less-favourable treatment than to financial services originating in third countries and, by extension, according less-favourable treatment to Venezuelan service suppliers. The US sanctions violated Article II:1 of the GATS since the capacity of a US person to receive Venezuelan services was limited but was not limited with respect to receiving like services from third jurisdictions that were not sanctioned. It was clear that this measure accorded less-favourable treatment to Venezuelan services and service suppliers.

In Venezuela's view, the US prohibitions on negotiating with respect to Venezuelan Government debt and the PDVSA, as well as the prohibitions on negotiating with respect to Venezuelan digital currency, constituted measures described in Articles XVI:2(a) and XVI:2(b) of the GATS. Those sanctions imposed a limitation – specifically, a limitation to zero – on the number of financial service suppliers that could provide those services, and a limitation to zero on the total value of service transactions with respect to those financial services. As US sovereign debt was not subject to the same prohibitions as Venezuelan sovereign debt, and digital currencies of US origin were not subject to the same prohibitions as Venezuelan digital currencies, the United States accorded less-favourable treatment to Venezuelan financial services and service suppliers than it accorded to its own financial services and suppliers of like domestic services. As the US sanctions denied national treatment to certain Venezuelan financial services and financial service suppliers, those sanctions violated Article XVII:1 of the GATS. Venezuela said that those measures had completely stifled Venezuela's economy and financial system. They had exacerbated the economic crisis in Venezuela and made it

almost impossible to stabilize its economy. All of those measures had caused disproportionate harm to the poorest and most vulnerable people in Venezuela. Moreover, the sanctions had prevented the Venezuelan Government from obtaining loans in the US financial markets. This had had a series of immediate effects. First, it had prevented the Government from restructuring its foreign debt, as any debt restructuring required the issuance of new bonds in exchange for the existing debt. Although the US sanctions technically affected only the financial system in the United States, in practice there had also been effects outside the US borders. Venezuela's debt restructuring was negotiated with groups of bondholders, which invariably included some from the United States. In addition, financial institutions outside the US financial system had good reasons to fear that there would be more sanctions affecting them. Financial institutions, both public and private, used a system of correspondent banks located in other countries to process international transactions. The US sanctions had removed Venezuela's international payment options from the Federal Reserve and from all United States financial institutions. The risk of conflict with the US sanctions had led the majority of correspondent banks to stop those correspondent banking services. That risk was concrete because the US Government could sanction foreign financial institutions that disobeyed their instructions. All of these measures had drastically reduced Venezuela's capacity to produce and sell oil or to sell any of the Government's foreign assets, the most significant of which were frozen and/or confiscated. In addition, the sanctions had reduced the foreign exchange available to Venezuela for purchasing essential imports, with adverse consequences for the population. It was Venezuela's intention to use all existing legal mechanisms to speak out and make itself heard, in accordance with the rules. As Venezuela had repeatedly denounced to the WTO, the illegal unilateral coercive measures imposed by the United States and its allies had had a negative impact in Venezuela, in that they significantly reduced sources of financing, prevented the supply of medicines and medical equipment, and affected the full enjoyment of human rights and the free determination of peoples, in violation of international law, the Charter of the United Nations (UN), the rules contained in the WTO Agreements and the principles governing peaceful relations between States. Venezuela reiterated that its channels of communication would always remain open for respectful dialogue, based on tolerance and the search for solutions in line with international law and peaceful multilateralism. Venezuela remained at the Chairman's disposal and wished him every success in carrying out his duties as the new Chairman of the General Council.

The DSB took note of the statement.

Table of Contents

1 SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB 4

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States 5

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States 5

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union 5

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States 6

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States 7

F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia 7

2 UNITED STATES – CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB 8

A. Statement by the European Union 8

3 EUROPEAN COMMUNITIES AND CERTAIN MEMBER STATES – MEASURES AFFECTING TRADE IN LARGE CIVIL AIRCRAFT: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB 10

A. Statement by the United States 10

4 CHINA – ANTI-DUMPING AND COUNTERVAILING DUTY MEASURES ON BARLEY FROM AUSTRALIA 11

A. Request for the establishment of a panel by Australia 11

5 EUROPEAN UNION AND CERTAIN MEMBER STATES – CERTAIN MEASURES CONCERNING PALM OIL AND OIL PALM CROP-BASED BIOFUELS 12

A. Request for the establishment of a panel by Malaysia 12

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) 13

7 STATEMENT BY INDONESIA REGARDING THE DISPUTE ON: "AUSTRALIA – ANTI–DUMPING MEASURES ON A4 COPY PAPER": IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB 17

8 ELECTION OF CHAIRPERSON 17

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.214)

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.189)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.152)

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.36)

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States (WT/DS471/17/Add.28)

F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.23 – WT/DS478/22/Add.23)

1.1. The Chairman noted that there were six sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. As Members recalled, Article 21.6 requires that: "[u]nless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time … and shall remain on the DSB's Agenda until the issue is resolved." Under this Agenda item, the Chairman invited delegations to provide up-to-date information about their compliance efforts. He also reminded delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "[r]epresentatives should

make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record." He then turned to the first status report under this Agenda item.

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.214)

1.2. The Chairman drew attention to document WT/DS184/15/Add.214, 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 15 April 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 thanked the United States for its latest status report and its 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.189)

1.6. The Chairman drew attention to document WT/DS160/24/Add.189, 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 15 April 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 made at the present meeting. The European Union wished to refer to its previous statements and reiterated its wish for this case to be resolved 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.152)

1.10. The Chairman drew attention to document WT/DS291/37/Add.152, 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 Standing Committee meeting had been held online on 16 December 2020. The Commission had presented two authorizations.[2] The Standing Committee had not reached an opinion. The Commission had presented the two authorization decisions at the next online meeting of the Appeal Committee on 26 February 2021. The vote of the Appeal Committee had been taken by written procedure. The Appeal Committee had reached no opinion on 8 March. It was now for the Commission to decide on the adoption of these

[2] Meeting of 16 December 2020: Maize MZIR086 and Cotton GHB614 × T304-40 × GHB119.

