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Dispute Settlement Body
27 April 2018

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 27 APRIL 2018

Chairperson: Ms. Sunanta Kangvalkulkij (Thailand)

Prior to the adoption of the Agenda, the item concerning the adoption of the Panel Report in the dispute: "United States – Countervailing Duty Measures on Certain Products from China: Recourse to Article 21.5 of the DSU by China" (DS437) was removed from the proposed Agenda following the US decision to appeal the Report.

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1.1. The Chairperson noted that there were five sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. She recalled that 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, she invited delegations to provide up-to-date information about compliance efforts and to focus on new developments, suggestions and ideas on progress towards the resolution of disputes. She 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".

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.182)

1.2. The Chairperson drew attention to document WT/DS184/15/Add.182, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case "US – Hot-Rolled Steel".

1.3. The United States had provided a status report in this dispute on 16 April 2018, 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

and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that his country thanked the United States for the 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.157)

1.6. The Chairperson drew attention to document WT/DS160/24/Add.157, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case "US – Section 110(5) Copyright Act".

1.7. The representative of the United States said that the United States had provided a status report in this dispute on 16 April 2018, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

1.8. The European Union said that his delegation thanked the United States for its status report and its statement made at the present meeting. The EU referred to its previous statements and reiterated that it would like to resolve this dispute as soon as possible.

1.9. The representative of China said that the United States had, once again, failed to report on any progress in this 158th status report with regard to the DSB's recommendations and rulings. The United States was the only WTO Member who failed to comply with the DSB's recommendations with regard to the TRIPS Agreement, long after the expiry of the reasonable period of time. Section 110(5) of the United States Copyright Act, which had been found to be inconsistent with the requirements of the Berne Convention and the TRIPS Agreement, was still in effect. China reiterated its serious concerns about the fact that intellectual property right holders were still denied their legitimate rights and that the United States failed to provide minimum standards of protection as required by the TRIPS Agreement. China reiterated that the United States should consider specifying, in its next status report, the precise action, which it had taken thus far to comply with the DSB's recommendations. China urged the United States, once again, to implement the DSB's recommendations by amending or withdrawing the law at issue.

1.10. The representative of the United States said that, by intervening under this Agenda item, China attempted to give the appearance of concern for intellectual property rights. At the present meeting, the United States would discuss the significant and trade distorting shortcomings in China's treatment of intellectual property under Agenda item 5. Under this item, the United States could say that as the companies and innovators of China and other Members well knew, the intellectual property protection that the United States provided within its own territory equalled or surpassed that of any other Member. Indeed, as China also well knew, none of the damaging technology transfer practices of China that were at issue under Agenda item 5 were practices that Chinese companies or innovators faced in the United States.

1.11. The representative of China said that, with respect to the second intervention by the United States, his country reminded the United States that, under this Agenda item, the issue was whether the United States had implemented the DSB's recommendations and rulings. China had legitimate economic and systemic interests on this matter, and, thus, looked forward to an explanation by the United States with regard to the reasons for its continued non-compliance.

1.12. 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.120)

1.13. The Chairperson drew attention to document WT/DS291/37/Add.120, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case "EC – Approval and Marketing of Biotech Products".

1.14. The representative of the European Union said that his delegation continued its progress with regard to authorizations where the European Food Safety Authority had finalized its scientific opinion and concluded that there were no safety concerns. On 19 March 2018, the draft authorization for the renewal of one GM sugar beet[1] for food and feed was submitted for vote by the member States committee, resulting in "no opinion". This measure had been submitted for a vote to the Appeal Committee on 25 April 2018, with a "no-opinion" outcome. It was now for the European Commission to decide on that authorization. On 23 April 2018, two draft authorizations had been presented for vote to the member States committee, i.e. one for a renewal of GM maize[2] and one new authorization for GM maize.[3] As the votes had resulted in "no opinion", the draft measures would be submitted for a vote to the Appeal Committee in May 2018. The EU continued to be committed to act in adherence with its WTO obligations. As had been stated at previous DSB meetings, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.15. The representative of the United States said that the United States thanked the EU for its status report and its statement made at the present meeting. The United States once again noted its ongoing concerns that the EU measures affecting the approval of biotech products continued to involve prolonged, unpredictable and unexplained delays at every stage of the approval process. These delays had affected the products that had been previously approved by the EU and continued to affect the dozens of applications that had been awaiting approval for months. Even when the EU finally approved a biotech product, the EU had facilitated the ability of individual EU member States to impose bans on the supposedly approved product. As the United States had noted at previous DSB meetings, the EU had adopted legislation that permitted EU member states to "opt out" of certain approvals, even where the European Food Safety Authority had concluded that the product was safe. The United States again urged the EU to ensure that all of its measures affecting the approval of biotech products, including measures adopted by individual EU member States, were supported by scientific evidence, and that decisions were taken without undue delay.

1.16. The representative of the European Union said that the United States had referred in its intervention to the EU's opt-out legislation. The EU's opt-out legislation was not covered by the DSB's recommendations and rulings. The EU further noted that, as of the present day, no EU member State had imposed any ban.

1.17. 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.4)

1.18. The Chairperson drew attention to document WT/DS464/17/Add.4, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case "US – Washing Machines".

1.19. The representative of the United States said that the United States had provided a status report in this dispute on 16 April 2018, in accordance with Article 21.6 of the DSU. On 15 December 2017, the US Trade Representative had requested the US Department of Commerce to make a determination under Section 129 of the Uruguay Round Agreements Act to address the DSB's recommendations relating to the Department's countervailing duty investigation of washers from Korea. On 18 December 2017, the US Department of Commerce had initiated a proceeding to make such determination. Since that time, the Department had issued initial and supplemental questionnaires seeking additional information necessary to conduct the Section 129 proceeding.

[1] Sugar beet H7-1.
[2] Maize GA21.
[3] Maize 1507 × 59122 × MON 810 × NK603.

The United States continued to consult with interested parties on options to address the recommendations of the DSB relating to anti-dumping measures challenged in this dispute.

1.20. The representative of Korea said that his country thanked the United States for its latest status report and the statement made at the present meeting. More than 19 months had passed since the adoption of the Panel and Appellate Body Reports in this dispute, nevertheless, there was barely any implementation progress, especially relating to the anti-dumping measures at issue. In this regard, Korea, once again, urged the United States to faithfully implement the DSB's recommendations and rulings in this dispute to fully comply with its obligations under the covered agreements.

1.21. The representative of Canada said that his country was concerned that the United States had not implemented the DSB's recommendations and rulings in this dispute. In particular, Canada was deeply disappointed that, despite the expiry of the reasonable period of time, the United States continued to collect cash deposits from Canadian exporters based on a methodology that had been found to be "as such" inconsistent with WTO obligations in this dispute.

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

E. China – Anti-dumping measures on imports of cellulose pulp from Canada: Status report by China (WT/DS483/7/Add.3)

1.23. The Chairperson drew attention to document WT/DS483/7/Add.3, which contained the status report by China on progress in the implementation of the DSB's recommendations in the case "China – Cellulose Pulp".

1.24. The representative of China said that his country had provided a status report in this dispute on 16 April 2018, in accordance with Article 21.6 of the DSU. As had been agreed with Canada, the reasonable period of time in this dispute had expired on 22 April 2018. China was pleased to report that it had fully implemented the DSB's recommendations and rulings in this dispute prior to the expiry of the reasonable period of time. On 25 August 2017, China's Ministry of Commerce had published a notice (Notice No. 43 of 2017) and had launched a re-investigation. On 20 April 2018, China's Ministry of Commerce had published a notice (Notice No. 37 of 2018) and had issued the determination of the re-investigation. The issuance of the determination of the re-investigation brought China into compliance with the DSB's recommendations and rulings in this dispute.

1.25. The representative of Canada said that, on 20 April 2018, China had concluded its reinvestigation on Canadian imports of cellulose pulp into China. The purpose of this reinvestigation had been to implement the DSB's ruling that MOFCOM's anti-dumping investigation on Canadian imports of cellulose pulp had been inconsistent with the WTO Anti-Dumping Agreement. In its reinvestigation, MOFCOM had found that imports of cellulose pulp from Canada had caused material injury to China's domestic industry. As a result, MOFCOM had decided to continue to impose anti-dumping duties on Canadian dissolving pulp. Needless to say that Canada was very disappointed by this outcome. As mentioned at the last DSB meeting, substantial evidence on MOFCOM's record demonstrated that subjected imports had not been responsible for any price depression suffered by the Chinese domestic industry. Similarly, incontrovertible evidence on MOFCOM's record had also shown that any material injury, suffered by the Chinese domestic industry, had been the result of non-dumping factors. As a result, the only means to properly implement the DSB's recommendations and rulings had been to rescind these duties. Canada would continue to review China's reinvestigation report carefully and, if necessary, would ensure that its rights under the DSU were protected.

1.26. The DSB took note of the statements.

2 RUSSIA – ANTI-DUMPING DUTIES ON LIGHT COMMERCIAL VEHICLES FROM GERMANY AND ITALY

A. Implementation of the recommendations of the DSB

2.1. The Chairperson recalled that in accordance with the DSU provisions, the DSB was required to keep the implementation of recommendations and rulings of the DSB under surveillance in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the DSB's recommendations and rulings. She further recalled that, at the 9 April 2018 DSB meeting, the DSB had adopted the Appellate Body Report and the Panel Report, as had been modified by the Appellate Body Report, pertaining to the dispute on: "Russia – Commercial Vehicles" (DS479). She then invited the representative of the Russian Federation to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

2.2. The representative of the Russian Federation said that her country intended to implement the DSB's recommendations and rulings in this dispute in a manner that respected its WTO obligations. She said that the Russian Federation would need a reasonable period of time to do so.

