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(21-2426) Page: 1/18

Dispute Settlement Body
22 February 2021

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 22 FEBRUARY 2021[1]

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

Prior to the adoption of the Agenda: (i) The Chairman welcomed all delegations participating in the virtual meeting of the DSB and recalled a few technical instructions regarding the virtual meeting. The Chairman recalled that, if a Member was unable to take the floor during the meeting because of a technical issue, the delegation could inform the Chairman or the Secretariat, and the Agenda item would remain open until the delegation could take the floor. In the alternative, the item would remain open temporarily, the meeting would proceed to the next Agenda item, and the DSB would revert to the open item after the technical issue had been resolved. If a technical issue remained unresolved, delegations had the option to send their statement to the Secretariat with the request that it be read out by the Secretariat on behalf of that delegation during the meeting so that the statement could be reflected in the minutes of the meeting; (ii) The item concerning the adoption of the Panel Report in "Pakistan – Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates" (DS538) was removed from the proposed Agenda following Pakistan's decision to appeal the Panel Report; and (iii) The Panel Report in the dispute: "United States – Anti-Dumping and Countervailing Duties on Certain Products and the Use of Facts Available" (DS539) was withdrawn from the proposed Agenda following Korea's written request to the Chairman of the DSB on 19 February 2021.

Table of Contents

[1] This meeting was held in virtual format only following the latest amendments to the COVID-19 related safety measures circulated by the WTO Health Task Force.

1 SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.212)

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.187)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.150)

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.34)

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States (WT/DS471/17/Add.26)

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

1.1. The Chairman noted that there were six sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. As Members recalled, Article 21.6 requires that: "[u]nless the DSB decides otherwise, the issue of implementation of the

recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time … and shall remain on the DSB's Agenda until the issue is resolved." Under this Agenda item, the Chairman invited delegations to provide up-to-date information about their compliance efforts. He also reminded delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "[r]epresentatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record." He then turned to the first status report under this Agenda item.

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.212)

1.2. The Chairman drew attention to document WT/DS184/15/Add.212, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.3. The representative of the United States said that the United States had provided a status report in this dispute on 11 February 2021, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations of the DSB that had yet to be addressed, the US Administration would confer with the US Congress with respect to the appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that Japan thanked the United States for its most recent status report and its statement made at the present meeting. Japan once again called on the United States to fully implement the DSB's recommendations and rulings so as to resolve this matter.

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

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.187)

1.6. The Chairman drew attention to document WT/DS160/24/Add.187, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.7. The representative of the United States said that the United States had provided a status report in this dispute on 11 February 2021, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

1.8. The representative of the European Union thanked the United States for its status report and its statement made at the present meeting. The European Union wished to make reference to its statements made at previous DSB meetings and reiterated its wish for this issue to be settled as soon as possible.

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

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.150)

1.10. The Chairman drew attention to document WT/DS291/37/Add.150, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

1.11. The representative of the European Union said that the Standing Committee meeting had been held online on 16 December 2020, during which the European Commission presented two authorisations for a vote.[2] The Standing Committee did not issue an opinion. The Commission had postponed the two authorisation decisions to the next online meeting of the Appeal Committee, to be held online on 26 February 2021. The United States frequently referred to member States' justifications issued during the meetings of the Standing Committee and Appeal Committee as being "political" and "not science based". The European Union underlined that the final decision on the authorisation was clearly science-based, as those genetically modified organisms were authorised where the European Food Safety Authority had finalised its scientific opinion and concluded that there were no safety concerns. As repeatedly explained by the EU and confirmed by the US delegation during the EU-US biannual consultations held on 27 October 2020, efforts to reduce delays in authorisation procedures were constantly maintained at a high level at all stages of the authorisation procedure. The European Union acted in line with its WTO obligations. Finally, the European Union recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.12. The representative of the United States thanked the European Union for its status report and its statement made at the present meeting. The European Union had suggested that, with respect to these delays, the fault was with the applicants. However, US concerns related to delays at every stage of the approval process that resulted from the actions or inactions of the EU and its member States. Recent outcomes of both the Standing Committee and Appeals Committee on Genetically Modified Food and Feed and Environmental Risk Assessment demonstrated the political nature of the comitology process – which repeatedly delayed safe products from receiving approval in the European market. EU member States cited the "Precautionary Principle" and "scientific reasons" as justification for not issuing approvals. However, those claims contradicted the fact that the European Food Safety Authority (EFSA) had successfully completed a science-based risk assessment for every product under consideration at those meetings. EU member States at the Standing Committee also cited "no agreed national position", "negative public opinion", and "political reasons" as justifications for reaching "no opinion" and for not approving those products. None of those justifications were science-based. The Appeals Committee meetings held on 12 November 2020, and 3 December 2020, which were meant to address those instances where member States reach "no opinion" regarding product approvals, cited the foregoing reasons as justification for not issuing biotech product approvals. The United States failed to see how this approval process addressed the undue delays contemplated in "EC – Approval and Marketing of Biotech Products" (DS291). The United States urged and requested that the European Union move to issue final approvals for the remaining products that had completed science-based risk assessments at EFSA, including those products that were with the Standing Committee and Appeals Committee.

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

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.34)

1.14. The Chairman drew attention to document WT/DS464/17/Add.34, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning anti-dumping and countervailing measures on large residential washers from Korea.

1.15. The representative of the United States said that the United States had provided a status report in this dispute on 11 February 2021, in accordance with Article 21.6 of the DSU. On 6 May 2019, the US Department of Commerce had published a notice in the US Federal Register announcing the revocation of the antidumping and countervailing duty orders on imports of large residential washers from Korea (84 Fed. Reg. 19,763 (6 May 2019)). With this action, the United States had completed implementation of the DSB recommendations concerning those anti-dumping and countervailing duty orders. The United States would consult with interested parties on options to address the recommendations of the DSB relating to other measures challenged in this dispute.

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

1.16. The representative of Korea said that Korea thanked the United States for its status report and its statement. Korea again urged the United States to take prompt and appropriate steps to implement the DSB recommendations for the "as such" measures in this dispute.