Implementing Decisions. In addition, a Standing Committee meeting had been held online on 19 April 2021. The Commission had presented one authorization and one renewal authorization. Due to the current public health situation, the vote would take place by written procedure ending ten working days after the date of the meeting concerned. The United States frequently referred to member States' justifications issued during the meetings of the Standing Committee and Appeal Committee as being "political" and "not science-based". The European Union wished to underline that the final decision taken on the authorization was clearly science-based, as GMOs were authorized where the European Food Safety Authority (EFSA) had finalized its scientific opinion and concluded that there were no safety concerns. As repeatedly explained by the European Union and confirmed by the US delegation during the EU-US consultations held on 22 October 2020, efforts to reduce delays in authorization procedures were constantly maintained at a high level at all stages of the authorization procedure. It was also important to recognize the increased transparency in the EFSA's scientific assessment of genetically modified organisms, resulting from the new Transparency Regulation, which should help to reinforce trust in the safety of the authorized GMOs. The European Union recalled that it had acted in line with its WTO obligations and that the European Union's 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. The European Union had suggested that, with respect to ongoing delays, the fault was with the applicants. However, the US concerns related to delays at every stage of the approval process resulting from the actions or inactions of the European Union and its member States. Recent outcomes of both the Standing Committee and Appeals Committee on Genetically Modified Food and Feed and Environmental Risk Assessment demonstrated the political nature of the comitology process – which repeatedly delayed safe products from receiving approval in the European market. EU member States continued to cite the so-called "*Precautionary Principle*" and "*scientific reasons*" as justification for not issuing approvals. However, those claims contradicted the fact that the European Food Safety Authority (EFSA) had successfully completed a science-based risk assessment for every product under consideration at those meetings. In addition, European Union member States at the Standing Committee continued to cite "*no agreed national position*", "*negative public opinion*", and "*political reasons*" as justifications for reaching "no opinion" and for not approving these products. None of those justifications were science-based. The United States noted that the Appeals Committee had held a meeting on 26 February 2021, to address those instances where member States reach "no opinion" regarding product approvals, and cited the same reasons as justification for not issuing biotech product approvals (e.g. "*no agreed national position*", "*negative public opinion*", "*political reasons*", "*precautionary principle*", and "*risk assessment deemed not sufficient*"). The United States failed to see how the EU's current approval process addressed the undue delays contemplated in "EC – Approval and Marketing of Biotech Products" (DS291). The United States requested that the European Union move to issue final approvals for the remaining 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.36)

1.14. The Chairman drew attention to document WT/DS464/17/Add.36, 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 15 April 2021, in accordance with Article 21.6 of the DSU. On 6 May 2019, the United States Department of Commerce had published a notice in the US Federal Register announcing the revocation of the anti-dumping and countervailing duty orders on imports of large residential washers from Korea (84 Fed. Reg. 19,763 (May 6, 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 thanked the United States for its status report and 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 this dispute, that the "differential pricing methodology" (DPM) was "as such" WTO-inconsistent. The United States had also ignored the DSB's recommendation that the United States bring itself into compliance with its obligations. Instead, the United States continued to apply the "as such" inconsistent differential pricing methodology in investigations with respect to foreign companies and continued to collect cash deposits from foreign exporters based on its 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 ago. However, in its most recent status report, the United States claimed that it continued to consult with interested parties. The continued use by the United States of the DPM had forced 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 with the continued failure by the United States to comply with the DSB's recommendations and rulings in this dispute. That failure seriously undermined the predictability and security 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.28)

1.19. The Chairman drew attention to document WT/DS471/17/Add.28, 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 15 April 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 thanked the Chairman for his efforts in making the present meeting happen and hoped that the disputing parties could find a satisfactory solution through good faith consultations. With regard to the present agenda item, China thanked the United States for providing its latest status report. However, China once again registered its grave concern over the standstill of the US implementation in this dispute. China noted that, 32 months after the expiry of the reasonable period of time, this dispute remained unresolved. None of the 29 status reports provided thus far could indicate any substantive implementation action, except consultations with interested parties. While the United States' WTO-inconsistent measures stayed intact, China's legitimate interests under the covered agreements continued to be infringed without any remedy. As set out by Article 21.1 of the DSU, implementation was not an option, but a legal obligation that needed to be faithfully honored. Without prompt compliance, WTO dispute settlement would lose its effectiveness and credibility. Therefore, China urged the United States to take concrete steps and come into full conformity 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.23 – WT/DS478/22/Add.23)

1.23. The Chairman drew attention to document WT/DS477/21/Add.23 – WT/DS478/22/Add.23, which contained the status report by Indonesia on progress in the implementation of the DSB's recommendations in the case concerning importation of horticultural products, animals and animal products.

1.24. The representative of Indonesia said that Indonesia had submitted its status report pursuant to Article 21.6 of the DSU. Indonesia reiterated its commitment to implementing the recommendations and rulings of the DSB in these disputes. That commitment had been reflected through numerous adjustments in relevant laws and regulations, which were not only substantial but also highly political. As reported in previous DSB meetings, Indonesia had enacted Law No. 11 of 2020 on Job Creation, which included adjustments to measure 18 by addressing all specific Articles in the previous Laws which were found to be inconsistent with WTO obligations. Those Articles had been amended and were no longer in place. With regard to measures 1–17, Indonesia wished to refer to its position made at previous DSB meetings, that significant adjustments had been made through the amendments of the relevant MoA and MoT Regulations. Those adjustments included the removal of the disputed measures, *inter alia*: harvest period restriction; import realization requirements; six-months harvest requirement; and reference price. Indonesia continued to note concerns raised by New Zealand and the United States and reaffirmed its commitment to implementing the recommendations and rulings of the DSB in these disputes. Indonesia would continue to engage with New Zealand and the United States regarding matters related to the recommendations and rulings of the DSB.

1.25. The representative of the United States thanked Indonesia for its status report. The United States understood that Indonesia had recently amended the relevant laws that would address Measure 18. The United States looked forward to receiving further detail from Indonesia regarding those legislative changes and their implementation by the government. The United States remained willing to work with Indonesia to fully resolve this dispute.

1.26. The representative of New Zealand thanked Indonesia for its status report and acknowledged Indonesia's commitment to comply fully with the WTO decision. Both compliance deadlines had however, long since expired, and a number of measures remained non-compliant. New Zealand understood that Indonesia's Parliament had passed the Job Creation Bill, but New Zealand did not yet have the information necessary to assess what impact this would have on Indonesia's compliance with the WTO decision, in particular in respect of Measure 18. New Zealand invited Indonesia to provide further details as soon as possible.

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 invited the representative of European Union to speak.