2.3. The representative of the European Union said that his delegation thanked the Russian Federation for stating its intention to comply and looked forward to discussing with Russia the appropriate reasonable period of time for Russia's compliance.

2.4. The DSB took note of the statements and of the information provided by the Russian Federation regarding its intentions in respect of implementation of the DSB's recommendations.

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

A. Statement by the European Union

3.1. The Chairperson said that this item was on the Agenda of the present meeting at the request of the EU. She then invited the representative of the EU to speak.

3.2. The representative of the European Union said that his delegation reiterated its request to the United States to stop transferring anti-dumping and countervailing duties to the US industry. Every disbursement that still took place was an act of non-compliance with the DSB's recommendations and rulings. The EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit status reports in this dispute. The EU would continue requesting this Agenda item, for as long as the United States had not implemented the DSB's ruling.

3.3. The representative of Canada said that his country thanked the EU for placing this item on the Agenda. Canada supported the EU's position that this item shall remain on the Agenda until the United States complied with the DSB's recommendations and rulings.

3.4. The representative of Brazil said that her country, once again, thanked the EU for keeping this item on the DSB Agenda. As an original party to the Byrd Amendment dispute, Brazil recalled that illegal disbursements continued to this day, more than 10 years after the adoption of the Repeal Act. Brazil, thus, called on the United States to fully comply with the DSB's recommendations and rulings in this dispute.

3.5. The representative of the United States said that, as the United States had noted at previous DSB meetings, the Deficit Reduction Act, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000, had been enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that the EU had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods that had entered after 1 October 2007, more than 10 years ago. With respect

to the EU's request for status reports in this matter, as the United States had already explained at previous DSB meetings, there was no obligation under the DSU to provide further status reports once a Member announced that it had implemented the DSB recommendations and rulings, regardless of whether the complaining party disagreed about compliance. As the United States had noted many times previously, the EU had demonstrated repeatedly that it shared this understanding, at least when it was the responding party in a dispute. Once again, this month the EU had provided no status report for long-standing disputes in which there was a disagreement between the parties on the EU's compliance.

3.6. The representative of the European Union said that his delegation referred to the last point made in the United States' statement with regard to the delivery of status reports by the EU. In this regard, the EU noted that it had provided status reports on all cases that had involved the EU. At the present meeting, this was only one dispute, namely: "EC – Approval and Marketing of Biotech Products" (DS291).

3.7. The DSB took note of the statements.

4 STATEMENT BY COLOMBIA REGARDING THE MEASURES ADOPTED BY PANAMA VIS-À-VIS SOME WTO MEMBERS

4.1. The Chairperson said that this item was on the Agenda of the present meeting at the request of Colombia. She then invited the representative of Colombia to speak.

4.2. The representative of Colombia said that his country wished to refer to a series of measures, which had been adopted by Panama. These measures adversely affected Colombian exports, and were taken prior to the completion of the ongoing Article 21.5 proceedings in the dispute: "Colombia – Textiles" (DS461). These proceedings had started on 18 June 2013 with a request for consultations by Panama. Although Panama had not been authorized by the DSB to suspend concessions, it had adopted measures that adversely affected Colombia's trade interests. Panama had stated that such measures were of a "retaliatory" nature. Pursuant to Decree No. 28 of 2 August 2016, Panama had raised the tariffs of thirteen sub-headings affecting certain Colombian products, including roses, carnations, gladioli, paper towels and cement clinker. Following the adoption of the Panel and Appellate Body Reports by the DSB in 2016[4], two requests for consultations had been made on 27 February 2017 and 9 March 2017, respectively.[5] Colombia and Panama had made the respective requests with regard to the measures taken by Colombia to comply with the DSB's recommendations and rulings. Subsequently, the respective Panel requests had been submitted to the DSB. In the first request, Colombia, as the complainant[6], had sought confirmation of its compliance with the recommendations, as set out in the Appellate Body Report in the initial proceeding. In the second request, Panama had claimed that Colombia had not complied with the recommendations of the Appellate Body Report.[7] Currently, proceedings were ongoing, addressing both requests in parallel. According to Articles 21 and 22 of the DSU, the suspension of concessions could only be authorized by the DSB and could not be determined unilaterally by any Member. The Decree, as had been adopted by Panama, however, was a unilateral act without any basis in the dispute initiated under the DSU.

4.3. On 10 January 2018, pursuant to Decree 01 of 2018, Panama had decided to increase the tariffs of 32 sub-headings, including flowers, cement and bituminous coal. For all of these products, Colombia was either the largest or the second largest exporter to the Panamanian market. At least one of these tariffs exceeded the bound import tariff rate, as contained in Panama's Schedule of Concessions. The Decree also established a list of WTO Members. Panama's decision to target a list of WTO Members was also inconsistent with the MFN principle, as provided for in Article I of the GATT 1994 and Article II of the GATS. Furthermore, on 8 March 2018, Panama's Minister of Foreign Affairs, Economy and Finance and the Minister of Trade and Industry had signed Resolution No. 001-2018, pursuant to Law 48 of 26 October 2016, which "establishes retaliatory measures in the event of foreign discriminatory restrictions against the Republic of Panama". In Resolution No. 001-2018, Panama listed Brazil, Colombia, Chile, Ecuador, France and Peru, among other WTO Members, and declared that "these jurisdictions include Panama in

[4] Appellate Body Report of 7 June 2016 – WT/DS461/AB/R.
[5] WT/DS461/19 and WT/DS461/21.
[6] WT/DS461/17.
[7] WT/DS461/22.

discriminatory lists". Concerning Colombia specifically, the Resolution implied that Colombia belonged to a group of WTO Members that had discriminatory lists. Colombia noted, however, that this was untrue. The Resolution also stated that the legislation, which provided for the alleged discrimination, was Decree No. 074 of 2013 concerning the importation of certain textiles, apparel and footwear. The said legislation was not in force and subject to an ongoing dispute. The DSB had not authorized the suspension of concessions. Colombia was, thus, concerned about Panama's decision to resort to unilateral action, which was a clear breach of WTO rules. Law 48 granted Panama to draw up lists of WTO Members that applied discriminatory measures *vis-à-vis* Panama, granting retaliatory action against them. Resolution No. 001-2018 contained such a list and included Colombia as a discriminating country. Pursuant to Article 23 of the DSU, Members had no right to undertake unilateral discrimination determinations, and even less so, implement retaliatory measures, including unauthorized suspensions of concessions. The prohibition of unilateral compliance determinations, as well as of unilateral trade retaliation, had been one of the key achievements of the DSU. Panama's measures were clearly inconsistent with Article 23 of the DSU, especially in light of the ongoing dispute settlement proceedings. Colombia drew attention to this issue given that such conduct was contrary to the very principles of the WTO dispute settlement system. Colombia called on Panama to cease its actions immediately.

4.4. The representative of Panama said that her country took note of the statement made by Colombia at the present meeting, and explained that the list at issue, to which Colombia referred, only represented a step taken by Panama in response to discriminatory measures imposed by certain WTO Members *vis-à-vis* Panama. These measures included monetary sanctions and burdensome procedural requirements, which affected transactions made by persons domiciled in Panama. The list of WTO Members that discriminated against Panama had been produced in a transparent manner, following diplomatic exchanges and bilateral consultations with these WTO Members. However, despite of the exchanges, Panama and the WTO Members at issue had not been in a position to agree on a satisfactory solution to eliminate the discriminatory measures at issue. Panama noted that the mere existence of a list did not imply that measures or sanctions had been applied or would be applied to the WTO Members in question. Instead, drawing up the list simply marked the beginning of a period of renewed bilateral consultations and exchanges. Panama emphasized that all bilateral channels for discussion, with the Members concerned remained open so as to provide the opportunity of being removed from the mentioned list. In this regard, Panama had invited Colombia, as well as the other listed WTO Members, to engage in renewed consultations. Panama further noted that, even when these consultations were over, no sanctions or measures would necessarily be applied. However, if ever, any measures were to be applied, this would only be done, following due consideration by Panama, so as to assess what reaction would be needed in light of the situation at hand. Panama recalled that this was a right accorded to every WTO Member. If, ultimately, measures should be applied, Panama would, as always, respect its international obligations, and in particular its WTO commitments and, any measures undertaken would be carefully evaluated and applied on a case-by-case basis.

4.5. Colombia had been included on this list because of the repeated measures that it had taken *vis-à-vis* Panama, which damaged Panama's economic interests significantly. The illegitimacy of Colombia's measures was well-known to anyone who had followed the decade-long disputes between the two WTO Members, and was confirmed by the associated findings. The DSU accorded particular importance to mutual agreements, which were reached through dialogue among WTO Members, and the DSU promoted such dialogue even for ongoing cases. Panama had, thus, invited Colombia to reengage in a dialogue with a view to settling the existing trade disputes. After a decade of WTO dispute settlement proceedings, Panama's claims, which had all been upheld by the DSB's recommendations and rulings, were yet to be settled in a satisfactory manner. Instead, Colombia had imposed further discriminatory measures *vis-à-vis* Panama. As a WTO Member, Panama reserved its right to resort to means that were consistent with its international obligations to ensure that Colombia complies with its own international obligations.