1.17. The representative of Canada said that the United States continued to fail to comply with the DSB's ruling, arising out of the Appellate Body report in this dispute, that the "differential pricing methodology" (DPM) was "as such" WTO-inconsistent. The United States had also ignored the DSB's recommendation that the United States bring itself into compliance with its obligations. Instead, the United States continued to apply the "as such" inconsistent differential pricing methodology in investigations with respect to foreign companies and continued to collect cash deposits from foreign exporters based on the inconsistent methodology. The reasonable period of time to implement the recommendations relating to the "as such" WTO-inconsistency of the DPM expired more than three years prior to the present meeting. However, in its most recent status report, the United States stated that it continued to consult with interested parties. Moreover, the continued use by the United States of the DPM had forced Members to resort to several dispute settlement proceedings concerning this measure. This was an inefficient and unnecessary use of WTO dispute settlement resources. Canada remained deeply concerned with the continued US failure to comply with the DSB's recommendations and rulings in this dispute. This failure seriously undermined the security and predictability of the multilateral trading system.

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

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States (WT/DS471/17/Add.26)

1.19. The Chairman drew attention to document WT/DS471/17/Add.26, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning certain methodologies and their application to anti-dumping proceedings involving China.

1.20. The representative of the United States said that the United States had provided a status report in this dispute on 11 February 2021, in accordance with Article 21.6 of the DSU. As explained in that report, the United States would consult with interested parties on options to address the recommendations of the DSB.

1.21. The representative of China said that China thanked the United States for its status report. However, China was very disappointed and had grave concerns about the US failure to implement the adopted recommendations and rulings of the DSB in this dispute. China noted that 30 months after the expiry of the reasonable period of time, the US WTO-inconsistent measures remained intact. China recalled that Article 21.1 of the DSU required the implementing Members to promptly comply with recommendations or rulings of the DSB. China, therefore, urged the United States to take concrete actions and achieve full conformity with WTO disciplines in this dispute without further delay.

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

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

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

1.24. The representative of Indonesia said that Indonesia had submitted its status report pursuant to Article 21.6 of the DSU. Indonesia reiterated its commitment to implementing the recommendations and rulings of the DSB in these disputes. Indonesia also continued to take note of concerns raised by New Zealand and the United States on measures 1-17 in previous DSB meetings. With regard to Measure 18, Indonesia submitted an update to the DSB, that the

Government continued to work on the implementing regulations of the Law No. 11/2020 on Job Creation. Indonesia would continue to engage with New Zealand and the United States regarding matters related to the recommendations and rulings of the DSB.

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

1.26. The representative of New Zealand said that New Zealand thanked Indonesia for its status report and acknowledged Indonesia's reiteration of its commitment to complying fully with the WTO decision. Both compliance deadlines had however, long since expired, and a number of measures remained non-compliant. This included Measure 18 and the continued enforcement of: (i) limited application windows and validity periods; (ii) harvest period import bans; (iii) import realisation requirements; and (iv) restrictions placed on import volumes based on storage capacity. New Zealand was particularly concerned that difficulties continued to be experienced in obtaining import recommendations and approvals. Whilst some import licences had been issued for 2021, a number of applications remained unprocessed and the time taken to process licenses was outside of the time-frame established in Indonesian regulations. New Zealand would be watching closely as applications were processed throughout the 2021 import period. New Zealand understood that Indonesia's Parliament had passed the Job Creation Bill the previous year, but New Zealand did not yet have the information necessary to assess what impact this would have on Indonesia's compliance with the WTO decision, in particular in respect of Measure 18. New Zealand invited Indonesia to provide further details regarding the changes to its laws and regulations. New Zealand strongly encouraged Indonesia to achieve full compliance with the WTO decision.

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

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

A. Statement by the European Union

2.1. The Chairman said that this item was on the Agenda of the present meeting at the request of the European Union, and invited the representative of European Union to speak.

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

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

2.4. The representative of the United States said that, as the United States had noted at previous DSB meetings, the Deficit Reduction Act – which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 – was enacted into law more than 14 years ago in

February 2006. The Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, more than 12 years ago. Accordingly, the United States had long ago implemented the DSB's recommendations and rulings in these disputes. Even aside from this, it was evidently not common sense that was driving the EU's approach to this agenda item. The European Union presently applied an additional duty of 0.012% on certain imports of the United States. There was no trade rationale for inscribing this item month after month. As it had done many times before, at the January DSB meeting, the European Union once again called on the United States to abide by its "clear obligation" under Article 21.6 for the United States to submit a status report in this dispute. Notably, the European Union had not called on any other Member in any other dispute to abide by this so-called "clear obligation," despite the fact that several Members were in the same situation as the United States. As the United States had explained repeatedly, there was no obligation under the DSU for a Member to provide further status reports once that Member announced that it *has implemented* the DSB's recommendations. The widespread practice of Members – including the European Union as a responding party – confirmed that understanding of Article 21.6. Indeed, at recent meetings, three Members – China, Brazil, and Australia – had informed the DSB that they had come into compliance with the DSB's recommendations in four disputes (DS472, DS497, DS517, and DS529), and the complaining parties did *not* accept the claims of compliance. Those Members announcing compliance had not provided a status report for the present meeting. This was consistent with the understanding that there was no obligation for a Member to provide further status reports once that Member had announced that it had implemented the DSB recommendations. The European Union was the complaining party in one of those disputes (DS472). If the EU believed that status reports were "required" under the DSU, it would have insisted that the responding Member provide a status report in that dispute, or the European Union would have inscribed that dispute as an item on the agenda of the present meeting. The European Union had taken neither action, nor had it explained the supposed difference between the two disputes. Through its actions, the European Union had once again demonstrated that it did not truly believe that there was a "clear obligation" under Article 21.6 to submit a status report after a party has claimed compliance. The European Union had simply invented a rule for this dispute, involving the United States, that it did not apply to other disputes involving other Members.

2.5. The representative of the European Union said that the European Union recalled that the CDSOA had been found to be in breach of WTO rules for transferring anti-dumping and countervailing duties to the US industry and that the DSB had authorized sanctions on the basis of the US failure to comply with the DSB's recommendations and rulings. That situation continued to persist for as long as the redistribution of collected duties continued. The circumstances of this case with regard to relevant DSU provisions and procedures were therefore entirely different from those in the case of "Brazil – Taxation" (DS472).

2.6. The DSB took note of the statements.

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

A. Statement by the United States

3.1. The Chairman said that this item was on the Agenda of the present meeting at the request of the United States. He then invited the representative of the United States to speak.