2.2. The representative of the European Union said that, despite the United States having repeatedly indicated that the DSB's recommendations and rulings were fully implemented by adopting the Deficit Reduction Act, disbursements under CDSOA had been made every year since then. Every disbursement that still took place under that legal basis was clearly an act of non-compliance with the DSB recommendations and rulings. For the item to be considered resolved and removed from the DSB's surveillance, the United States must fully stop transferring collected duties. The European Union would continue to put this point on the agenda as long as the United States had not fully implemented the WTO ruling and the disbursements ceased completely. The European Union would continue to insist – as a matter of principle – independently of the cost resulting from the application of such limited duties. The European Union renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit implementation reports in this dispute, as the issue remained unresolved. If the United States disagreed that the issue remained unresolved, nothing prevented it from seeking a multilateral determination through a compliance procedure.

2.3. The representative of Canada thanked the European Union for placing this item on the agenda of the DSB. Canada agreed with the European Union that the Byrd Amendment should remain subject to the surveillance of the DSB until the United States ceased to apply it.

2.4. The representative of the United States said that, as the United States had noted at previous DSB meetings, the Deficit Reduction Act – which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 – was enacted into law more than 15 years ago in February 2006. The Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, more than 13 years ago. Accordingly, the United States had long ago implemented the DSB's recommendations and rulings in these disputes. Even aside from this, it was evidently not common sense that was driving the EU's approach to this agenda item. The European Union currently applied an additional duty of 0.012% on certain imports of the United States. There was no trade rationale for inscribing this item month after month.

2.5. As it had done many times before, at the February DSB meeting, the European Union once again called on the United States to abide by its "clear obligation" under Article 21.6 for the United States to submit a status report in this dispute. Notably, the European Union did not call on any other Member in any other dispute to abide by this so-called "clear obligation", despite the fact that several Members were in the same situation as the United States. As the United States had explained repeatedly, there was no obligation under the DSU for a Member to provide further status reports once that Member announced that it *has implemented* the DSB recommendations. The widespread practice of Members – including the European Union as a responding party – confirmed this understanding of Article 21.6. Canada, despite the views expressed in its statement in February, shared this view as the responding party in *Canada – Measures Relating to the Feed-in Tariff Program* (DS426). Canada explained to the DSB that, because it had submitted a notification of compliance, "there was no further obligation on Canada to provide status reports to the DSB", which Canada cited as "consistent with DSU provisions and the DSB practice."[3] Canada maintained this systemic position that it was not required to submit a status report to the DSB if it had informed the DSB that it had taken the necessary steps to comply.

2.6. At recent meetings, three other Members – China, Brazil, and Australia – had acted consistently with this systemic position. Each Member informed the DSB that they had come into compliance with DSB recommendations in four disputes (DS472, DS497, DS517, and DS529), and the complaining parties did *not* accept the claims of compliance. Those Members had not provided a status report since announcing compliance – just like the United States. The European Union was the complaining party in one of those disputes (DS472). If the European Union believed status reports were "required" under the DSU, it would have insisted that the responding Member provide a status report in that dispute, or the European Union would have inscribed that dispute as an item on the agenda of the present meeting. The European Union took neither action, nor had it explained the supposed difference between the two disputes. Through its actions, the European Union had once again demonstrated that it did not truly believe that there was a "clear obligation" under Article 21.6 to submit a status report after a party has claimed compliance. The European Union had simply invented a rule for this dispute, involving the United States, that it did not apply to other disputes involving other Members.

2.7. The representative of the European Union said that, in relation to the comparison drawn by the United States between the present case and DS472 (*Brazil - Taxes*), the European Union recalled that the Continued Dumping and Subsidy Offset Act had been found to be in breach of WTO rules for transferring anti-dumping and countervailing duties to the US industry and that the DSB authorized sanctions on the basis of the US failure to comply with the recommendations and rulings. That situation persisted as long as the redistribution of collected duties continued. The circumstances of this case with regard to relevant DSU provisions and procedures were therefore entirely different from those in DS472.

2.8. The DSB took note of the statements.

[3] Dispute Settlement Body, Minutes of the Meeting Held on July 22, 2014, WT/DSB/M/348, para. 4.4.

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 of the present meeting at the request of the United States, and invited the representative of the United States to speak.

3.2. The representative of the United States noted that once again the European Union had not provided Members with a status report concerning the dispute EC – Large Civil Aircraft (DS316). As the United States had noted at several recent DSB meetings, the European Union had argued – under the previous agenda item – that where the European Union as a complaining party did not agree with the responding party Member's "*assertion* that it has implemented the DSB ruling", "the issue remains unresolved for the purposes of Article 21.6 DSU." Under this agenda item, however, the European Union argued that, by submitting a compliance communication, the European Union as the responding party no longer needed to file a status report, even though the United States as the complaining party did *not* agree with the European Union's assertion that it had complied. The European Union's position was erroneous and not based on the text of the DSU .

3.3. The European Union had argued that where "a matter is with the adjudicators, it is temporarily taken out of the DSB's surveillance" and the DSB was somehow deprived of its authority to "maintain surveillance of implementation of rulings and recommendations". Yet, there was nothing in the DSU text to support that argument, nothing in Article 2 of the DSU or elsewhere that limited the DSB's authority in that manner, and the European Union provided no explanation for how it read DSU Article 21.6 to contain this limitation. The European Union was not providing a status report because of its assertion that it had complied, demonstrating that the European Union's principles varied depending on its status as complaining or responding party. The United States' position on status reports had been consistent: under Article 21.6 of the DSU, once a responding Member announced to the DSB that it had complied, there was no further "progress" on which it could report, and therefore no further obligation to provide a status report. But as the European Union allegedly disagreed with that position, it should for future meetings provide status reports in this *EC – Large Civil Aircraft* dispute (DS316).

3.4. The representative of the European Union said that, as in previous DSB meetings, the United States had again stated that the European Union was taking inconsistent positions under Article 21.6 of the DSU, depending on whether the European Union was a complaining party or a defending party in a dispute. The United States' assertions were without merit. As the European Union had repeatedly explained in past meetings of the DSB, the crucial point for the defending party's obligation to provide status reports to the DSB was the stage of the dispute. In the Airbus case, the dispute was at a stage where the defending party did not have an obligation to submit status reports to the DSB.