4.6. The representative of Ecuador said that his country intervened under this Agenda item to express its concern about having been listed, together with other WTO Members, by Panama, as a result of a Ministerial Resolution. According to Panama, the said list comprised WTO Members, which applied discriminatory or restrictive measures *vis-à-vis* Panama. Panama claimed that these measures adversely affected its economic and trade interests. The Ministerial Resolution provided for the implementation of Law No. 48 of 26 October 2016, which, in turn, provided for retaliatory measures in response to discriminatory restrictions. Ecuador was concerned about this unilateral determination by Panama, as the law provided that Panama could decide unilaterally whether or

not a measure adopted by another WTO Member was discriminatory without conducting consultations for such a determination. Ecuador encouraged the review of Law No. 48 of 26 October 2016 and recalled that WTO rules should be fully respected.

4.7. The representative of Brazil said that her country thanked Colombia for including this item on the DSB Agenda. Brazil expressed its concern about its inclusion in a list of WTO Members, which had allegedly maintained discriminatory measures against Panama. The list had been created under Resolution No. 001-2018, which had been issued by the Government of Panama on 8 March 2018. Brazil understood that this list had been created to enable Panama to take action, pursuant to Article 8 of Law 48-2016, *vis-à-vis* the listed WTO Members. Such action could take the form of tariff increases, for example, affecting the products, which were being sold by nationals of the WTO Members that had been included on the said list. Brazil was of the view that its inclusion in a list of WTO Members that had allegedly maintained discriminatory measures *vis-à-vis* Panama was unwarranted. Brazil stood ready to discuss the matter with Panama and hoped that Panama would be mindful of its obligations under the WTO Agreement.

4.8. The representative of the Russian Federation said that her country shared the concerns raised by Brazil, Colombia and Ecuador. The Russian Federation underscored that if Panama was of the view that its rights, under the covered agreements, had been in any way undermined, Panama could take recourse to available WTO instruments. In doing so, Panama could address any such issue in a legitimate way, namely, by raising the matter in a relevant WTO body, including the DSB, and resolve it through a dispute settlement procedure. Without a DSB ruling, unilateral retaliatory action was unacceptable. The Russian Federation called on Panama to refrain from violating its WTO obligations.

4.9. The representative of the European Union said that his delegation had listened to the concerns expressed by Colombia and other WTO Members on this matter. The EU understood that Panama had enacted legislation, which contained a list of WTO Members, *vis-à-vis* which, Panama could adopt a variety of retaliatory measures. The EU recalled that unilateral retaliation, which was not based on WTO rules and procedures, undermined WTO multilateralism and was, thus, unacceptable.

4.10. The representative of Panama said that her country wished to reiterate its previous statement. The list, which Panama had drawn up, was a response to similar lists that other Members had drawn up previously, and on which they had included Panama. Panama also reiterated that no sanctions or measures had been applied *vis-à-vis* any WTO Member on Panama's list. The diplomatic channels were open, including to all those WTO Members that had made statements under this Agenda item at the present meeting. Panama's Ministry of Foreign Affairs had approached all of the listed WTO Members. Ecuador had responded to the request for bilateral consultations. Panama urged all other WTO Members on the said list to be in contact with their capitals so that consultations could be initiated.

4.11. The DSB took note of the statements.

5 UNITED STATES ACTIONS UNDER SECTION 301 OF THE TRADE ACT OF 1974

A. Statement by China

5.1. The Chairperson said that this item was on the Agenda of the present meeting at the request of China. She then invited the representative of China to speak.

5.2. The representative of China said that on 18 August 2017, the United States had initiated a Section 301 investigation into China's intellectual property policy. The United States had claimed that the purpose of this investigation had been to address China's alleged "unfair economic practices" with the objective of "re-balancing the China-US trade relationship", namely to lower the US trade deficit with China. On 22 March 2018, the United States had announced the plan to take a range of actions *vis-à-vis* China, as a result of the Section 301 investigation, including additional tariffs that the United States intended to apply to US$50 billion worth of goods from China.

5.3. China noted that what had happened during the last eight months was not new; instead, many WTO Members were quite familiar with these types of actions. A large number of WTO

Members had been subject to Section 301 investigations, and as a result of these investigations, some of these Members had either been forced to open their markets to US companies or had become the target of retaliatory action. Since its enactment in 1974, the United States had initiated 125 investigations under Section 301 of the Trade Act of 1974 and had taken 17 retaliatory actions. There was a long list of WTO Members, which had been subject to Section 301 investigations. Between 1974 and 2018, the United States had initiated 27 investigations against the EU, 16 investigations against Japan, 14 investigations against Canada, 11 investigations against Korea, 8 investigations against Brazil, 6 investigations against Argentina, 6 investigations against Chinese Taipei, 5 investigations against India, 3 investigations against Thailand, 2 investigations against Belgium, France, Indonesia, Italy, Portugal, Spain, Sweden, Switzerland, the United Kingdom, Ukraine respectively, and 1 investigation against Australia, Austria, Colombia, Costa Rica, Denmark, Germany, Guatemala, Honduras, Ireland, Mexico, Norway, Pakistan, Paraguay, the Netherlands, Turkey and the Soviet Union, respectively.

5.4. The Section 301 investigation, which had been concluded most recently, was the 125th investigation, and there could be more. Prior to the establishment of the WTO, Section 301 investigations, and associated retaliatory actions, were a nightmare for countries or regions, which did not possess as much negotiating leverage as the United States, and whose export industries relied heavily on the US market. Notably, the threshold to launch Section 301 investigations was relatively low, and approximately one third of all Section 301 investigations had been self-initiated by the United States, without a specific request by any domestic US industry. Twenty-three years after the establishment of the WTO, Section 301 of the Trade Act of 1974 continued to serve as a tool for the United States to take unilateral actions against fellow WTO Members. In 2000, the Panel in "US – Section 301 Trade Act" (DS152) had found that Section 301 was not inconsistent with Article 23 of the DSU, only when the US honoured its commitments. The US commitments were that it would base a Section 301 decision or action only on adopted DSB's recommendations and rulings. Contrary to these commitments, none of the decisions or actions taken by the United States in the most recent Section 301 investigation, and subsequent actions, had been based on any adopted rulings and recommendations of the DSB. The United States had defended the most recent Section 301 investigation, and subsequent action, by asserting that the United States had made no findings in the Section 301 investigation that China had breached its WTO obligations. The United States, hence, argued that it was entitled to take retaliatory trade measures *vis-à-vis* China were legitimate, irrespective of whether or not the United States' retaliatory measures were WTO-consistent. This was a fundamental misinterpretation of WTO Members' obligations. The language in Article I and Article II of the GATT 1994 was clear. Under Article I of the GATT 1994, Members had the unconditional obligation to provide MFN treatment to all WTO Members, and under Article II of the GATT 1994, each Member "shall accord to the commerce of the other [Members] treatment no less favourable than that provided for in [its schedules of concessions]". The precondition suggested by the United States was simply no and unjustified. *De facto*, the unilateral nature of Section 301 had been revived and was now challenging the foundation of the rules-based multilateral trading system. China was, thus, of the view that the time had come for all WTO Members to stand up against the unilateralism and protectionism manifested in the recent actions taken by the United States, so that what had happened time after time in the past, would not be repeated in the future.

5.5. The representative of the United States said that the United States thanked China for placing this item on the Agenda as it gave WTO Members the opportunity to discuss the seriously trade distorting policies adopted by China that were the subject of the ongoing Section 301 investigation that had been mentioned in China's statement. To be clear, it was these policies, and not responses by the United States or other WTO Members to address these trade distorting policies, that were a threat to the international trading system. As WTO Members were aware, the United States had issued a detailed factual report regarding the results of the US investigation under Section 301, which was available on the USTR website. The report contained extensive evidence that China engaged in the following four types of practices involving technology transfer.

5.6. First, China used foreign ownership restrictions, such as joint venture requirements and foreign equity limitations, and various administrative review and licensing processes, to require or pressure technology transfer from foreign companies. These foreign ownership restrictions prohibited foreign investors from operating in certain industries unless they partnered with a Chinese company, and in some cases, unless the Chinese partner was the controlling shareholder. These requirements precluded foreign companies from entering the market on their own terms, and laid the foundation for China to require or pressure the transfer of technology. China also used

its administrative licensing and approvals processes to force technology transfer in exchange for the numerous approvals needed to establish and operate a business in China. Vague provisions and uncertainty about the applicable rules provided Chinese authorities with wide discretion to use administrative processes to pressure technology transfer or otherwise act in furtherance of China's trade-distorting industrial policy objectives.

5.7. Second, China's regime of technology regulations forced US companies seeking to license technologies to Chinese entities to do so on non-market-based terms that favoured Chinese recipients. China imposed a different set of rules for imported technology transfers originating from outside China, such as from foreign entities attempting to do business in China. These rules did not apply to technology transfers occurring between two domestic Chinese companies. China's mandatory requirements for importation of foreign technology were discriminatory and clearly more burdensome than the requirements applicable to domestic Chinese companies. Specifically, China mandated that all indemnity risks were borne by the foreign technology transferor. Parties could not negotiate the allocation of this risk, even if the transferee would be willing to bear the risk under the contract. China also mandated that all improvements belong to the party making the improvement and that a foreign licensor could not stop the Chinese licensee from making improvements to the technology. China further required that joint ventures, mandated under Chinese law, may continue to use transferred technology after the conclusion of any licensing contract. These restrictions tipped the technology transfer regime in favour of Chinese entities before a foreign company even attempted to enter the market in China.