3.2. The representative of the United States noted that once again the European Union had not provided Members with a status report concerning the dispute *EC – Large Civil Aircraft* (DS316). As the United States had noted at several recent DSB meetings, the European Union had argued – under the previous agenda item – that where the European Union as a complaining party did not agree with the responding party Member's "*assertion* that it has implemented the DSB ruling," "the issue remains unresolved for the purposes of Article 21.6 DSU." Under this agenda item, however, the European Union argued that by submitting a compliance communication, the European Union as the responding party no longer needed to file a status report, even though the United States as the complaining party did *not* agree with the EU's assertion that it had complied. The EU's position was erroneous and not based on the text of the DSU. The EU argued that where "a matter is with the adjudicators, it is temporarily taken out of the DSB's surveillance" and the DSB was somehow deprived of its authority to "maintain surveillance of implementation of rulings and recommendations." Yet, there was nothing in the DSU text to support that argument, nothing in

Article 2 of the DSU or elsewhere that limited the DSB's authority in this manner, and the European Union had provided no explanation for how it read Article 21.6 of the DSU to contain this limitation. The European Union was not providing a status report because of its assertion that it had complied, demonstrating that the EU's principles varied depending on its status as a complaining or responding party. The US position on status reports had been consistent: under Article 21.6 of the DSU, once a responding Member announced to the DSB that it had complied, there was no further "progress" on which it could report, and therefore no further obligation to provide a status report. But as the European Union allegedly disagreed with this position, it should for future meetings provide status reports in this "EC – Large Civil Aircraft" dispute (DS316).

3.3. The representative of the European Union said that, as in previous DSB meetings, the United States had again stated that the European Union was taking inconsistent positions under Article 21.6 of the DSU, depending on whether the European Union was a complaining party or a defending party in a dispute. The US assertions were without merit. As the European Union had repeatedly explained in past meetings of the DSB, the crucial point for the defending party's obligation to provide status reports to the DSB was the stage of the dispute. In the Airbus case, the dispute was at a stage where the defending party did not have an obligation to submit status reports to the DSB. The European Union reminded the DSB that in the Airbus case the European Union had notified a new set of compliance measures to the DSB. That new set of compliance measures were a clear demonstration that the European Union – contrary to the United States in the parallel Boeing-case – was serious about and committed to achieving compliance. That new set of compliance measures were subject to an assessment by a compliance panel and that panel report had been issued on 2 December 2019. As noted in their statement at the relevant meeting of the DSB, the European Union was of the view that significant aspects of the compliance panel's report could not be regarded as legally correct and were very problematic from a systemic perspective when it came to assessing compliance with the subsidy disciplines of the WTO agreements. It was in order to have these legal errors corrected, and not in order to continue litigation for the sake of litigation, that the European Union had filed an appeal against the compliance panel report on 6 December 2019. The European Union was concerned that with the current blockage of the two-tier multilateral dispute settlement system, it was losing the possibility of a proper appellate review of the serious flaws contained in the panel report. While the blockage continued, the European Union stood ready to discuss with the US alternative ways to deal with the appeal.

3.4. The European Union was also committed to finding a balanced negotiated solution with the United States that would allow leaving both aircrafts disputes behind them. Those considerations did not, however, alter the fact that the compliance proceeding in this dispute had not been resolved. Whether or not the matter was "resolved" in the sense of Article 21.6 remained the very subject matter of that ongoing litigation. How could it be said that the defending party should submit "status reports" to the DSB in those circumstances. The European Union would be very concerned with a reading of Article 21.6 of the DSU that would require the defending party to notify the purported "status of its implementation efforts" through the submission of status reports to the DSB, while dispute settlement proceedings on that precise issue were ongoing. The European Union noted that its reading of the provision was supported by other WTO Members. The view of the European Union was further supported by Article 2 of the DSU, on the administration of the dispute settlement rules and procedures: where, further to the disagreement between the parties on compliance, a matter was with the adjudicators, it was temporarily taken out of the DSB's surveillance. Instead of progressively stepping-up retaliatory measures, one should step them down. With that in mind, the European Union reaffirmed its determination to obtaining a long-term resolution to the WTO aircraft disputes. A balanced, negotiated settlement was the only way to avoid mutually imposed countermeasures. The EU's willingness to find a negotiated solution was shown by the EU notification of 21 August 2020 (which was discussed at a previous DSB meeting) of additional and extraordinary compliance measures that withdrew all remaining subsidies and constituted appropriate steps to remove adverse effects, substantially in excess of what was required by Article 7.8 of the SCM Agreement. Those additional and extraordinary measures went far beyond what was required in order to discharge the European Union's compliance obligations, as required by Article 7.8 of the SCM Agreement. The European Union had procured those additional, extraordinary and costly compliance measures in an effort to persuade rational and reasonable stakeholders in the United States, including consumers, employers, workers, government officials and entities, airlines, and other economic operators, that now was the time to draw a line under those disputes. It was not in the interests of anyone that the European Union and the United States proceeded to, or continued, mutually assured retaliation, and certainly not in the present economic climate.

3.5. The representative of the United States said that the United States was aware that the EU had filed yet another notice of supposed compliance. The United States disagreed that the European Union had achieved compliance. Instead, the United States agreed with the second compliance panel report, which rejected the EU's assertions and found that 8 EU launch aid subsidies continued to cause adverse effects. The European Union asserted that it had amended 2 of those 8 measures; and therefore, it admittedly had made no changes to 6 WTO-inconsistent measures. Unfortunately, the amendments the European Union made to French and Spanish A350 XWB launch aid were marginal and insufficient to withdraw those subsidies. The European Union had also expressed doubt about US compliance in DS353 (*US – Large Civil Aircraft*). But no one could deny that Washington State had terminated the aerospace tax break – and the EU had not denied it. The text of the measure was public, and its terms had been notified to the WTO and the European Union. This was the sole measure found to cause adverse effects in the compliance proceeding and the sole basis for countermeasures authorized by the WTO. As it clearly had been withdrawn, the European Union had no basis for countermeasures of any kind.

3.6. The representative of the European Union said that, with regard to the additional Repayable Launch Investment (RLI) not covered by the EU notification that was mentioned by the United States, the European Union reiterated its position, as expressed earlier, that the compliance proceeding in this dispute had not been concluded due to the present blockage of the two-step multilateral dispute settlement system. Moreover, some of the measures mentioned by the United States had actually been amended and the European Union had fully explained this to the United States. Finally, it had to be noted that the other contested measures related to the RLI for the development of the A380 aircraft model. It was well known that Airbus decided in 2019 to completely wind-down the A380 programme. The last Airbus 380 rolled out of the production line in Toulouse, France, in September 2020. The production line had been closed and employees moved to other operations. The A380 RLI therefore could not cause any more adverse effects on the United States.