3.5. The European Union wished to remind the DSB that in the Airbus case the European Union had notified a new set of compliance measures to the DSB. That new set of compliance measures were a clear demonstration that the European Union – contrary to the United States in the parallel Boeing-case – was serious about and committed to achieving compliance. That new set of compliance measures were subject to an assessment by a compliance panel and that panel report was issued on 2 December 2019. As noted in the US statement at the December 2019 DSB meeting, the European Union was of the view that significant aspects of the compliance panel report could not be regarded as legally correct and were very problematic from a systemic perspective when it came to assessing compliance with the subsidy disciplines of the WTO agreements. It was in order to have those legal errors corrected, and not to continue litigation for the sake of litigation, that the European Union had filed an appeal against the compliance panel report on 6 December 2019.

3.6. The European Union was concerned that with the present blockage of the two-tier multilateral dispute settlement system, it was losing the possibility of a proper appellate review of the serious flaws contained in the panel report. While the blockage continued, the European Union stood ready to discuss with the United States alternative ways to deal with this appeal. The European Union was also committed to finding a balanced negotiated solution with the United States that would allow leaving both aircraft disputes behind them. However, those considerations did not alter the fact that the compliance proceedings in this dispute had not been concluded. Whether or not the matter was

"resolved" in the sense of Article 21.6 remained the very subject matter of that ongoing litigation. The European Union questioned how it could be said that the defending party should submit status reports to the DSB in those circumstances. The European Union would be very concerned with a reading of Article 21.6 of the DSU that would require the defending party to notify the purported "status of its implementation efforts" through the submission of status reports to the DSB, while dispute settlement proceedings on that precise issue were ongoing. The European Union noted that its reading of the provision was supported by other WTO Members. The view of the European Union was further supported by Article 2 of the DSU on the administration of the dispute settlement rules and procedures: where, further to the disagreement between the parties on compliance, a matter was with the adjudicators, it was temporarily taken out of the DSB's surveillance.

3.7. Instead of progressively stepping-up retaliatory measures, they should be stepped down. With that in mind, the European Union reaffirmed its determination to obtain a long-term resolution to the WTO aircraft disputes. A balanced negotiated settlement was the only way to avoid mutually imposed countermeasures. The European Union's willingness to find a negotiated solution was shown by the European Union's notification of 21 August 2020, which was discussed at a previous DSB meeting, of additional and extraordinary compliance measures that withdrew all remaining subsidies and constituted appropriate steps to remove adverse effects, substantially in excess of what was required by Article 7.8 of the SCM Agreement. Those additional and extraordinary measures went far beyond what was required in order to discharge the EU's compliance obligations required by Article 7.8 of the SCM Agreement. The European Union had procured those additional, extraordinary and costly compliance measures in an effort to persuade rational and reasonable stakeholders in the United States, including consumers, employers, workers, government officials and entities, airlines, and other economic operators, that now was the time to draw a line under these disputes. It was not in the interests of anyone that the European Union and the United States proceeded to, or continued, mutually assured retaliation, and certainly not in the present economic climate. In that respect, the European Union welcomed the fact that both parties had reached an understanding to suspend their respective retaliation for four months in order to permit further discussions to continue.

3.8. The DSB took note of the statements.

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

A. Request for the establishment of a panel by Australia (WT/DS598/4)

4.1. The Chairman drew attention to the communication from Australia contained in document WT/DS598/4 and invited the representative of Australia to speak.

4.2. The representative of Australia said that in anticipation of the appointment of a new Chairman of the DSB, Australia wished to thank the outgoing Chairman for his service over the previous twelve months, in that very important role, which he had undertaken with distinction. Australia was sure that the new Chairman would continue to nurse the system back to health. Australia hoped that all Members could nurse the system back to health under the guidance of the outgoing and incoming Chairmen.

4.3. With respect to the present agenda item, Australia noted that on 16 December 2020, the Australian Government requested WTO dispute settlement consultations with China with respect to the imposition of a 73.6% anti-dumping duty and a 6.9% countervailing duty on Australian barley exports to China. The measures were set forth in Notices No. 14 and 15 of 2020, both issued on 18 May 2020 by the Ministry of Commerce of the People's Republic of China (MOFCOM). In Australia's view, China's measures were inconsistent with China's obligations under the Anti-Dumping Agreement, the SCM Agreement and the GATT 1994. Prior to the imposition of the anti-dumping and countervailing duties, China was Australia's most valuable barley export market. From 2015-16 to 2019-20 approximately 49% of Australian feed barley and 86% of Australian malting barley, by value, was exported to China. However, Australian barley exports to China had slowed significantly since anti-dumping and countervailing duties were imposed from 19 May 2020, effectively closing the market for Australian producers.

4.4. Australia had expressed its concerns to China on numerous occasions bilaterally and at the WTO, including on 27 and 28 October 2020 at the WTO Subsidies and Anti-Dumping Committees, respectively, and on 25 November 2020 at the WTO Council for Trade in Goods. The Australian barley industry had also applied for domestic administrative reconsideration of the decision under Chinese laws and regulations, in July 2020. Following a review, MOFCOM affirmed its original decisions. As no concrete steps had been taken to date to respond to its concerns, Australia requested 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 it had raised.

4.5. The representative of China regretted that Australia had decided to request the establishment of a panel with regard to this dispute. China was not in a position to support such a request at the present meeting. China maintained its domestic anti-dumping and countervailing regime in line with relevant WTO rules. Specifically, in this dispute, the Chinese Investigating Authority, by adhering to its legal mandate, had conducted a transparent, thorough, and fair investigation in relation to the imports concerned from Australia. It finally determined the existence of dumping and subsidies and found those trade distortions had caused material injury to its domestic industry. As a necessary remedial step, certain anti-dumping and countervailing measures had been duly imposed by the Chinese Investigating Authority. Both during and after the consultations, China engaged with Australia in good faith and provided upon request information with respect to the challenged measures. China recalled that both sides agreed that consultations were constructive. Given the overall circumstances, China believed it was still premature to establish a panel in this dispute. China was willing to continue engagement with Australia.

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

5 EUROPEAN UNION AND CERTAIN MEMBER STATES – CERTAIN MEASURES CONCERNING PALM OIL AND OIL PALM CROP-BASED BIOFUELS

A. Request for the establishment of a panel by Malaysia (WT/DS600/6)

5.1. The Chairman drew attention to the communication from Malaysia contained in document WT/DS600/6 and invited the representative of Malaysia to speak.