5.8. Third, China directed and unfairly facilitated the systematic investment in, and acquisition of, foreign companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property and to generate the transfer of technology to Chinese companies. The role of the state in directing and supporting this outbound investment strategy was pervasive and evident at multiple levels of government – central, regional, and local. China had devoted massive amounts of financing to encourage and facilitate outbound investment in areas it deemed strategic. To implement these policies, China employed tools such as investment approval mechanisms and a system of "encouraged" sectors to channel and support outbound investment. These investments and acquisitions aligned with state objectives and policies, and were often undertaken by State-owned enterprises that were, by definition, owned and controlled by the government. Even when undertaken by companies, in which the government did not own an observable controlling stake, these transactions were frequently guided and directed by the State. In addition, many of these transactions were funded by State-owned entities or banks, often in situations where comparable commercial financing would have been unavailable.

5.9. Fourth, China conducted and supported unauthorized intrusions into, and theft from, the computer networks of foreign companies to access their sensitive commercial information and trade secrets. For over a decade, China had conducted and supported cyber intrusions into US commercial networks, targeting confidential business information held by US firms. Through these cyber intrusions, China had gained unauthorized access to a wide range of commercially-valuable business information, including trade secrets, technical data, negotiating positions, and sensitive and proprietary internal communications. China had used cyber-enabled theft and cyber intrusions to serve its strategic economic objectives. Documented incidents of China's cyber intrusions against US commercial entities aligned closely with China's industrial policy objectives.

5.10. These four technology transfer policies harmed every WTO Member, and every industry in every WTO Member, that relied on technology for maintaining competitiveness in world markets and increasing its people's standard of living. Instead of addressing its damaging and discriminatory policies, China accused the United States of "unilateralism". This criticism had absolutely no validity. From the outset of the investigation, the United States had been clear that where an act, policy, or practice appeared to involve WTO rules, the United States would pursue the matter through WTO dispute settlement. In fact, one of the areas of investigation, involving technology licensing, appeared to be amenable to WTO dispute settlement. In particular, certain technology licensing measures adopted by China appeared to deny patent rights to foreign IP holders and to discriminate against foreign IP holders. Thus, China's measures appeared to be inconsistent with China's obligations under the TRIPS Agreement. Accordingly, on 23 March 2018, the United States had initiated a WTO dispute on this issue.[8] The consultation request had been circulated, and WTO Members may review the request to see the TRIPS Agreement issues

[8] "China – Certain Measures Concerning the Protection of Intellectual Property Rights" (DS542).

involved. To be absolutely clear, the United States had made no findings in the Section 301 investigation that the licensing measures at issue were inconsistent with China's TRIPS Agreement obligations. Rather, as for any WTO dispute, the matter would be resolved by the parties or findings may be sought through WTO dispute settlement. In contrast, the three other categories of measures covered in the US investigation did not appear to implicate specific WTO obligations. In a previous DSB meeting, the United States had noted that, if China wished to tell the DSB that the three other sets of acts, policies, and practices covered in the Section 301 investigation did amount to breaches of WTO rules, it could do so. China now had another golden opportunity.

5.11. Accordingly, China's argument that the United States had somehow acted inconsistently with Article 23 of the DSU was completely lacking in foundation. Indeed, by asserting that the United States had breached the DSU, it was China itself that was acting inconsistently with Article 23. More broadly, the WTO system was not threatened, as China claimed, where a Member took steps to address harmful, trade distorting policies not directly covered by WTO rules. To the contrary, what did threaten the WTO was that China was asserting that the mere existence of the WTO prevented any action by any WTO Member to address its unfair, trade-distorting practices and policies, unless those policies were currently subject to WTO dispute settlement. If the WTO was seen as a shield protecting those WTO Members that chose to adopt policies that could be shown to undermine the fairness and balance of the international trading system, then the WTO and the international trading system would lose all credibility and support among citizens.

5.12. The representative of Pakistan said that his country, a developing country, was a supporter of the multilateral trading system and was of the view that systemic concerns needed to be addressed if they were raised at any level. As had been raised by China, Pakistan also expressed its systemic concerns with regard to the measures taken by the United States under Section 301 of the US Trade Act of 1974. Pakistan was of the view that such measures could have a significant impact on the global trading environment, in particular from a developing country perspective. This action had the potential to spur a global protectionist backlash from other WTO Members. This would not only lead to serious consequences for developing countries but would, more importantly, weaken the basis of the multilateral trading system. As had been mentioned previously, the WTO Membership was already facing many challenges. Pakistan, thus, urged all WTO Members to continue to work towards trade multilateralism and openness as this would be the only way for all, especially smaller economies, to develop through the means of trade.

5.13. The representative of the Russian Federation said that her country had serious concerns with regard to the unilateral actions taken by the United States under Section 301 of the Trade Act of 1974. The Russian Federation recalled that the unilateral application of measures without the DSB decision was unacceptable.

5.14. The representative of Hong Kong, China said that as a firm supporter of the rules-based multilateral trading system her delegation was opposed to any restrictive trade measures that were WTO-inconsistent. The entire WTO Membership would benefit by vigilant watch over unilateralism and protectionism. Her delegation appealed to China and the United States, the two largest economies in the world, to resolve their disputes within the rules-based multilateral trading system. It was high time that the WTO demonstrated to the world what value predictable trade rules had on global trade.

5.15. The representative of Japan that his country referred to its previous statement made at the DSB meeting held on 27 March 2018, when the same issues had been raised.

5.16. The representative of Chinese Taipei said that her delegation shared the US concerns with regard to intellectual property matters and forced technology transfers. Chinese Taipei took note that, although certain measures, which had been mentioned by the United States, would not involve specific WTO obligations, these measures could impact the fairness and balance of the world market. Chinese Taipei was of the view that such measures should be properly addressed before they became unamenable to any remedies. Chinese Taipei called on all WTO Members to work together and actively engage in relevant discussions so as to promote a fair and balanced multilateral trading system.

5.17. The representative of the European Union said that his delegation wished to make two points. First, the EU shared the US concerns with regard to the protection of intellectual property

rights and discriminatory conditions applying to foreign licensors of intellectual property rights in China. These were well-known issues and long-standing concerns that the EU had raised over the years both in political dialogues with China and at the multilateral level, such as in TRIPS Council transitional reviews. Second, the EU was of the view that the only way to find solutions to these issues was through the multilateral trading system. Therefore, the EU would not support any measure, which were contrary to the WTO and, thus, called on WTO Members to ensure compliance of their trade actions with WTO rules.

5.18. The representative of India said that her country was of the view that the multilateral trading system, embodied in the WTO, had served WTO Members well in ensuring fair and open trade, and in utilizing trade as an engine for growth. The adoption of unilateral measures by WTO Members would erode the valued principles of predictability and non-discrimination and could lead to a full-blown trade war. As a firm supporter of the rules-based multilateral trading system, India believed that gaps, imperfections and unfair elements in trade rules needed to be discussed and reformed at the WTO. Unilateral measures, on the other hand, could stop the fragile global economic recovery, with consequences for jobs, GDP growth and development that would harm the entire WTO Membership. India, thus, urged all WTO Members to work together to safeguard the spirit of multilateralism and international cooperation, and to refrain from any action that could weaken the WTO.

5.19. The representative of Brazil said that his country had been following closely the recent actions taken under Section 301 of the Trade Act of 1974. While WTO Members were entitled to implement their trade policies according to their national legislation, including by promoting investigations into alleged unlawful practices, any actions to remedy such practices should be fully consistent with their international obligations. Brazil encouraged the entire WTO Membership to abide by WTO rules, which had been developed collectively and which served the interests of all WTO Members. In particular, Brazil recalled that Article 23 of the DSU stated that redress of violations of obligations under the covered agreements should be made through recourse to the WTO dispute settlement system.

5.20. The representative of Norway said that her country shared the general concern raised by other WTO Members over what appeared to be a re-emergence of the use of unilateral trade measures, as a reaction to what was conceived to be WTO-inconsistent measures by other WTO Members. It was for the WTO, through the DSU process, and not an individual WTO Member, to determine that a measure was inconsistent with other WTO Members' obligations. This was one of the basic principles of the multilateral trading system and one that Norway was very keen to uphold. Having said that, Norway also shared the view that protection of intellectual property rights was important, and Norway had noted with interest that the United States had requested DSU consultations on that matter, in "China – Certain Measures Concerning the Protection of Intellectual Property Rights" (DS542). Norway looked forward to follow the case, as it developed.

5.21. The representative of China said that his country took note of the US statement made at the present meeting. In the previous and present DSB meetings, the United States had listed policies that allegedly harmed the interests of other WTO Members as an excuse for resorting to unilateralism. In this regard, China wished to make a few clarifications. First, the findings of the US Section 301 investigation were wilful distortions of facts and full of selective assertions and allegations, disregarding the actual progress China had made with regard to market-oriented reforms, in particular, concerning IP protection. With regard to the alleged policies, which forced foreign enterprises to transfer their technology and to agree to non-market based technology licensing terms that favoured Chinese recipients, China reiterated that this assertion was entirely unfounded. China would defend its legitimate interests in "China – Certain Measures Concerning the Protection of Intellectual Property Rights" (DS542). In the meanwhile, China underlined the fact that contracts between Chinese companies and US companies were mutually beneficial arrangements agreed upon by the companies. Contrary to the presumption of the United States, no US company would ever enter into a contract if the terms of the contract were not favourable to its interests. Most US companies considered doing business in China as one of the most profitable business locations in the world. If the United States questioned China's joint venture requirements or foreign equity limitations, this would be a market access issue. China had fully complied with its WTO market access commitments. Furthermore, China continued to eliminate the requirements for joint ventures and foreign equity limitations in some industries through reforming measures and bilateral investment agreement negotiations. This was an endeavor that took time but China would continue to open up its market, and these policy reforms were made by China at

its own initiative and voluntarily. Second, the United States also claimed that China directed or facilitated investment in, and acquisition of, US companies, or conducted and supported unauthorized intrusion into US company computer networks, China fundamentally objected to these allegations and failed to see any concrete evidence with regard to this claim, in the 200-page Section 301 report. Third, China emphasized that unilateral actions by the United States had gravely undermined the foundations of the WTO, putting the Organization in an unprecedented danger. China reiterated its call on the entire WTO Membership to work together and stand up firmly to the protectionist actions taken by the United States.