3.7. The DSB took note of the statements.

4 INDONESIA - MEASURES RELATING TO RAW MATERIALS

A. Request for the establishment of a panel by the European Union (WT/DS592/3)

4.1. The Chairman recalled that the DSB had considered this matter at its meeting on 25 January 2021 and had agreed to revert to it, should a requesting Member wish to do so. He then drew attention to the communication from the European Union contained in document WT/DS592/3 and invited the representative of the European Union to speak.

4.2. The representative of the European Union referred to the EU's statement made at the previous DSB meeting on 25 January 2021. The European Union urged Indonesia to bring its measures in line with its WTO obligations. In order to achieve this the European Union requested, for the second time, the establishment of a panel to fully examine those measures. This meant that, pursuant to Article 6.1 of the DSU, a panel would be established at the present meeting.

4.3. The representative of Indonesia said that Indonesia regretted the EU's decision to request, for the second time, the establishment of a panel in this dispute. Indonesia believed that the measures at issue were consistent with, and fully justified by, WTO rules and objectives. Nevertheless, Indonesia respected the EU's decision to refer this matter to a panel and stood ready to defend its measures before the panel. Indonesia understood that with this second request, the panel would be established at the present meeting. Indonesia looked forward to a constructive engagement with the European Union during the panel proceedings.

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

4.5. The representatives of Brazil, Canada, China, India, Japan, the Russian Federation, Singapore, Chinese Taipei, Turkey, Ukraine, the United Arab Emirates, the United Kingdom, and the United States reserved their third-party rights to participate in the Panel's proceedings.

5 UNITED STATES – ORIGIN MARKING REQUIREMENT

A. Request for the establishment of a panel by Hong Kong, China (WT/DS597/5)

5.1. The Chairman recalled that the DSB had considered this matter at its meeting on 25 January 2021 and had agreed to revert to it, should a requesting Member wish to do so. He then drew attention to the communication from Hong Kong, China contained in document WT/DS597/5 and invited the representative of Hong Kong, China to speak.

5.2. The representative of Hong Kong, China said that Hong Kong, China requested, for the second time, the establishment of a panel to examine the US revised origin marking requirement, which was inconsistent with various provisions under several WTO covered agreements. Despite Hong Kong, China's strong opposition, the United States had implemented a revised origin marking requirement starting from 10 November 2020, under which imported goods produced in Hong Kong could no longer be marked to indicate "Hong Kong" as their origin, but had to be marked to indicate "China". As Hong Kong, China had pointed out at the previous DSB meeting on 25 January 2021, the revised origin marking requirement was inconsistent with, among other things, the fundamental WTO obligation to provide Most-Favoured-Nation (MFN) treatment to all Members. It also violated various provisions of the WTO covered agreements, including the GATT 1994, the Agreement on Rules of Origin, and the Agreement on Technical Barriers to Trade, as stated in Hong Kong, China's panel request. The revised requirement impaired Hong Kong, China's rightful and legitimate interests under the relevant WTO covered agreements. Hong Kong, China continued to strongly object to the imposition of this arbitrary, unilateral, unnecessary, and unjustifiable requirement. Hong Kong, China thereby, once again, requested that the DSB establish a panel with standard terms of reference to examine the matter. Pursuant to the DSU provisions, a panel would have to be established by the DSB at the present meeting.

5.3. The representative of the United States said that the United States regretted that Hong Kong, China, had chosen to move forward with a request for panel establishment. In the US reply to Hong Kong, China's consultation request, the United States had made clear that the Executive Order identified by Hong Kong, China, had suspended the application of section 201(a) of the United States-Hong Kong Policy Act of 1992 to section 1304 of title 19 of the United States Code. The Executive Order had further determined that the situation with respect to Hong Kong, China, constituted a threat to the national security of the United States. The clear and unequivocal US position, for over 70 years, had been that issues of national security were not matters appropriate for adjudication in the WTO dispute settlement system. The United States therefore did not understand the purpose of this request for panel establishment, seeking WTO findings that the United States had breached certain WTO provisions. The WTO could not, consistent with Article XXI of the General Agreement on Tariffs and Trade 1994, consider those claims or make the requested findings. No WTO Member could be surprised by this view. For decades, the United States had consistently held the position that actions taken pursuant to Article XXI are not subject to review in GATT or WTO dispute settlement. Each sovereign had the power to decide, for itself, what actions were essential to its security, as was reflected in the text of GATT 1994 Article XXI.[3] Infringing on a Member's right to determine, for itself, what was in its own essential security interests would run exactly contrary to the efforts to revitalize and reform the WTO that are necessary to ensure that it lived up to its potential. There was no basis for a WTO panel to review the claims of breach raised by Hong Kong, China. Nor was there any basis for a WTO panel to review the invocation of Article XXI by the United States. The United States therefore did not see any reason for this matter to proceed further.

5.4. The representative of Hong Kong, China wished to respond briefly to the US remarks. While this was not the right forum for substantive debates on the interpretation and application of specific provisions in the WTO covered agreements, he wished to state for the record that Hong Kong, China disagreed with the US purported reliance on the security exceptions clause under Article XXI of the GATT 1994, and Hong Kong, China considered them not applicable to the revised origin marking

[3] GATT 1994 Article XXI(b) ("Nothing in this Agreement shall be construed … (b) to prevent any contracting party from taking any action *which it considers necessary* for the protection of *its essential security interests* … (italics added)).

requirement at issue. In this regard, Hong Kong, China considered it necessary and appropriate for a panel to be established to examine this matter, in accordance with the DSU provisions.

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

5.6. The representatives of Brazil, Canada, China, the European Union, India, Japan, Korea, Norway, the Russian Federation, Singapore, Switzerland, Turkey and Ukraine reserved their third-party rights to participate in the Panel's proceedings.