5.2. The representative of Malaysia said that, on 15 January 2021, Malaysia requested consultations with the European Union, as well as France and Lithuania, pursuant to Article 4 of the DSU, Article XXII of the GATT 1994, Article 14.1 of the TBT Agreement and Article 30 of the SCM Agreement. This request was circulated on 19 January 2021 as document WT/DS600/1. The consultations had been held on 17 March 2021 with a view to reaching a mutually agreed solution. Regretfully, the consultations had failed to settle the dispute. Pursuant to this development, Malaysia had sent a request on 15 April to the DSB Chairman, that a panel be established pursuant to Articles 4.7 and 6 of the DSU regarding certain measures imposed by the European Union and certain European Union member States affecting palm oil and oil palm crop-based biofuel from Malaysia. Malaysia respectfully asked that the request be considered at the present DSB meeting. The representative of Malaysia also expressed his sincere appreciation for the outgoing Chairman's outstanding commitment as the DSB Chairman and welcomed the incoming Chairman.

5.3. The representative of the European Union noted Malaysia's decision to request a WTO panel on certain measures concerning palm oil and oil palm crop-based biofuels imposed by the European Union and certain member States. The European Union recalled that it had held constructive consultations with Malaysia on 17 March 2021. The European Union had hoped that the consultations provided the necessary information and clarifications. Malaysia was of course entitled to bring this matter to dispute settlement in the WTO, but the European Union firmly believed that the measures at stake were fully justified. For those reasons, the European Union was confident that it would prevail in this dispute, and that its actions would be declared in line with WTO law. At the present meeting, the European Union was not ready to accept the establishment of a panel. In parallel, the European Union also stood ready to discuss with Malaysia reciprocal interim arrangements that would preserve the availability of appeal review in this and other disputes, on the basis of Article 25 of the DSU, for as long as the Appellate Body was not functioning. A good example of such arrangement was the Multi-Party Interim Appeal Arbitration Arrangement (MPIA).

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

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. The Chairman 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 to launch the selection processes for the vacancies of the Appellate Body Members. On behalf of 121 Members, Mexico wished to make the following statement. The extensive number of Members submitting the joint proposal reflected a common concern with the current situation in the Appellate Body that was seriously affecting the overall dispute settlement system, against the best interest of its Members. WTO Members had a responsibility to safeguard and preserve the Appellate Body, the dispute settlement system, and the multilateral trading system. Thus, it was their duty to proceed, without further delay, with the launching of the selection processes for the Appellate Body members, as submitted to the DSB at the present meeting. The proposal sought to: (i) start seven selection processes (one process to replace Mr. Ricardo Ramírez-Hernández, whose second term had expired on 30 June 2017; a second process to fill the vacancy 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 expired on 11 December 2017; a fourth process to replace Mr. Shree Baboo Chekitan Servansing, whose four-year term of office had expired on 30 September 2018; a fifth process to replace Mr. Ujal Singh Bhatia, whose second term had expired on 10 December 2019; a sixth process to replace Mr. Thomas Graham whose second term had expired on 10 December 2019; and a seventh selection process to replace Ms Hong Zhao, whose first four-year term of office had expired on 30 November 2020); (ii) to establish a Selection Committee; (iii) to set a deadline of 30 days for the submission of candidacies; and (iv) to request that the Selection Committee issue its recommendation within 60 days after the deadline for nominations of candidates. The proponents were flexible with regard to 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.

6.3. The representative of the European Union referred to the previous statements made by the EU on this matter. Since 11 December 2019, the WTO no longer guaranteed access to 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. Addressing this task was 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 this objective. The European Union had elaborated on this in the recent Trade Policy Review communication by the European Commission. 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 Mauritius, speaking on behalf of the African Group, said that the African Group wished to refer to its previous statements made on this issue. The African Group wished to join others in thanking the delegation of Mexico for their statement on the proposal for the Appellate Body appointments. The African Group continued to regret that, up until now, the DSB had failed to fill the vacancies of the Appellate Body. The African Group therefore urged the DSB to fulfil its obligation under the DSU and urgently fill the vacancies as contained in the proposal for appointments, so that Members maintained the two-tier dispute settlement system and in so doing ensured predictability and that the WTO remained the cornerstone of a rules-based, multilateral trading system.

6.5. The representative of Canada said that Canada supported the statement made by Mexico and shared the concerns expressed by other Members at the present meeting. Canada invited WTO Members that had not yet sponsored the proposal to consider joining the 121 Members calling for the launch of the selection process. The critical mass of WTO Members behind the proposal was a clear testimony of the importance that all Members accorded to a fully functioning Appellate Body as an integral part of the dispute settlement system. The fact that the Appellate Body could not hear new cases was of great concern. Canada reiterated that it was fully committed to solution-oriented discussions on matters related to the functioning of the Appellate Body and encouraged the United States to constructively engage in those discussions. Canada's priority remained finding a long-lasting multilateral resolution to the impasse, that covered all Members, including the United States. In the meantime, Canada and 24 other WTO Members had endorsed the MPIA as a contingency measure to safeguard their rights to binding two-stage dispute settlement in disputes amongst 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 Appellate Body impasse. Canada remained available to discuss the MPIA with any interested Member.

6.6. The representative of India referred to India's statements made on this matter at previous DSB meetings. India strongly believed in access to binding, two-tier, independent, and impartial resolution of trade disputes. India therefore 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.

6.7. The representative of Indonesia referred to Indonesia's statements made at previous DSB meetings with regard to this Agenda item. Indonesia was concerned that Members remained in a long-standing discussion on the launch of the Appellate Body members selection processes, which had yet to reach a successful outcome. Notwithstanding the fact that the current condition has adversely impacted the interests of the majority of WTO Members in bringing predictability to global trade, Members had yet to agree on a solution to the crisis. Given the situation, it should be an utmost priority for Members to solve this perturbing unsolved crisis. While offering Indonesia's long-standing commitment to constructively engage and contribute to solving this issue, Indonesia again urged all Members to give their serious attention, willingness, and commitment to the immediate appointment of the Appellate Body members.