5.22. The DSB took note of the statements.

6 AUSTRALIA – ANTI-DUMPING MEASURES ON A4 COPY PAPER

A. Request for the establishment of a panel by Indonesia (WT/DS529/6)

6.1. The Chairperson recalled that the DSB had considered this matter at its meeting on 27 March 2018 and had agreed to revert to it. She then drew attention to the communication from Indonesia, contained in document WT/DS529/6, and invited the representative of Indonesia to speak.

6.2. The representative of Indonesia said that, on 1 September 2017, her country had requested consultations with Australia with regard to Australia's anti-dumping duties on A4 copy paper from Indonesia. As had been noted in Indonesia's request for consultations, Australia's anti-dumping determination appeared to be inconsistent with Australia's obligations under the GATT 1994 and the Anti-Dumping Agreement. Indonesia and Australia had held consultations on 31 October 2017, which unfortunately did not resolve the dispute. Indonesia had, thus, requested the establishment of a panel at the 27 March 2018 DSB meeting. However, Australia had objected to Indonesia's first request, hence, the second request at the present meeting. As had been set out in Indonesia's request for panel establishment, a number of substantive deficiencies existed in Australia's anti-dumping determination, which appeared to be inconsistent with its obligations under the GATT 1994 and the Anti-Dumping Agreement. Indonesia, therefore, requested that the DSB establish a panel to examine the matter as set out in Indonesia's panel request, with standard terms of reference.

6.3. The representative of Australia said that her country considered it unfortunate that Indonesia had proceeded with its second request for a WTO panel on this matter. As Australia had stated at the 27 March 2018 meeting of the DSB, Australia considered the investigation into alleged dumping of A4 copy paper from Indonesia, and the subsequent imposition of dumping duties on certain Indonesian exporters, had been entirely consistent with the Anti-Dumping Agreement. Australia was of the view that the ability to take remedial action against dumped imports that were causing, or threatened to cause, material injury to a domestic industry formed part of the critical balance of WTO Members' rights and obligations provided under WTO rules. While Australia stood ready to defend this matter before a WTO panel, it remained open to engage in a bilateral discussion with Indonesia to resolve this matter through a mutually agreeable solution. In this regard, Australia also reminded Indonesia that it had not yet exhausted the domestic review options available to it.

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

6.5. The representatives of Canada, China, the European Union, India, Israel, Japan, the Russian Federation, Singapore, Thailand, Ukraine, the United States and Viet Nam reserved their third-party rights to participate in the Panel's proceedings.

7 UNITED STATES – ANTI-DUMPING AND COUNTERVAILING DUTIES ON CERTAIN PRODUCTS AND THE USE OF FACTS AVAILABLE

A. Request for the establishment of a panel by the Republic of Korea (WT/DS539/6)

7.1. The Chairperson drew attention to the communication from Korea, contained in document WT/DS539/6, and invited the representative of Korea to speak.

7.2. The representative of Korea said that, as had been explained in the panel request dated 16 April 2018, his country had serious concerns about the use of facts available by the authorities of the United States in its anti-dumping and countervailing duty proceedings *vis-à-vis* certain products from Korea. More specifically, Korea was concerned that the use of adverse facts available, "as applied" in the challenged anti-dumping and countervailing duty proceedings, was inconsistent with US obligations under the Anti-Dumping Agreement and the SCM Agreement. In addition, it appeared that certain provisions of US law on the use of adverse facts available, such as Section 776 of the Tariff Act of 1930, as had been amended by Section 502 of the Trade Preferences Extension Act of 2015, as well as US practice of resorting to the use of adverse facts available as a form of "ongoing conduct" or a rule or norm of general and prospective application, were also "as such" inconsistent with United States' obligations under the said Agreements. In addition to a number of related procedural due process violations, as had been identified in the panel request, the undue use of adverse facts available had consequences, among others, on the determination of the margin of dumping or the amount of subsidization; on the determination of the impact of the allegedly dumped or subsidized imports on the domestic industry; on the imposition and maintenance of the duties; on the level of the duties imposed; and on the determination of the likelihood of dumping or subsidization and, thus, the extension of measures beyond the original period of application.

7.3. Korea had already provided a detailed explanation on how the use of adverse facts available by the United States violated the covered agreements. Korea chose not to repeat these explanations at the present meeting. Korea and the United States had held consultations on 22 March 2018. While the consultations had been helpful in understanding each other's positions on this matter, they had not led to a mutually satisfactory resolution of the dispute. The US measures continued to nullify or impair the benefits accruing to Korea, directly or indirectly, under the said Agreements. Korea, thus, requested the establishment of a panel to examine the matter set out in Korea's panel request, with standard terms of reference.

7.4. The representative of the United States said that the United States regretted that Korea had sought the establishment of a panel in this matter. As the United States had explained to Korea, the determinations identified in Korea's request for panel establishment were fully consistent with WTO rules. Furthermore, Korea sought to challenge certain items that were not measures and would not fall within the scope of a dispute settlement proceeding. For these reasons, the United States did not agree to the establishment of a panel at the present meeting.

7.5. The DSB took note of the statements and agreed to revert to this matter.

8 UNITED STATES – COUNTERVAILING MEASURES ON CERTAIN HOT-ROLLED CARBON STEEL FLAT PRODUCTS FROM INDIA

A. Recourse to Article 21.5 of the DSU by India: Request for the establishment of a panel (WT/DS436/18)

8.1. The Chairperson drew attention to the communication from India, contained in document WT/DS436/18, and invited the representative of India to speak.

8.2. The representative of India said that, on 19 December 2014, the DSB had adopted the Reports of the Appellate Body and the Panel in "US – Carbon Steel (India)" (DS436). The Reports had found that the United States had imposed countervailing duties on Indian exports of certain hot-rolled carbon steel flat products, in a manner that breached the US obligations under the SCM Agreement. The DSB had, thus, recommended that the United States should bring its measures into conformity with its obligations under the SCM Agreement. The reasonable period of time to implement the DSB's recommendations and rulings had expired on 18 April 2016. On 6 May 2016, India and the United States had concluded a sequencing agreement that would apply between the two parties, for the purpose of DS436. India considered that the United States had failed to implement the DSB's recommendations and rulings in DS436. Therefore, on 5 June 2017, India had requested consultations with the United States under Article 21.5 of the DSU, as well as, under paragraph 1 of the sequencing agreement, which had been concluded by the parties. India and the United States had held consultations on 13 July 2017 and 4 October 2017, respectively. The consultations had, unfortunately, not resolved the matter at issue, namely, India's concerns with regard to the US failure to implement the DSB's recommendations and rulings in this dispute.

8.3. Paragraph 1 of the sequencing agreement clearly provided that "[t]he parties to the dispute agree that after the end of such period for consultations, India may, at any time, request the establishment of a panel pursuant to Article 21.5 of the DSU". India had, thus, requested the establishment of a compliance panel under Article 21.5 of the DSU in its communication, dated 29 March 2018 (WT/DS436/18). Paragraph 2 of the sequencing agreement provided that the United States should accept the establishment of an Article 21.5 panel at the first DSB meeting, at which India's compliance panel request appeared on the Agenda. India was disappointed that the United States had not complied with the DSB's recommendations and rulings in DS436, despite the fact that the reasonable period of time had expired more than two years ago. Among other issues, it appeared that the United States had made no effort to repeal or amend Section 1677(7)(G)(iii) of its domestic law to ensure conformity with Articles 15.1, 15.2, 15.3 and 15.5 of the SCM Agreement. India was of the view that the sheer indifference by the United States on this matter was a cause of concern for the integrity and effectiveness of the WTO dispute settlement system. India, thus, requested the establishment of a panel under Article 21.5 of the DSU, with standard terms of reference, pursuant to Article 7.1 of the DSU. India also requested that, if possible, the matter should be referred to the original Panel.

8.4. The representative of the United States said that, as the United States had stated at the November 2016 DSB meeting, and at prior DSB meetings, the United States had completed implementation with respect to the DSB recommendations in this dispute. Contrary to India's view, there was no basis for suggesting that US compliance had been inadequate. The United States maintained that the measures identified in India's panel request were fully WTO-consistent. Nevertheless, the procedures set forth in the sequencing agreement between India and the United States provided that the United States shall accept the establishment of a panel at the first DSB meeting in which India's request appeared on the Agenda. The United States was prepared to engage in these proceedings and to explain to the panel why India had no legal basis for its claims. This statement was without prejudice to whether each of the items cited in India's panel request constituted a measure taken to comply for purposes of Article 21.5 of the DSU, and therefore was subject to examination by the panel.

8.5. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by India in document WT/DS436/18. It was agreed that the Panel would have standard terms of reference.