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

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

6.2. The representative of Mexico said that the delegations referred to in document WT/DSB/W/609/Rev.19, had agreed to submit the joint proposal, dated 7 December 2020, contained in the same document, to launch the selection processes for the vacancies of the Appellate Body Members. Mexico, on behalf of those 121 Members, wished to state the following. The extensive number of Members submitting the joint proposal reflected a common concern with the present situation in the Appellate Body, that was seriously affecting the overall dispute settlement system against the best interest of its Members. WTO Members had a responsibility to safeguard and preserve the Appellate Body and the dispute settlement and multilateral trading systems. Thus, it was their duty to proceed, without further delay, with the launching of the selection processes for the Appellate Body members, as submitted presently to the DSB. The proposal sought to: (i) start seven selection processes: one process to replace Mr Ricardo Ramírez-Hernández, whose second term expired on 30 June 2017; a second process to fill the vacancy occurred with the resignation of Mr Hyun Chong Kim with effect from 1 August 2017; a third process to replace Mr Peter Van den Bossche, whose second term expired on 11 December 2017; a fourth process to replace Mr Shree Baboo Chekitan Servansing, whose four-year term of office expired on 30 September 2018; a fifth process to replace Mr Ujal Singh Bhatia, whose second term expired on 10 December 2019; a sixth process to replace Mr Thomas R. Graham, whose second term expired on 10 December 2019; and a seventh selection process to replace Ms Hong Zhao, whose first four-year term of office expired on 30 November 2020; (ii) to establish a Selection Committee; (iii) to set a deadline of 30 days for the submission of candidacies; and (iv) to request that the Selection Committee issue its recommendation within 60 days after the deadline for nominations of candidates. The proponents were flexible in the determination of the deadlines for the selection processes, but Members should consider the urgency of the situation. Mexico stated that they continued to urge all Members to support this proposal in the interest of the dispute settlement and multilateral trading systems.

6.3. The representative of the European Union referred to the EU's statements on this issue made at previous meetings, starting in February 2017 (four years ago), and to the EU's statements made in the General Council meetings, including on 9 December 2019. Since 11 December 2019, the WTO was no longer able to guarantee access to a binding, two-tier, independent and impartial resolution of trade disputes. This was in clear breach of the WTO Agreements. As the European Union had

stated on numerous occasions, WTO Members had a shared responsibility to resolve this issue as soon as possible, and to fill the outstanding vacancies as required by Article 17.2 of the DSU. The European Union renewed its call on all WTO Members to engage in a constructive discussion so that the vacancies could be filled as soon as possible. The European Union thanked all Members that co-sponsored the proposal to launch the appointment processes and invited all other Members to endorse the proposal.

6.4. The representative of Korea said that Korea noted that Members had continuously voiced their concerns over the impasse of the Appellate Body and the urgency to revive the two-tier dispute settlement system. Korea supported the statement made by Mexico based on the joint proposal and urged all Members to engage constructively in the relevant discussions to resolve this important issue as soon as possible.

6.5. The representative of India referred to India's statements made on this issue at previous DSB meetings. India strongly believed in a two-tier, independent and impartial dispute settlement system as agreed by Members in the DSU. India therefore supported the proposal and requested all WTO Members to resolve the appointment of Appellate Body members and to start working on filling the outstanding vacancies as set out in Article 17.2 of the DSU.

6.6. The representative of Indonesia referred to Indonesia's previous statements delivered at previous DSB meetings with regard to similar agenda items. It was undeniable that the present crisis surrounding the appointment of the Appellate Body members had resulted in the inability of the Appellate Body to hear and considered the appealed cases in the WTO. Nevertheless, this matter was again on the DSB Agenda in order to once again make a call for the immediate launch of the AB selection processes. In this regard, Indonesia believed that immediate work to bring the Appellate Body back into the Organization would be imperative to secure predictability to global trade. The resolution of this matter should remain Members' priority. While offering Indonesia's long-standing commitment to constructively engage and contribute to the effort to solve this issue, Indonesia once again urged all Members to give their serious attention, willingness and commitment to the immediate appointment of the Appellate Body members.

6.7. The representative of China said that China supported the statement made by Mexico on behalf of the 121 Members who sponsored the proposal. China referred to its previous statements made on this important matter and reiterated its firm support to preserve a two-tier independent and impartial dispute settlement system. Maintaining a standing Appellate Body was a legal duty shouldered collectively by the entire Membership. Nothing could serve as an excuse to neglect this important treaty obligation. As many Members had noted, the continuation of paralysis undermined the confidence and trust that Members attached to the dispute settlement system. A dysfunctional Appellate Body had increasingly become a loophole for rules enforceability, which in turn seriously undermined the security of the multilateral trading system and had an impact on Members' interest towards new rules negotiations. Time was of the essence. Swiftly launching the selection processes and restoring the operation of the Appellate Body should remain the top priority of the entire Membership. Although there might be no easy fix, China firmly believed that an open, transparent, solution-based consultations with the constructive participation of all Members was the only way forward. China believed that the Walker process should continue as a valuable platform for future discussions. China renewed its commitment to the two-tier independent and impartial dispute settlement system and stood ready to further engage with Members on this urgent matter.

6.8. The representative of Hong Kong, China expressed Hong Kong, China's continued support for Mexico's statement, made on behalf of the co-sponsors, including Hong Kong, China. Hong Kong, China reiterated its concerns over the lack of progress in resolving the Appellate Body's impasse and reiterated the importance of resuming the full functioning of the two-tier dispute settlement mechanism. The AB selection processes should commence without any further delay. Hong Kong, China urged Members to continue with their efforts and constructive engagement until a solution was found.

6.9. The representative of Japan referred to Japan's statements made at previous DSB meetings. Japan supported the proposal and shared a sense of urgency with other WTO Members, towards an expeditious reform of the dispute settlement system of the WTO. As mentioned at previous DSB meetings, Japan's top priority was to reform the WTO dispute settlement system in a manner that would serve to achieve a long-lasting solution to the Appellate Body matters. To that end, Japan considered it essential that Members, as the owners of the dispute settlement system, participated

actively in discussions on reforms of the system. Furthermore, Members should seriously deal with the current situation that the Appellate Body was virtually non-operational, and that cases continued to be appealed into the void. Therefore, Japan spared no efforts to collaborate with other WTO Members on these matters.

6.10. The representative of South Africa said that South Africa supported the statement by Mexico on behalf of the 121 co-sponsors of the proposal. South Africa also supported the statement to be made by the African Group. South Africa recalled its previous statements on this issue. A functional dispute settlement mechanism was the cornerstone of the multilateral trading system and was essential to the functioning of the WTO. The restoration of an independent and impartial two-stage dispute settlement system was critical in ensuring the effective resolution of disputes in the WTO. South Africa emphasized the need to resolve the current impasse urgently and find a permanent solution to the appointment of the members of the Appellate Body. South Africa therefore called on all Members to ensure that they discharge their collective duty to select and appoint Appellate Body members as soon as possible. The resumption of the appointment processes of the Appellate Body members had to remain a priority for all WTO Members. South Africa therefore called on all Members to engage in a solution-oriented process in order to restore the Appellate Body as soon as possible.