6.8. The representative of China said that China wished to echo the statement made by Mexico on behalf of the 121 co-sponsors and called upon others to join the proposal. China referred to its previous statements on this urgent matter and reiterated its firm support to preserve a two-tier independent and impartial dispute settlement system. In line with Articles 17.1 and 17.2 of the DSU, the DSB, comprised of all Members, "shall" establish and maintain a standing Appellate Body. Nothing could be used as a pretext to negate or ignore that unconditional legal obligation. As cases were still piling up, the continued paralysis was driving the whole dispute settlement system into increasing uncertainty, which was contrary to the interests of the entire Membership. Time was of the essence. Restoring the functioning of the dispute settlement system with a reformed Appellate Body should remain the top priority. China called on all Members to engage constructively in solution-based consultations with a view to launching the selection process at the earliest possible date.

6.9. The representative of Korea noted that many Members had consistently voiced their concerns over the impasse of the Appellate Body and the urgent need to revive the two-tier dispute settlement system. Korea fully supported the statement made by Mexico, on behalf of the co-sponsors of the proposal and urged all Members to engage constructively in discussions to resolve this important matter as soon as possible.

6.10. The representative of Hong Kong, China said that his delegation wished to join other Members who had supported the need to start the Appellate Body selection processes as soon as possible in order to restore the Appellate Body.

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

6.12. The representative of Thailand said that Thailand supported the statement made by Mexico on behalf of the co-sponsors. Thailand, like other co-sponsors, had strongly advocated for a solution to the Appellate Body impasse. Thailand noted that Members continued to file appeals before the Appellate Body, which demonstrated the importance of the two-tiered dispute settlement system. Thailand urged Members to double their efforts to find ways and means to solve the Appellate Body impasse. The goal was to promptly bring back the full functioning of the Appellate Body. Thailand stood ready to engage in constructive dialogue with Members on those efforts.

6.13. The representative of Norway thanked Mexico for its leadership in relation to this Agenda item. Norway wished to be fully associated with the Mexican statement and referred to its previous statements on this matter. Norway noted that the United States, had appealed the panel report in the DS539 dispute before the 19 March special DSB meeting. Therefore, Norway expected the United States to engage constructively in order to unblock the appointment of Appellate Body members so as to settle this and other disputes, in line with the objectives of the multilateral trading system.

6.14. The representative of Switzerland wished to refer to Switzerland's statements made at previous DSB meetings. Switzerland's determination to resolve the current gridlock remained strong and it urged all Members to commit to working in a constructive manner to find solutions. Switzerland hoped that renewed collective impetus could be provided rapidly to alleviate the present impasse. Switzerland's priority continued to be to ensure that the Appellate Body once again became functional for the benefit of all. Switzerland was ready to work with all Members to achieve this goal. Switzerland thanked the outgoing Chairman for his leadership and commitment to the DSB.

6.15. The representative of Japan wished to refer to Japan's statements made at previous DSB meetings. Japan supported the proposal. Japan completely shared the sense of urgency with other WTO Members, towards an expeditious reform of the dispute settlement system of the WTO. Japan's top priority was to reform the dispute settlement system in a manner that would serve to achieve a long-lasting solution to the Appellate Body matters. To that end, Japan considered it essential that Members, as the owners of the dispute settlement system, participate actively in the discussions on reforms of the dispute settlement system, and seriously considered the current situation, in which the Appellate Body had been virtually non-operational while more and more cases were being appealed into "the void". Japan spared no efforts to collaborate with other WTO Members on reform of the dispute settlement system.

6.16. The representative of the United Kingdom said that the United Kingdom continued its support for the proposal for the launch of the AB selection processes. The United Kingdom supported a fully functioning dispute settlement system as the best means of enforcing the rules Members had negotiated. The WTO dispute settlement system was vital in upholding the rights of Members, ensuring the fair resolution of disagreements, and preventing recourse to unilateral measures. The United Kingdom welcomed the call of the Director-General, in her remarks made at the General Council meeting last month for a road map towards reform and a work programme to achieve this, which could be endorsed at the 12th Ministerial Conference. The United Kingdom stood ready to engage with all Members in the important discussions to come, to find common ground and solutions on dispute settlement reform.

6.17. The representative of Brazil thanked Mexico for presenting the proposal on behalf of the co-sponsors. Brazil referred to its previous statements made under this Agenda item. Brazil stood ready to engage with all Members to discuss a multilateral, long-term solution to the current impasse.

6.18. 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 looked forward to further discussions with Members on those concerns.

6.19. The representative of the Russian Federation thanked Mexico for its statement made on behalf of the co-sponsors and referred to the previous statements made by Russia with respect to the issue of appointment of Appellate Body members, its critical state, and the negative consequences for the dispute settlement mechanism and the multilateral trading system. The Russian Federation reiterated its commitment to engage in constructive dialogue with all WTO Members towards resolution of the crisis and restoration of an effectively functioning Appellate Body. Russia's top priority was to launch the appointment of the Appellate Body members as soon as possible.

6.20. The representative of Singapore thanked Mexico for its statement, which Singapore supported. Singapore referred to its past statements and reiterated its strong systemic interest in maintaining the two-tier binding WTO dispute settlement mechanism that was underpinned by negative consensus. Embarking on the Appellate Body selection process had to remain the paramount priority for all Members. Singapore urged all Members, including the United States, to constructively engage in finding a lasting multilateral solution.

6.21. The representative of Mexico, speaking on behalf of the 121 co-sponsors, regretted that for the forty-first 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 the WTO. The fact that a Member may have had concerns about certain aspects of the functioning of the Appellate Body could not serve as a pretext to impair and disrupt the work of the DSB and dispute settlement in general. There was no legal justification for the current blocking of the selection processes, which caused 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 interests of all Members.

6.22. The representative of Mexico said that her country wished to refer to its previous statements made on this matter for the past two years. Mexico expressed its deep concern about the unprecedented situation with a non-existent Appellate Body. All ongoing disputes were affected by not having a fully functioning dispute settlement system. This undermined the right of all Members to have a two-tier dispute settlement system and put at risk prompt compliance with panel reports. That was why Mexico urgently encouraged Members who had yet to do so to support the proposal. Mexico remained ready to work constructively on concrete proposals to try and find a solution. Mexico also took the opportunity to thank the outgoing Chairman for his work steering the DSB, and to welcome the incoming Chairman.

6.23. The Chairman thanked all delegations for their statements and said that as in the past, the DSB would take note of the statements expressing the respective positions, which would be reflected in the minutes of the meeting. As Members were all aware, this matter required a political engagement on the part of all WTO Members and the Chairman hoped that Members would be able to find a solution to this matter as soon as possible.