8.6. The representatives of China, the European Union, Japan and the Russian Federation reserved their third-party rights to participate in the Panel's proceedings.

9 APPELLATE BODY MATTERS

A. Appellate Body Appointments: Proposal by Argentina; Australia; Plurinational State of Bolivia; Brazil; Canada; Chile; China; Colombia; Costa Rica; Dominican Republic; Ecuador; El Salvador; the European Union; Guatemala; Honduras; Hong Kong, China; India; Indonesia; Israel; Kazakhstan; Korea; Mexico; New Zealand; Nicaragua; Norway; Pakistan; Panama; Paraguay; Peru; the Russian Federation; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Turkey; Ukraine; Uruguay and Viet Nam (WT/DSB/W/609/Rev.3)

9.1. The Chairperson said that this item was placed on the Agenda of the present meeting, at the request of Mexico on behalf of several delegations. In this regard, she drew attention to the proposal, contained in document WT/DSB/W/609/Rev.3, and invited the representative of Mexico to speak.

9.2. The representative of Mexico said that the following delegations: Argentina; Australia; Plurinational State of Bolivia; Brazil; Canada; Chile; China; Colombia; Costa Rica; Dominican Republic; Ecuador; El Salvador; the European Union; Guatemala; Honduras; Hong Kong, China; India; Indonesia; Israel; Kazakhstan; Korea; Mexico; New Zealand; Nicaragua; Norway; Pakistan; Panama; Paraguay; Peru; the Russian Federation; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Turkey; Ukraine; Uruguay and Viet Nam, had agreed to submit a joint proposal to launch the selection processes for the vacancies in the Appellate Body. Mexico, speaking on behalf of the 65 Members, as well as Iceland, wished to state the following. The considerable number of Members submitting this joint

proposal reflected the common concern about the current situation in the Appellate Body, which was seriously affecting the WTO's work and the overall functioning of the dispute settlement system and was against the best interest of WTO Members. The WTO Members had a responsibility to safeguard and preserve the Appellate Body, the dispute settlement system and the multilateral trading system. Thus, it was Members' duty to launch the selection processes for new Appellate Body members, as set out in the proposal submitted to the DSB at the present meeting. This proposal sought to, first, start the three selection processes, namely, one to replace Mr. Ricardo Ramírez-Hernández, whose second term of office expired on 30 June 2017; a second process to fill the vacancy that had arisen following the resignation of Mr. Hyun Chong Kim with effect from 1 August 2017; and a third process to replace Mr. Peter Van den Bossche, whose second term expired on 11 December 2017. Second, to establish a Selection Committee. Third, to set a 30-day deadline for the submission of candidacies. Fourth, to request that the Selection Committee circulate its recommendation within 60 days after the deadline for the nomination of candidates. While the proponents were flexible with regard to the deadlines for the selection processes, these should, however, reflect the urgency of the situation. The co-sponsors of the proposal reiterated their call on all WTO Members to support the joint proposal in the interest of the dispute settlement system and the multilateral trading system as a whole.

9.3. The representative of the United States said that the United States thanked the Chairperson for the continued work on these issues. As the United States had explained in prior DSB meetings, the United States was not in a position to support the proposed decision. For at least the past eight months, the United States had been raising and explaining the systemic concerns that arose from the Appellate Body's decisions that purport to "deem" as an Appellate Body member someone whose term of office had expired and, thus, was no longer an Appellate Body member, pursuant to its Working Procedures for Appellate Review (Rule 15). During that period of time, the DSB had adopted by positive consensus two reports signed by someone no longer an Appellate Body member, and currently, there remained five ongoing appeals where the term of one or more of the persons appointed to the division had expired. In one instance, the person's term had expired almost ten months ago. However, the DSB had not yet addressed the problem of persons continuing to hear appeals well after their terms had expired. Under the DSU, it was the DSB that had the authority to appoint Appellate Body members and to decide when their term in office would expire[9], and so it was up to the DSB to decide whether a person who was no longer an Appellate Body member could continue to serve on an appeal. The United States appreciated the recognition by WTO Members at the last DSB meeting of the fact that addressing this issue was a joint responsibility of all WTO Members, and the United States appreciated the willingness these WTO Members had expressed to engage on this issue. The United States remained resolute in its view that WTO Members needed to resolve that issue as a priority. The United States, therefore, would continue its efforts and its discussions with WTO Members and with the Chairperson to seek a solution on this important issue.

9.4. The representative of Colombia, speaking on behalf of the GRULAC, said that the WTO was undergoing a delicate period due to the blockage to the Appellate Body selection processes. At the outset, Colombia wished to thank the Chairperson for her efforts to seek a solution for the current problem. Colombia reiterated its deep concern about the present situation, which affected the functioning of a key WTO body. If this problem prevailed without resolution, it would bring about the paralysis of the Appellate Body in the near future. This would, in turn, put the entire dispute settlement system at risk. With the continued delay in launching the selection processes, the current number of vacancies had risen to three, and the WTO Membership was failing to comply with an existing mandate, and thus, breached its legal obligations under a covered agreement. This had serious systemic consequences and set a bad precedent for the WTO. This situation caused damage and affected the image and credibility of the WTO, in particular, given the complex international environment that was adversely affecting the multilateral trading system. Concerns had been raised regarding the functioning of the dispute settlement system and some specific issues regarding the decision-making process. Colombia disagreed that such concerns should be linked to the Appellate Body selection processes, and thus hinder WTO Members from fulfilling their legal obligations under the DSU. The proper functioning of the system should not be undermined because the concerns of some Members had not been addressed. Colombia called on the WTO Membership to understand the gravity of a continued blockage. The selection processes should be delinked from unrelated concerns and should be addressed on the basis of their own

[9] Understanding on Rules and Procedures Governing the Settlement of Disputes, Articles 17.1, 17.2 ("DSU").

merit. In this regard, Colombia urged WTO Members to find a solution that would allow the WTO Members to meet their legal obligations. Colombia supported the efforts of the Chairperson to continue to seek a solution to this matter.

9.5. The representative of Canada said that his country deeply regretted that the DSB had been unable to fulfil its legal obligation under Article 17.2 of the DSU to appoint Appellate Body members as vacancies arose. Canada agreed that it was time to start a process or, if necessary, several processes to select new Appellate Body members for the three current vacancies. Canada was pleased to join the proposal submitted by more than 30 delegations and urged the DSB to adopt it without further delay. Like other WTO Members, Canada was disappointed that the United States had linked the start of the Appellate Body selection processes to the resolution of certain procedural concerns it had shared with the WTO Membership. Canada invited the United States to engage in discussions with interested Members with a view to expeditiously developing a solution to the concerns that it had raised. Canada remained committed to working with other interested WTO Members, including the United States, with a view to finding a way to address those concerns, so as to allow the Appellate Body selection processes to start and be completed as soon as possible.

9.6. The representative of Pakistan said that his country believed in achieving development through trade. Pakistan greatly valued the WTO dispute settlement mechanism and considered its worth, including the element of enforceability, as one of the major differentials from the GATT-era. Pakistan, once again, urged WTO Members not to link Appellate Body appointments to systemic concerns regarding the working of the Appellate Body. Pakistan supported the position that Appellate Body vacancies should be filled urgently. Presently, there were three Appellate Body vacancies. Unless these vacancies were filled soon, the WTO Membership was arriving at a situation where the current number of vacancies would rise to four before the end of 2018. Pakistan, once again, urged all WTO Members to discuss this matter with an open mind and show the utmost flexibility in order to ensure that the WTO Membership could ensure the continuity of the dispute settlement system. As a co-sponsor, Pakistan supported the joint proposal, which had been submitted by Mexico, and expressed its hope that a positive outcome could be achieved through this proposal.

9.7. The representative of Hong Kong, China said that her delegation was pleased to co-sponsor the proposal on Appellate Body selection processes, and encouraged all WTO Members that had not yet joined the proposal to support it. As Hong Kong, China had repeatedly expressed at previous DSB meetings, her delegation was deeply concerned with the prolonged impasse over the Appellate Body selection processes. This impasse was threatening the effective functioning of the WTO dispute settlement system. Vacancies on the Appellate Body should be filled as quickly as possible, without any delay. While Hong Kong, China took note that some procedural concerns had been raised, and was ready to discuss these to find a possible way forward, Hong Kong, China did not see a linkage between the selection processes and these procedural concerns. Hong Kong, China, thus, urged all WTO Members to exercise maximum flexibility to reach an agreeable solution to end the current impasse, so as to minimize the adverse effects on the WTO dispute settlement system.

9.8. The representative of the Russian Federation said that her country was deeply concerned about the continued US blockage with regard to the Appellate Body selection processes, and the fact that the United States had linked a launch of the selection processes with the resolution of "the problem". For the past six months, the United States had neither put forward what the actual problem was, nor provided any possible ways of resolving any such problem. As a result, WTO Members were not able to engage in a meaningful discussion and could not move towards a resolution of the matter at issue. Unilateral actions, such as these, have the potential to destroy the trust in the multilateral process and contribute to chaos with regard to multilateral rules, irrespective of whether or not the unilateral actions were taken under the pretence of complying with WTO rules. There was always room for improvement. Such improvement, however, should not run counter to the effective functioning of the WTO dispute settlement mechanism and the WTO as a whole. The Russian Federation, thus, called on the United States to provide a clear picture of the problem at issue, and propose potential solutions or stop the blockage.