6.11. The representative of the United Kingdom said that the United Kingdom continued its support for this proposal for the launch of the selection processes. The United Kingdom supported a fully functioning dispute settlement system as the best means of enforcing the rules Members had negotiated, ensuring the fair resolution of disagreements and preventing recourse to unilateral measures. Members had to commit themselves fully and collectively to the task of reform in order to ensure that the WTO remained relevant and respected. The United Kingdom stood ready to engage with all Members in solutions-based discussions on dispute settlement reforms.

6.12. The representative of Nigeria, speaking on behalf of the African Group, said that the African Group referred to its previous statements made on this very important issue. The African Group joined others in thanking the delegation of Mexico for their statement on the proposal for Appellate Body appointments. The African Group continued to regret that up until now, the DSB had failed in the performance of its functions under Article 17.2 of the DSU, which clearly was in breach of the rules despite the overwhelming number of Members submitting the joint proposal. The fact that the Appellate Body could not hear new appeals remained a concern to all Members. Members had a shared responsibility under the DSU, to safeguard the two-tier dispute settlement system. During the previous special General Council meeting, the new DG of the WTO called on Members to make every effort to strengthen the dispute settlement system. The African Group was fully in support of her call. Therefore, the Group urged the DSB to urgently meet its obligation under the DSU, which was to fill vacancies as they arose, as contained in this proposal for Appellate Body appointments, so as to maintain the two-tier dispute settlement system in order to ensure predictability within the multilateral trading system. Finally, the African Group urged all Members to engage constructively with each other in addressing the specific concerns raised against the functioning of the Appellate Body, with a view to finding a suitable compromise in this regard. The African Group believed that procedural issues might be addressed along with substantive issues. The African Group urged all Members to endorse the proposal as soon as possible. The African Group stood ready to engage constructively with all Members in that regard.

6.13. The representative of the United States said that the United States was not in a position to support the proposed decision. The United States continued to have systemic concerns with the Appellate Body. As Members knew, the United States had raised and explained its systemic concerns for more than 16 years and across multiple US Administrations. The United States looked forward to further discussions with Members on those concerns.

6.14. The representative of Brazil said that Brazil thanked Mexico for introducing the proposal on behalf of the co-sponsors. Brazil referred to its previous statements and as always was ready to work with all Members in order to find a sustainable solution to the current blockage.

6.15. The representative of Norway said that, at the end of 2020, Norway had noted with disappointment that Members had entered a new era, namely an era where the Appellate Body was no longer able to perform its functions. Norway had responded to that by calling on the United States to unblock the appointments and had insisted on tackling disruptive strategies through efforts to cooperate and find solutions. In the beginning of 2021, however, Norway sensed that Members may be entering yet another era, where such efforts could – if Members cooperated well – deliver

multilateral results. Norway continued to call for the unblocking of AB appointments and believed that this time the message was more tangible. Norway called on Members to come together and said that with unity Members could achieve great things.

6.16. The representative of Switzerland referred to the statements made by her country during previous DSB meetings. Switzerland's determination to resolve the present impasse remained solid and Switzerland invited all Members to make constructive contributions to try to find a solution. Switzerland hoped that a solution to this matter would be found as quickly as possible. Switzerland's priority was that the Appellate Body could work again smoothly to take into account the interests of all Members as quickly as possible. Switzerland was ready to work towards that objective along with other Members.

6.17. The representative of Canada said that Canada supported the statement made by Mexico and shared the concerns expressed by other Members at the present meeting. Canada invited those WTO Members who had not yet endorsed the proposal to join the 121 Members who were calling for the selection process to be launched. The critical mass of WTO Members who supported the initiative were a clear testimony to the importance that all Members accorded to a fully functioning Appellate Body as an integral part of the dispute settlement system. The fact that the Appellate Body could not hear new appeals was very worrying. Canada noted that the United States was in a period of transition as the new US administration was put in place. Canada reaffirmed its full commitment to participating in discussions aimed at identifying solutions regarding the functioning of the Appellate Body. Canada indicated that it would be delighted for the United States to commit to those discussions and invited them to do so. Canada's priority remained finding a lasting multilateral solution that involved all Members, including the United States. In the meantime, Canada and 24 other WTO Members had endorsed the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) as a contingency measure to safeguard their rights to binding two-stage dispute settlement in disputes amongst themselves. The MPIA was open to all WTO Members. Canada invited all WTO Members to consider joining the MPIA to safeguard their dispute settlement rights to the greatest extent possible until Members collectively found a permanent solution to the AB impasse. Canada remained available to discuss the MPIA with any interested Member.

6.18. The representative of Iceland said that Iceland fully supported the statement made by Mexico. As a small country and an open economy, Iceland was a strong supporter of the global framework governing international trade, which was based on the rule of law principle. Iceland viewed the WTO's two-step dispute settlement mechanism as playing a central role in providing predictability within that system and securing a fair playing field for all participating Members. The Organization's long-time lack of progress in filling the vacancies of the Appellate Body was therefore a source of grave concern for Iceland. Once again, Iceland called on all Members to engage in a constructive manner to solve this impasse and to do so without further delay.

6.19. The representative of Thailand said that Thailand supported the statement made by Mexico on behalf of the co-sponsors. Thailand, like other co-sponsors, had strongly advocated for a solution to the Appellate Body impasse. Thailand had observed the continued filing of appeals by Members before the Appellate Body, demonstrating the importance of the two-tiered dispute settlement system. The appointment of a new Director-General on 15 February 2021 at the General Council special meeting had given some positive news as well as much needed fresh perspective and guidance. Given her priority on solving the AB impasse, it renewed optimism among Members. In this context, Thailand looked forward to working with all Members and the new Director-General to reach a solution and bring back the full function of the Appellate Body.

6.20. The representative of New Zealand said that New Zealand reiterated its support for the co-sponsored proposal and referred to its previous statements made on this matter. New Zealand continued to urge all Members to engage, constructively, on the issues with a view to urgently addressing this serious situation. Following the appointment of the WTO Director-General, the year ahead presented an opportunity for Members to refocus their collective efforts on finding a solution that works for all Members.