6.24. The DSB took note of the statements.

7 STATEMENT BY INDONESIA REGARDING THE DISPUTE ON: "AUSTRALIA – ANTI-DUMPING MEASURES ON A4 COPY PAPER": IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

7.1. The Chairman recalled that as stated at the outset of the meeting, before proceeding to the item regarding the election of the new Chairman, he would first take up the item under "Other Business". He then invited Indonesia to make a statement.

7.2. The representative of Indonesia, speaking under "Other Business", expressed Indonesia's appreciation to Australia for its efforts in implementing the DSB's recommendations and rulings in the DS529 dispute. Indonesia understood that the Minister had affirmed the decision to revoke the anti-dumping duties for A4 copy paper in this dispute. Indonesia welcomed Australia's confirmation of its understanding. Indonesia further thanked Australia for its efforts and cooperation in resolving this dispute.

7.3. The Chairman said that he wished to inform delegations that the delegation of Australia was unable to connect virtually to the present meeting and requested that its statement be delivered by the Secretariat on behalf of Australia under this Agenda item. He then requested the Secretariat to read out the statement on behalf of Australia.

7.4. As requested by the Chairman, the representative of the Secretariat read out the following statement on behalf of the delegation of Australia: Australia thanked Indonesia for its intervention. Australia again confirmed that the anti-dumping measures at issue in this dispute were revoked on 11 September 2020, and that this brought Australia into full compliance with the recommendations and rulings of the DSB. Australia also again confirmed that the Minister had affirmed the revocation of those measures on 16 February, following completion of an administrative review process. Australia welcomed Indonesia's statement made at the present meeting and trusted that this matter was now resolved.

7.5. The DSB took note of the statements.

8 ELECTION OF CHAIRPERSON

8.1. The outgoing Chairman said that, before proceeding with the election of the new Chair, he would like to make a short statement. First, he thanked all Members for their cooperation and support during his term as Chairman of the DSB. He said that this had been an unprecedented and challenging time. All Members had had to adjust and invent new ways of working, including meeting virtually. In addition, the DSB had to face a very difficult situation related to the Appellate Body impasse. He said that when he assumed his Chairmanship in May 2020, he had had to immediately deal with several outstanding issues, including the DS371 dispute, *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines*, which was now in the hands of Ambassador George Mina as Facilitator. In accordance with paragraph 5 of the 18 December 2020 Understanding between the Philippines and Thailand regarding this matter (WT/DS371/44), the Facilitator had circulated his report on progress made on 31 March 2021 (WT/DS371/45), and in that report he recommended the continuation of the process up to 31 July 2021. The outgoing Chairman thanked Ambassador Mina for undertaking this important task. The outgoing Chairman also recalled that in 2020 in light of the current impasse of the Appellate Body, a group of delegations had created the Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU (MPIA) and had nominated 10 Arbitrators. This was an alternative arrangement while the issue of the Appellate Body remained unresolved. He noted that a proposal to start the Appellate Body processes continued to be brought to the DSB every month by the delegation of Mexico on behalf of 121 co-sponsors. He said that he had sincerely hoped that Members would be able to come to an agreement on this matter in the near future. He also thanked the delegations who had agreed prior to the Agenda of the present meeting that the Chair of the DSB consult with each interested party regarding one pending issue in relation to the DS574 dispute so that the DSB could move forward with the rest of the Agenda items. He also wished to thank the Secretariat for their support, in particular Ms B. Mueller-Holyst, the Secretary of the DSB, for being there constantly and for coming up with immediate solutions to the issues at hand. He also thanked Ms G. Marceau with whom he had had the privilege of working even before he took over the Chairmanship of the DSB. He wished to thank her for the support towards proposals to resolve Appellate Body crisis and ideas regarding specific cases, which now had brought tangible results to the benefit of the dispute settlement system. He

also thanked the interpreters and Interprefy colleagues who had done everything possible to ensure that virtual DSB meetings had been conducted in a smooth fashion.

8.2. Finally, the outgoing Chairman recalled that, at its meeting on 4 March 2021, the General Council had taken note of a consensus on a slate of names for Chairpersons to a number of WTO bodies, including the DSB. On the basis of the understanding reached by the General Council, he proposed that the DSB elect, by acclamation, Ambassador Didier Chambovey of Switzerland as Chairman of the DSB.

8.3. The DSB took note of the statement and so agreed.

8.4. The incoming Chairman thanked Members for their trust that they had placed in him by appointing him as Chairman of the DSB. He was conscious of the responsibility that now fell upon him and he said that he would do his best to carry out his new mandate to the satisfaction of Members. He intended to engage with Members and work in an open and constructive spirit to ensure the proper functioning of this important WTO body. He said that he had dedicated a large part of his career to international trade cooperation, with a particular focus on the GATT and WTO matters. Taking over the Chairmanship of the DSB was a continuation of his long-standing commitment to the multilateral trading system. He noted that the outgoing Chairman had already mentioned that there were a number of outstanding challenges. He said that he would do his utmost to try to meet those challenges. He had had the opportunity to familiarize himself with the WTO dispute settlement procedures by serving as a panelist in a complex case covering all stages of proceedings. He hoped that this experience would serve him well as Chairman of the DSB. He sincerely thanked the outgoing Chairman, Ambassador Dacio Castillo, who had skilfully guided the work of the DSB over the previous year. He was sure that Members had all highly appreciated his leadership and his services to the Organization. Ambassador Castillo had served until now as Chairman of both the DSB and the General Council. Wearing those two hats certainly suited him very well. He would now be able to fully devote himself to the highest function of the WTO and he wished him every success in his new role as Chairman of the General Council.

8.5. The representative of Canada thanked Ambassador Castillo for his work chairing this important body in tumultuous times over the previous year. Canada wished him all the best in his new role as Chair of the General Council. Canada congratulated Ambassador Chambovey on his new role as Chair of the DSB and looked forward to working with him and the other Members.

8.6. The representative of the European Union thanked the outgoing Chairman for his work. He also wished him success with the upcoming Ministerial Conference. The European Union warmly welcomed the new Chair of the DSB. The European Union wished him well in this important and challenging role. In those difficult times, it was all the more important that the DSB continued to properly exercise its functions as envisaged by the DSU. The European Union trusted in the new Chairman's commitment to ensuring that. The new Chair could count on the full support of the European Union in that regard.