9.9. The representative of the Bolivarian Republic of Venezuela said that his country supported the statement made by Colombia, on behalf of the GRULAC. Venezuela reiterated its deep concern about the unfortunate delay, caused by the lack of consensus, to appoint new Appellate Body

members. Like other WTO Members, Venezuela reiterated the importance of the Appellate Body, and its contribution to the multilateral trading system. Venezuela hoped that the WTO Member in question that was opposing the current appointment of new Appellate Body members would also come to understand the importance of the Appellate Body and take action in order to unblock the selection processes of new Appellate Body members, as set out in the joint proposal. This action would strengthen the confidence of WTO Members in the WTO dispute settlement system.

9.10. The representative of Switzerland said that, like many other WTO Members, his country was disappointed that the overdue launch of the processes to fill the three vacancies on the Appellate Body continued to elude the DSB. Switzerland had strong systemic concerns regarding the threat this situation posed to the WTO's key role in the settlement of trade disputes between Members. Switzerland, once again, invited all WTO Members, and in particular the major ones, to constructively engage in substantive discussions aimed at strengthening trust and overcoming the present stalemate with a sense of urgency.

9.11. The representative of Thailand said that her country supported the position of other WTO Members that the Appellate Body selection processes should be launched as soon as possible. Thailand thanked all WTO Members, which had jointly submitted the proposal to this end, and agreed that ensuring a standing Appellate Body was a duty, which had been entrusted to the DSB. In this regard, all WTO Members shared a responsibility to promptly resolve the present issue. Thailand regretted that, thus far, the DSB had been unable to resolve this matter. Thailand had followed closely the concerns, which had been raised in recent DSB meetings, and encouraged the United States to share its view as to how the DSB should address "the problem of persons continuing to serve on appeals well after their terms have expired". If this problem was an issue that should be resolved before WTO Members could agree to initiate the selection processes, Thailand was of the view that a concrete proposal was essential to facilitate Member's discussions towards possible solutions on this matter. Without prejudice to Thailand's position as to whether or not there should be a linkage between the start of the Appellate Body selection processes and the resolution of the systemic concerns, Thailand was open to consider any suggestions that could enable the DSB to break the deadlock and move forward. Thailand reiterated its willingness to work with the United States and all interested WTO Members in this regard.

9.12. The representative of Chinese Taipei said that her delegation shared the concerns expressed by other WTO Members at the present meeting. Linking Appellate Body appointment matters to other concerns was inappropriate, given the present circumstance of a prolonged delay in launching the Appellate Body selection processes. The deadlock had already had a serious impact on the overall effectiveness of the WTO dispute settlement system. Chinese Taipei, hence, reiterated its concerns and urged WTO Members to consider these issues in a well-balanced manner. Chinese Taipei stood ready to work with other WTO Members to find a way forward, which was in the best interest of the entire WTO Membership.

9.13. The representative of Singapore reiterated his country's serious systemic concerns about the lengthy delays in launching the Appellate Body selection processes. Singapore had co-sponsored the joint proposal to launch the selection processes, since its introduction at the November 2017 DSB meeting. The growing number of co-sponsors since then indicated the increasing concern that WTO Members had over this impasse. Presently, four out of seven Appellate Body positions were filled and the term of yet another Appellate Body member was set to expire in September 2018. Against this background, and if the vacancies were not filled, the WTO Membership would face an imminent paralysis. Given its heavy workload and significance, a fully-staffed Appellate Body was crucial to the proper functioning of the WTO dispute settlement mechanism, which, in turn, was an integral part of the rules-based multilateral trading system. The continued impasse adversely affected the credibility and functioning of the WTO, and it was essential that all current and future Appellate Body vacancies would be filled without any further delays. Systemic issues, which had been raised, could be discussed in a separate process. Singapore stood ready to engage constructively and to work with other WTO Members, as well as the Chairperson, to resolve this impasse.

9.14. The representative of Norway said that, as stated by her country at previous DSB meetings, a well-functioned dispute settlement system was Norway's primary interest. All WTO Members had to work together and show flexibility and commitment to find solutions to surpass the present deadlock. Norway, thus, encouraged all WTO Members to support the proposal, which had been co-sponsored by over 60 WTO Members. Norway believed that the process of filling Appellate Body

vacancies should not be dependent on finding solutions to procedural issues, related to the work of the Appellate Body. Nevertheless, Norway reiterated its openness and willingness to listen seriously and engage constructively with all and any WTO Member on any existing grievances with the dispute settlement system.

9.15. The representative of Australia said that her country referred to its previous statements made on this matter and reiterated its serious concerns with regard to the long-standing impasse, which had prevented the appointment of new Appellate Body members. Australia had joined over 60 WTO Members in co-sponsoring the proposal for the DSB to commence immediately a process to make appointments to the Appellate Body. As had been repeated in the DSB over many months, this proposal gave effect to the DSB's responsibility under Article 17.2 of the DSU, requiring vacancies on the Appellate Body to be filled as they arose. Australia joined Mexico in inviting other WTO Members to support the proposal and join the long list of co-sponsoring WTO Members. While Australia was disappointed that, once again, the WTO Membership was unable to reach consensus on the launch of Appellate Body selection processes, Australia continued to believe that, in the WTO, there was a group of Members with the will and commitment to find a way forward. Australia, like many other WTO Members that had spoken at the present meeting, remained willing to explore options for addressing the concerns that had been identified by one WTO Member regarding transitional arrangement for outgoing Appellate Body members, in anticipation that doing so, would unlock the current impasse in the Appellate Body selection processes. It was time for the WTO Membership to put words into action and commit to efforts to find positive, long-term solutions to the matters before the DSB, and to ensure the ongoing functioning and effectiveness of the WTO dispute settlement system.

9.16. The representative of Brazil said that her country endorsed the joint proposal, which had been submitted once again by 65 WTO Members for consideration at the present DSB meeting. More than 16 months had passed, since the DSB had first started discussions on the process to fill Appellate Body vacancies, and unfortunately, no progress had been achieved. Brazil remained extremely concerned with the current impasse and its effects on the proper functioning of the WTO dispute settlement system and, more generally, of the WTO and the multilateral trading system. In fact, the underlying question was whether a rules-based multilateral trading system could survive without the guarantor of the multilateral rules. Brazil had taken note of recent documents, which contained concerns with regard to the multilateral trading system. There were certainly issues that could be improved in the WTO in general and in its dispute settlement system in particular. For this, WTO Members would need to be mindful of the significant achievements of the current system, and at the same time, demonstrate good will to identify and improve specific issues of concern. In this regard, Brazil stood ready to engage in conversations with interested WTO Members and encouraged the prompt submission of concrete ideas and proposals to overcome this unfortunate impasse.

9.17. The representative of Ecuador said that his country had expressed its views on this issue at previous DSB meetings. Ecuador recalled that WTO Members' compliance with WTO rules was one of the fundamental principles governing the multilateral trading system. By failing to initiate the selection processes to fill the Appellate Body vacancies, the WTO Membership had failed to comply with WTO rules. For this reason, Ecuador supported the statement made by Colombia, on behalf of the GRULAC, and by Mexico, on behalf of the 66 proponents of the joint proposal. Ecuador was of the view that the linkage of procedural concerns with the appointment of new Appellate Body members was undermining the WTO dispute settlement system. These were two different issues, and should, thus, not be linked. Ecuador understood that Article 17.2 of the DSU to require that vacancies should be filled as quickly as possible, and it was, thus, the prerogative of the Chairperson to take the decision to initiate the selection processes as soon as possible to settle this matter in the interest of the WTO dispute settlement system and the WTO as a whole. Ecuador also recalled that the WTO Membership was constantly reminded of the need to respect another key principle of the WTO, namely, transparency. Ecuador, thus, invited WTO Members to reflect on whether it was sensible to speak about transparency given the current situation, in which the WTO Membership was barred from proceeding with the appointments of new Appellate Body members, given the importance of the Appellate Body.

9.18. The representative of Turkey said that his country wished to be associated with the statement made by Mexico, on behalf of the co-sponsors. Turkey regretted that the DSB had, once again, failed to launch the selection processes for the three vacant positions in the Appellate Body. Like many other WTO Members, Turkey was concerned about the workload of the Appellate Body,

as well as the overall dispute settlement system. Turkey was of the view that the concerns, which had been raised by the United States about the Appellate Body's working procedures, should be dealt with separately, and should not block the immediate start of the selection processes. Turkey, therefore, reiterated its call on all WTO Members to join the proposal soon.

9.19. The representative of India said that her country supported the proposal to launch the Appellate Body selection processes as a matter of priority. India recognized that the WTO dispute settlement system was the central pillar that provided security and predictability in the multilateral trading system. The wide use of the WTO dispute settlement system in the 23 years of its existence was a testament to Member's trust in the impartiality and effectiveness of the WTO dispute settlement system. It would be a severe blow to the rules-based multilateral trading system, if one of its central pillars were to become ineffective. India deeply regretted that the DSB had been unable to fulfil its legal obligation under Article 17.2 of the DSU to appoint Appellate Body members as new vacancies arose. This was a serious and urgent concern for the multilateral trading system and threatened to undermine the rights and obligations of WTO Members. India, therefore, urged all WTO Members to engage constructively to resolve this matter as soon as possible. India remained committed to work with other interested WTO Members to find a way to launch the Appellate Body selection processes as soon as possible.