6.21. The representative of the Russian Federation said that the Russian Federation thanked Mexico for its statement made on behalf of the co-sponsors. The Russian Federation referred to its previous statements with respect to the issue of appointment of Appellate Body members, its critical state and negative consequences for the dispute settlement mechanism and multilateral trading system. The Russian Federation reiterated its commitment to engaging in a constructive dialogue with all

WTO Members towards resolution of the crisis and restoration of an effectively functioning Appellate Body. The Russian Federation's top-priority was to immediately launch the appointment of the Appellate Body members. At the same time, the Russian Federation was determined to participate constructively in any negotiations on the Appellate Body reform.

6.22. The representative of Singapore thanked Mexico for its statement, which Singapore supported. Singapore referred to its past statements and wished to reiterate its strong systemic interest in maintaining the two-tier binding WTO dispute settlement mechanism that was underpinned by negative consensus. The unblocking of the Appellate Body selection processes had to remain the paramount priority for all Members. Singapore urged all Members, including the United States, to constructively engage in finding a lasting multilateral solution. Singapore also looked forward to the engagement of the new Director-General in Members' discussions on this matter.

6.23. The representative of Turkey thanked Mexico for tabling the proposal on behalf of the co-sponsors. Like others, Turkey recognized the importance of maintaining the two-tier dispute settlement system and underlined the urgent need to start the selection processes for the AB vacancies. Turkey also considered it important and necessary to resume multilateral discussions on crafting ways to improve the current system and address the concerns of members. For this, Turkey still considered the Walker process as a good basis to advance such discussions. Turkey stood ready to engage constructively to help overcome the impasse and invited all parties to engage in discussions with the Membership.

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

6.25. The representative of Mexico said that her country wished to refer to its previous statements on this matter. For more than two years Mexico's deep concern continued as Members were faced with an unprecedented situation with a non-existent Appellate Body. All ongoing disputes were affected by not having a fully functioning dispute settlement system, undermining the right of all Members to have a two-tier dispute settlement system, and putting at risk the prompt compliance with panel reports adopted by the DSB. The proposal submitted to the DSB at the present meeting, supported by 121 Members was requesting the launch of the AB processes to fill the seven vacancies in the Appellate Body. The situation was not sustainable and Members should not get accustomed to the status quo. That was why Mexico urgently called on Members who had not done so to join the proposal. Mexico remained ready to work constructively with concrete proposals in order to reach a concrete solution.

6.26. The Chairman thanked all delegations for their statements. He said that, as in the past, the DSB would take note of the statements expressing their respective positions, which would be reflected in the minutes of the present meeting. As Members were aware, this matter required a political engagement on the part of all WTO Members.

6.27. The DSB took note of the statements.

7 STATEMENT BY INDONESIA REGARDING THE IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB IN THE DISPUTE "AUSTRALIA – ANTI-DUMPING MEASURES ON A4 COPY PAPER" (DS529)

7.1. The representative of Indonesia, speaking under "Other Business", said that Indonesia, once again, regretted the fact that Australia had yet to provide a status report to the DSB on the implementation of the DSB's recommendations and rulings in DS529: "Australia – Anti–Dumping

Measures on A4 Copy Paper." Indonesia noted Australia's statement in the previous DSB meeting that "[t]he Review Panel is due to provide its report and recommendations to the Minister before 18 January 2021 and in usual circumstances, the Minister will then have 30 days to make a decision". Indonesia was pleased that the Minister recently affirmed the decision of the Australian Anti-Dumping Commission. However, Indonesia's understanding was that the Minister's decision could be appealed to the Federal Court of Australia and that the deadline for doing so was not until sometime in the middle of March. Indonesia remained concerned about the possibility that a court decision could change or revoke the decision terminating the anti-dumping measures against Indonesian producers of A4 copy paper in relation to the implementation of the rulings and recommendations of the Panel in DS529. Indonesia believed that the effect of such change or revocation would not be in line with Australia's obligations under the WTO Anti-Dumping Agreement and would affect Indonesia's exports of A4 copy paper to the Australian market. Indonesia, therefore, strongly encouraged Australia to provide status reports to the DSB until the issue was resolved, and urged Australia to ensure that all of its measures complied with the DSB's recommendations and rulings of the Panel in DS529. Indonesia stood ready to communicate and work closely with Australia to resolve this matter, with a view to achieving a mutually satisfactory solution, in accordance with the DSU.

7.2. The representative of Australia said that, as Australia had notified to the DSB in September 2020, the anti-dumping measures at issue in this dispute were revoked on 11 September 2020. The revocation of the relevant measures brought Australia into full compliance with the recommendations and rulings of the DSB. This revocation was affirmed by the Minister on 16 February 2021, following the completion of an administrative review process. As Indonesia had noted, Australia's system also provided procedures for judicial review – consistently with Article 13 of the WTO Anti-Dumping Agreement. Since the relevant measures no longer applied – something that Indonesia did not contest – Australia had no further compliance update to report to the DSB. Australia would continue to engage constructively with Indonesia, as required, in relation to Australia's compliance in this matter.

7.3. The DSB took note of the statements.

8 STATEMENTS BY PAKISTAN AND THE UNITED ARAB EMIRATES REGARDING THE DISPUTE ON: "PAKISTAN – ANTI-DUMPING MEASURES ON BIAXIALLY ORIENTED POLYPROPYLENE FILM FROM THE UNITED ARAB EMIRATES" (DS538)

8.1. The representative of Pakistan, speaking under "Other Business", said that Pakistan wishes to make a statement following its Notice of Appeal of the Panel Report in the dispute DS538, "Pakistan – Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates". Pakistan extended its thanks to the Panel and its members as well as to the WTO Secretariat who assisted the Panel in this dispute, especially in the difficult circumstances caused by the COVID-19 pandemic. In its Report circulated on 18 January 2021, the Panel had agreed with Pakistan in several instances, especially regarding the determination of the dumping. Some of the other findings reflected procedures that were already amended after the investigation at issue in this case and that no longer formed part of Pakistan's anti-dumping laws and practices. In certain other instances, however, Pakistan disagreed with the Panel's legal interpretations and felt compelled to seek review of those legal interpretations through an appeal. For instance, the Panel had found that Article 3.4 of the Anti-Dumping Agreement required an investigating authority to "examine the impact of the dumped imports on the domestic industry", such that "an investigating authority is required to identify the trends in the injury factors and place those trends in the relevant context that is informative of the injury suffered by the domestic industry". This finding created a causation requirement under Article 3.4 (in addition to that under Article 3.5) and added to the analytical workload required of the investigating authority. In another instance, Pakistan believed that the Panel had erred in its interpretation of the term "known" in Article 3.5, in deciding that the main UAE investigated company – Taghleef – had submitted enough information to make these factors "known" to the NTC in such a manner as to trigger an obligation for the authority to examine them. Finally, Pakistan felt that the Panel erred in finding that, in the Sunset Review, the NTC acted inconsistently with Article 11.3 of the Anti-Dumping Agreement by relying on a dumping margin that was inconsistent with Article 2 of the Anti-Dumping Agreement. Here, the interpretation of Article 11.3 limited the scope of actions of investigating authorities to determine the likelihood of dumping. These and similar instances had, therefore, compelled Pakistan to exercise its rights under the DSU and file an appeal pursuant to Rule 20 of the Working Procedures for Appellate Review. On 22 February 2021, Pakistan had submitted a proper Notice of Appeal as well as full Appellant's