8.7. The representative of the Russian Federation thanked Ambassador Dacio Castillo for his hard work and his valuable contribution as the DSB Chairman. The Russian Federation said that under Ambassador Castillo's leadership, the DSB had managed to effectively launch virtual meetings, so that the work of the DSB had continued without disruption during the challenging times of the pandemic. The Russian Federation congratulated Ambassador Castillo on his new role as the Chairman of the General Council and wished him the very best of luck. The Russian Federation also congratulated Ambassador Didier Chambovey on his election as the new DSB Chairman and wished him great success in that new role. The Russian Federation believed that he would be an excellent Chairman and extended its commitment to cooperate and fully support him during difficult times for the WTO dispute settlement system.

8.8. The representative of China thanked Ambassador Castillo for his leadership and contributions in steering the DSB during the previous year. China wished him all the best in his new role as the Chairman of the General Council, which would be particularly challenging considering the upcoming MC12, a crucial event for the future of the multilateral trading system. China said that he could continue to count on China's firm support and active engagement. China also warmly congratulated Ambassador Chambovey on his appointment as the new DSB Chair. Like many others, China attached great importance to the well-functioning of the dispute settlement system and the

rules-based multilateral trading system. China would work closely with him and make contributions to further strengthen the system under his able leadership.

8.9. The representative of Korea thanked Ambassador Castillo for his dedication and contribution to the work of the DSB under these very difficult circumstances imposed by the pandemic. Korea wished him every success in his role as the Chair of the General Council, especially in light of the MC12 to be held by the end of 2021. Korea also wished every success to Ambassador Chambovey in his new role as the Chairman of the DSB. Korea stood ready to fully support him in his new endeavour and remained committed to making contributions to reviving the two-tier dispute settlement system.

8.10. The representative of Peru said that, like the previous speakers, Peru wished to congratulate Ambassador Chambovey on becoming the Chairman of the DSB. He could fully count on the support of Peru in rising to the important challenges faced by the dispute settlement system. Peru also joined others in extending thanks to Ambassador Castillo for his work in protecting the smooth functioning of the DSB and wished him every success as the Chairman of the General Council.

8.11. The representative of Brazil thanked Ambassador Castillo for all his work as the DSB Chairman, which was crucial to the maintenance of the work of the DSB during difficult times. Brazil congratulated Ambassador Chambovey on his new role as the Chairman of the DSB. Brazil stood ready to work with him to help to ensure that the DSB could function as smoothly as possible.

8.12. The representative of India joined other delegations in expressing India's thanks to Ambassador Dacio Castillo for skilfully handling this important responsibility over the previous year and wished him all the best for his future assignment. India congratulated the incoming Chairman, Ambassador Didier Chambovey and welcomed him to this new and difficult role. India had full confidence that he would be able to fulfil his responsibilities with skills and flair and looked forward to working with him.

8.13. The representative of Singapore expressed Singapore's sincere appreciation and thanks to Ambassador Castillo for his contributions as the DSB Chair and wished him every success as Chairman of the General Council. Singapore also warmly welcomed Ambassador Chambovey as the current DSB Chair and looked forward to working with him and supporting him in that role.

8.14. The representative of the United States said that the United States congratulated Ambassador Chambovey on his election, and welcomed him as he assumed the Chairmanship of the DSB. The United States very much looked forward to working with him over the coming year. The United States also thanked Ambassador Castillo for his many contributions to the work of the DSB during the previous year. The United States wished him well as he embarked on the Chairmanship of the General Council.

8.15. The representative of the Philippines said that his country welcomed the new Chairman of the DSB and looked forward to cooperating and collaborating with him in preserving the two-tier system of the dispute settlement system of the WTO. The Philippines also thanked the outgoing Chairman and the General Council Chairman, Ambassador Dacio Castillo, for his efforts throughout the previous year in helping to move the DSB forward despite the AB crisis. The Philippines was grateful for his work on facilitating consultations in the Philippines-Thailand DS371 dispute and his guidance on moving for a facilitator-led process regarding this matter. The Philippines hoped to be able to work with the incoming Chairman on concluding this matter successfully.

8.16. The representative of Japan extended Japan's deepest thanks to Ambassador Castillo and wished him all the best in his new role as the General Council Chairman. Japan welcomed Ambassador Chambovey as the new DSB Chairman and wished to work closely with him.

8.17. The representative of the United Kingdom said that the United Kingdom wished to thank Ambassador Castillo for his work and commitment as the Chairman of the DSB and wished him every success in his new role. The United Kingdom also welcomed the new Chairman of the DSB and looked forward to working with him over the coming year.

8.18. The representative of Thailand expressed Thailand's appreciation to the outgoing DSB Chairman, Ambassador Castillo, for his leadership and contribution towards addressing unprecedented challenges. Thailand welcomed the new DSB Chairman, Ambassador Chambovey and stood ready to work with him during his tenure.

8.19. The representative of New Zealand expressed New Zealand's sincerest thanks to Ambassador Castillo for his work and congratulated and welcomed Ambassador Chambovey as the incoming Chairman of the DSB. New Zealand wished them both every success for the year ahead.

8.20. The representative of Indonesia expressed Indonesia's appreciation to Ambassador Dacio Castillo for his exceptional leadership, contribution, and tireless work in guiding the DSB over the previous year. Indonesia wished him all the best for his new role as the Chairman of the General Council. Indonesia also congratulated and welcomed Ambassador Chambovey in his new role as the DSB Chairman. Despite the ongoing challenges surrounding the dispute settlement system, Indonesia was more than ready to support the Chairman's work.

8.21. The incoming Chairman thanked Members for their words of support. He said that he appreciated Members' willingness to work constructively and to address the current challenges faced by the dispute settlement system. He then invited the outgoing Chairman to speak.

8.22. The outgoing Chairman thanked delegations for their kind words. He said that he had known Ambassador Chambovey for many years and had worked with him for the benefit of the multilateral trading system. Everybody knew Ambassador Chambovey's career and how professional he was. He was sure that Ambassador Chambovey would put all his experience towards finding solutions to the problems faced in the WTO. Members had a difficult year ahead and must try to find the best solutions to the current problems in order to move forward. Finally, he said that it had been a great honour to be the Chairman of the DSB over the past year.

8.23. The DSB took note of the statements.