9.20. The representative of Panama said that her country supported the statement made by Mexico, on behalf of the co-sponsors, as well as the statement made by Colombia, on behalf of the GRULAC. Panama shared the systemic concerns expressed by other delegations with regard to the current deadlock in launching the Appellate Body selection processes. The inability to initiate or complete what should be a routine task seriously undermined and jeopardized the functioning and the credibility of the WTO dispute settlement system and WTO rules, which, without the WTO dispute settlement system, would lose their effectiveness and would be less respected. This would, in turn, jeopardize the trade interests of WTO Members and result in major economic losses. Panama was of the view that there was no justification to continue the delay in launching the three selection processes to fill each of the three vacancies. Nevertheless, Panama noted the statements made by the WTO Member, which had raised concerns about the functioning of the Appellate Body and the rules governing the selection of new Appellate Body members. Panama invited the WTO Member, which had raised the mentioned concerns, to provide the WTO Membership with options and solutions *vis-à-vis* the concerns it had raised. Panama believed that flexibility and pragmatism were needed in order to overcome the current impasse.

9.21. The representative of Honduras said that her country considered the WTO dispute settlement system as one of the key pillars of the WTO. As an active Member of the system, Honduras reiterated its systemic concern with the current situation, which jeopardized the functioning of this pillar, and would, consequently, jeopardize the functioning of the entire multilateral trading system. Honduras, thus, urged all WTO Members to show flexibility and willingness to overcome this impasse as soon as possible, as this would be to the benefit of all WTO Members. Honduras supported the statement made by Mexico, on behalf of the proponents of the joint proposal, as well as the statement made by Colombia, on behalf of the GRULAC.

9.22. The representative of Korea said that his country referred to its previous statement made at DSB meetings under this Agenda item. Korea noted that, with the current impasse regarding the Appellate Body selection processes, it was not only the Appellate Body but the entire multilateral trading system would be undermined. Korea, thus, stood ready to engage in discussions and show flexibilities to resolve the problem.

9.23. The representative of New Zealand said that her country was seriously concerned about the ongoing impasse and considered that Appellate Body selection processes should be a routine matter. Delays in appointing Appellate Body members could have a bearing on the efficient and effective functioning of the WTO dispute settlement system, and had the potential to undermine the broader rules-based multilateral trading system. Despite its failure to agree on the proposal, which had been introduced by Mexico at the present meeting, New Zealand continued to strongly support the proposal to launch the Appellate Body selection processes as soon as possible. New Zealand invited all WTO Members to join the co-sponsors efforts to launch the selection processes. While New Zealand did not agree with the linkages that had been drawn, it once again confirmed its willingness to engage constructively with all WTO Members to find solutions to address the concerns, which had been raised, with regard to the WTO dispute settlement system, so that the DSB could ensure that it continued to fulfil its essential role in the WTO.

9.24. The representative of Japan said that his country thanked the WTO Members that had placed the joint proposal on the Agenda of the present meeting. Japan would not repeat its position, which it had stated at previous DSB meetings under the same Agenda item. Instead, Japan simply emphasized that it was the responsibility of the entire WTO Membership, acting as the DSB, to ensure the proper functioning of the WTO dispute settlement system, in a manner consistent with the DSU. Japan welcomed the readiness expressed by many WTO Members to engage, and looked forward to work with other interested WTO Members on this common endeavour.

9.25. The representative of China said that WTO Members had been unable to launch the Appellate Body member selection processes for over a year. No progress had been made. The reason for this impasse was widely known, both inside and outside the WTO. The WTO Member that had blocked the process, in the name of systemic concerns, had shared some of its reasoning at the previous DSB meetings. In the past two DSB regular meetings, the United States had asserted that China's interpretation of the word "rotation" "exhibits [a] fundamental misunderstanding of the DSU". However, China's reading of Article 17 of the DSU suggested otherwise. Specifically, Article 17 of the DSU set out the basic rules for the Appellate Body, while paragraph 1 thereof contained general provisions, paragraphs 2 to 14 focused on specific aspects of the appellate review. Article 17.1 served as the introductory paragraph with general rules and as a basis for subsequent paragraphs. The fourth sentence of Article 17.1 contained the rotation requirement, and thus, Appellate Body members' terms were not open-ended and they could not, necessarily, serve on one case throughout their terms. The specific provisions on rotation were provided under Article 17.2 of the DSU. If these provisions were interpreted as had been suggested by the United States, then the definition of "rotation" would be limited to the rotation of Appellate Body members only among different divisions, which would result an incomplete reading of Article 17.1 of the DSU. The United States had also claimed at previous DSB meetings that, unlike similar rules of many other international adjudicative bodies, the transitional rules under Rule 15 of the Working Procedures for Appellate Review had not been based on the WTO dispute settlement system's "constitutional text", namely, the DSU. The United States, thus, appeared to believe that the Appellate Body had made an improper analogy of Rule 15 to rules of other international tribunals and had reiterated this in previous DSB regular meetings. China had undertaken a brief survey of transitional rules of other international adjudicative bodies and had found that, for instance, in the case of the African Court on Human and People's Rights, a rule similar to Rule 15 was included in Article 2.2 of the Rules of the Court. The said rules had been adopted by the court.

9.26. The question as to whether or not Rule 15 had been included in the DSB's "constitutional text" should not prevent WTO Members from implementing such rule, or including such rule in the DSU, as an amendment after negotiations. The DSU itself was the result of negotiations of the Uruguay Round, and to recall, the WTO had not existed prior to 1995. The entire multilateral trading system was the result of tough negotiations. The United States had stated that "[t]he United States remains resolute in its view that Members need to resolve that issue first before moving on to the issue of replacing such a person. We therefore will continue our efforts and our discussions with Members and with the Chair[person] to seek a solution on this important issue". China, however, did not see any efforts, on the part of the United States, to seek resolution or to engage constructively in a meaningful discussion. Without the United States' constructive engagement, discussions on this matter would not be productive. There were currently three Appellate Body vacancies, and China reiterated its concerns that the unreasonable blockage by the United States would undermine the functioning of the WTO dispute settlement system and the credibility of the multilateral trading system. This could eventually result in a complete paralysis of the WTO. Without the WTO, and its enforceable WTO dispute settlement mechanism, trade rules would be trampled upon. Unilateral and protectionist actions such as Section 301 or Section 232 investigations, and associated measures, would become the norm, and all of this, would give rise to trade tensions among WTO Members or, eventually, even trade wars if the present situation was not handled with care. Such scenario should be avoided.

9.27. The representative of Uruguay said that her country referred to its previous statements made at the DSB, under this Agenda item. Uruguay supported the proposal, which had been submitted by Mexico, on behalf of several delegations, and endorsed the statement made by Colombia, on behalf of the GRULAC.

9.28. The representative of the Philippines said that her country placed great importance on the WTO dispute settlement system, including the Appellate Body, which played a crucial role in providing security and predictability to the rules-based multilateral trading system. In this regard, the Philippines noted its systemic concern with the delay in launching the Appellate Body selection processes. There were currently three vacancies, and a fourth vacancy would arise later this year. The effective functioning of the dispute settlement system was hinged on a fully composed Appellate Body; hence, the present vacancies had to be filled expeditiously. WTO Members would need to show flexibility so that a consensus could be reached for a DSB decision to launch the Appellate Body selection processes as soon as possible. The Philippines stood ready to engage constructively with WTO Members, in any configuration, in order to resolve the present deadlock.

9.29. The representative of Mexico, speaking on behalf of the 66 co-sponsors of the proposal, said that the proponents regretted that, for the eleventh time, WTO Members had not achieved consensus to start the selection processes for the Appellate Body vacancies and had, thus, failed to fulfil their duties as WTO Members. No discussion should prevent the Appellate Body from continuing to function fully, and WTO Members should comply with their obligation under the DSU, to fill the vacancies as they arose. By failing to act at the present meeting, the WTO Membership would maintain the current situation, which was seriously affecting the work of the Appellate Body and was against the best interest of WTO Members.

9.30. The representative of Guatemala said that his country understood and shared the disappointment and concerns expressed by other WTO Members. Guatemala had listened carefully to the statements made by the United States during the past eight months. Guatemala believed that a period of eight months had been sufficient to understand the concerns at issue. Particularly, when such concerns referred to procedural issues that did not involve a high degree of sophistication. Furthermore, Guatemala's perception was that a great majority of WTO Members would be willing to engage with the United States with a view to finding a solution to the concerns, which had been raised. However, Guatemala had not heard in the DSB whether the United States would be willing to appoint new Appellate Body members, if and when the DSB were to find a solution to the concerns the United States had raised at the DSB. Guatemala would appreciate if the United States could provide clarification as to whether or not a solution on the procedural issues, as had been identified by the United States in the DSB, would lead to the United States' agreement to appoint new Appellate Body members.

9.31. The representative of the European Union said that his delegation noted that everything had already been said, practically by everyone, at the present meeting. There was, however, one issue that had not yet been addressed. The United States had mentioned that, in recent months, two Appellate Body Reports had been adopted with "positive consensus". The EU was not aware of any Appellate Body Report that had ever been adopted by positive consensus. As in the past, Appellate Body Reports, which had been adopted thus far in 2018, had been adopted pursuant to Article 17.14 of the DSU.

9.32. The Chairperson thanked all delegations for their statements. She regretted that the DSB was, once again, not in a position to agree to launch the selection processes to fill the three Appellate Body vacancies. She noted that this matter required political engagement on the part of all WTO Members. She said that she was in the hands of WTO Members and that her door was open to any delegation wishing to share ideas or views on how to proceed with this issue. She further stated that it was her intention to consult informally with some delegations in line with the process carried out by the former DSB Chair, Ambassador Ihara. She also invited any delegations that had views on this matter to contact her directly.

9.33. The DSB took note of the statements.