Submission, as required under the relevant procedures. Pakistan was a strong supporter of the two-tiered dispute settlement system laid out in the DSU. Pakistan had also co-sponsored the proposal by Mexico and 121 other Members calling for the restoration of the Appellate Body and Pakistan had endorsed the statement made earlier under the agenda item concerning the Appellate Body Appointments proposal. However, the right to appeal was the right of every WTO Member. While the structure of the appellate system existed, it had been rendered dysfunctional due to reasons the Members had debated elsewhere. This development did not preclude Pakistan from exercising its rights when aggrieved and from believing and having faith, as Pakistan did, that the collective efforts of the WTO Members could soon find appropriate ways to restore the Appellate Body to a functional state again. This was the reason Pakistan had chosen to follow due procedure and protocol by submitting a proper Notice of Appeal as well as an Appellant's Submission, and not just a placeholder. It was for the same reason that Pakistan had also endorsed and joined the Multi-Party Appeal Arbitration (MPIA) mechanism, to keep the system running pending the eventual restoration of the appellate review mechanism to its functional state. Pakistan was always open to finding amicable resolutions to disputes, including the current one, and had made every effort towards making this happen at every step in this dispute. At the same time, Pakistan remained aware of its rights and obligations as a responsible WTO Member. Very recently, the delegation of Pakistan had received information from its Capital that the UAE wished to resolve this matter bilaterally in an amicable manner. Pakistan welcomed this development and awaited further details.

8.2. The representative of the United Arab Emirates said that the United Arab Emirates had requested the DSB to consider at the present meeting the adoption of the Panel Report in DS538 "Pakistan – Biaxially Oriented Polypropylene Film". However, the United Arab Emirates very much regretted Pakistan's decision to appeal that Panel Report. Indeed, the Panel had found that Pakistan acted inconsistently with several substantive and procedural obligations under the Anti-Dumping Agreement, both when imposing the anti-dumping measure and when extending it through a sunset review. In fact, the violations were of such a fundamental nature that the Panel had suggested that Pakistan bring its measures into conformity by withdrawing the measures. The Panel had made this unusual but important and necessary suggestion because of "the fundamental nature and pervasiveness of the inconsistencies" found in Pakistan's imposition of anti-dumping duties on the exports of BOPP. Rather than following up on the Panel's suggestion, Pakistan had decided to appeal the Panel Report. The Panel's long list of violations and the established "fundamental nature" of the inconsistencies found to exist raised doubts about the usefulness of an appeal. In this respect, the UAE quoted from paragraphs 9.5-9.6 of the Report, where the Panel had said the following: "we have found fundamental and pervasive inconsistencies, extending to the evidence on the basis of which the authority initiated the investigation, the chosen POI for the original investigation, multiple aspects of the determination of injury in the original investigation, and multiple aspects of the sunset determination. Because of the fundamental nature and pervasiveness of the inconsistencies we have found, we suggest that Pakistan implement our recommendation by withdrawing the anti-dumping measures it had imposed on BOPP film from the United Arab Emirates." It was needless to go through all the claims as they had been reported in the Report itself. Unfortunately, the fact that the Appellate Body was presently not functioning meant that this appeal would not be considered for a long time, thus delaying unnecessarily the resolution of this dispute and the implementation of the Panel's suggestion, which ultimately nullified the UAE's rights arising under the covered agreements. With that said, the UAE sincerely hoped that Pakistan would honour its WTO obligations and implement the Panel's findings, terminating the measures as soon as possible, and the UAE was ready to engage in any consultations or discussions which might solve the case sooner.

8.3. The representative of the European Union said that this was yet another dispute illustrating the grave consequences of the blockage of Appellate Body appointments since 2017. That blockage frustrated the essential rights of Members, rights that were agreed multilaterally under the DSU. The EU referred to its intervention under item 7 of the DSB meeting held on 28 September 2020, where the EU elaborated on those consequences and on the possibility of appeals being adjudicated through appeal arbitration based on Article 25 of the DSU, consistently with the principles of the DSU. The EU would not repeat those points at the present meeting.

8.4. The representative of the Russian Federation referred to the Russian Federation's previous statements with respect to the practice of appealing panel reports into the "void". At the present meeting the Russian Federation reiterated its disappointment with the fact that WTO Members had continued filing appeals notwithstanding the Appellate Body's critical state. With the appeal notified by Pakistan, the effective resolution of eight disputes had been blocked. The Russian Federation was greatly concerned that actions that resulted in the prevention of dispute settlement, in particular

appeals into the "void", aggravated the crisis of the dispute settlement mechanism and inevitably undermined confidence in the WTO.

8.5. The representative of Canada said that, since 11 December 2019, the Appellate Body had effectively ceased to function. Article 3.10 of the DSU provided that if a dispute arose, all Members would engage in dispute settlement procedures in good faith in an effort to resolve the dispute. While the inability of the Appellate Body to discharge its functions of hearing appeals had undermined the procedures set forth in the DSU, the obligation stipulated under Article 3.10 to engage in good faith to resolve the dispute remained. No Member should try to obtain an unfair advantage due to the present impasse. In the case of specific disputes, there were solutions for dealing with the current impasse with the Appellate Body. In particular, the parties might agree to resort to procedures such as those listed in Annex I of the MPIA (in document JOB/DSB/1/Add.12) to conduct the appeal. Canada considered that it was essential for all parties to a dispute to honour their commitment to act in good faith under the provisions of Article 3.10 of the DSU by doing their best to find an acceptable resolution. Failure to do so could lead to unilateral measures which, in turn, would undermine confidence in the rules-based multilateral trading system. No Member would benefit from such a system in the long run. No Member acting in good faith should find solace in enjoying an unfair short-term advantage it may have in the absence of a functioning Appellate Body.

8.6. The DSB took note of the statements