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Dispute Settlement Body
25 January 2021

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 25 JANUARY 2021[1]

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

Prior to the adoption of the Agenda: (i) The Chairman said that since this was the first DSB meeting in a virtual format he wished to draw attention to the following technical instructions: if a Member was unable to take the floor during the meeting because of a technical issue, that Member's delegation could inform the Chair or the Secretariat, and that Agenda item would remain open until the delegation could take the floor. If necessary, the item would remain open temporarily, the meeting would move on to the next Agenda item, and then the DSB could revert to the open item after the technical issue had been resolved; and (ii) The item concerning the adoption of the Panel Report in the dispute on: "Korea – Sunset Review of Anti-Dumping Duties on Stainless Steel Bars" (DS553) was removed from the proposed Agenda following Korea's decision to appeal the Panel Report.

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[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

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B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.186)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.149)

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.33)

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F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.20 – WT/DS478/22/Add.20)

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. He recalled that Article 21.6 required 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, he 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.211)

1.2. The Chairman drew attention to document WT/DS184/15/Add.211, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti–dumping measures on certain hot-rolled steel products from Japan.

1.3. The representative of the United States said that the United States had provided a status report in this dispute on 14 January 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 DSB's recommendations that had yet to be addressed, the US Administration would work with the US Congress with respect to the appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that his country wished to thank 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.186)

1.6. The Chairman drew attention to document WT/DS160/24/Add.186, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.7. The representative of the United States said that the United States had provided a status report in this dispute on 14 January 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. His delegation wished to refer to the EU's statements made at previous DSB meetings under this Agenda item. The EU wished to resolve this dispute 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.149)

1.10. The Chairman drew attention to document WT/DS291/37/Add.149, 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 during the online meetings of the Standing Committee on GM Food and Feed held on 15 September and 7 October 2020, the European Commission had presented for vote eight authorizations representing 38 possible GMOs. As the Standing Committee had not reached an opinion, the European Commission had presented those eight authorizations for a vote to the Appeals Committee. Although the Appeals Committee could

not reach an opinion on the authorizations presented for a vote, the eight authorizations for GM Food and Feed had been adopted on 22 January 2021. The Standing Committee meeting had been held online on 16 December 2020. The European Commission had presented two authorizations.[2] The Standing Committee had not reached an opinion. The European Commission would present the two authorization decisions at the next online meeting of the Appeals Committee. The EU continued to progress with the authorizations where the European Food Safety Authority had finalized its scientific opinion and concluded that there were no safety concerns. As repeatedly explained by the EU and confirmed by the United States during the EU-US biannual consultations held on 27 October 2020, efforts to reduce delays in authorization procedures were constantly maintained at a high level at all stages of the authorization procedure. The United States frequently referred to what was known as the EU "opt-out Directive". The EU wished to reiterate that the DSB's recommendations and rulings did not cover the "opt-out Directive". The EU acted in line with its WTO obligations. The EU wished to recall 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 (EU) for its status report and its statement made at the present meeting. The EU 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 resulting 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. During the most recent Standing Committee meetings (15 September 2020 and 7 October 2020), EU member States had cited the "*Precautionary Principle*" and "*scientific reasons*" as justification for not issuing approvals. However, these 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 these meetings. EU member States at the Standing Committee had also cited "*no agreed national position*", "*negative public opinion*", and "*political reasons*" as justifications for reaching "no opinion" and for not approving these products. As could be seen, none of these justifications were science-based. The Appeals Committee meetings held on 12 November 2020 and 3 December 2020, which had been meant to address those instances where member States reached "no opinion" regarding product approvals, had 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 this "EC – Approval and Marketing of Biotech Products" dispute (DS291). In this light, and taking into account the EU's statement at the present meeting, the United States requested a further update from the EU regarding the outcomes of the Standing Committee meeting held on 16 December 2020. The United States noted and appreciated the 22 January 2021 announcement that the European Commission had authorized five biotech crops (three corn and two soybeans) and renewed the authorizations for three maize crops used for food and feed. However, the United States also urged and requested that the European Union move to issue final approvals for the remaining products that had completed science-based risk assessments at the 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.33)

1.14. The Chairman drew attention to document WT/DS464/17/Add.33, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning anti-dumping and countervailing measures on large residential washers from Korea.

1.15. The representative of the United States said that the United States had provided a status report in this dispute on 14 January 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 anti-dumping and countervailing duty orders on imports of large residential washers from Korea (84 Fed. Reg. 19,763 (6 May 2019)). With this action, the United States had completed implementation of the DSB's recommendations concerning those

[2] Meeting of 16 December 2020: Maize MZIR086 and Cotton GHB614 x T304-40 x GHB 119.

anti-dumping and countervailing duty orders. The representative of the United States said that the United States would consult with interested parties on options to address the DSB's recommendations relating to other measures challenged in this dispute.

1.16. The representative of Korea said that his country wished to thank the United States for its status report. Once again, Korea urged the United States to take prompt and appropriate steps to implement the DSB's recommendations for the "as such" measure at issue in this dispute.

1.17. The representative of Canada said that the United States continued to fail to comply with the DSB's ruling, arising out of the Appellate Body report in this dispute, that the "differential pricing methodology" (DPM) was "as such" WTO-inconsistent. The United States had also ignored the DSB's recommendation that the United States bring itself into compliance with its obligations. Instead, the United States continued to apply the "as such" inconsistent differential pricing methodology in investigations with respect to foreign companies and continued to collect cash deposits from foreign exporters based on its inconsistent methodology. The reasonable period of time to implement the recommendations relating to the "as such" WTO-inconsistency of the DPM had expired more than two years ago. 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 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 stability 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.25)

1.19. The Chairman drew attention to document WT/DS471/17/Add.25, 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 14 January 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 DSB's recommendations.

1.21. The representative of China said that, on 22 May 2017, the DSB had adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body, in this dispute, which had found that the US measures at issue were in violation of anti-dumping rules. Since the United States continued to fail to implement the DSB's rulings in this dispute, China had been left with no other option but to request the DSB's authorization to retaliate in accordance with Article 22.2 of the DSU. On 1 November 2019, the arbitration under Article 22.6 of the DSU had concluded that China could request the DSB's authorization to retaliate at a level not exceeding USD 3.579 billion annually. China expressed serious disappointment with the unwillingness of the United States to move forward in this dispute. More than 29 months after the reasonable period of time had expired, the WTO-inconsistent US measures remained intact. The most recent US status reports had once again failed to identify any implementation action. China's legitimate interests continued to be infringed and there was no meaningful remedy available. Unfortunately, what China experienced in this dispute was not a single case. The record revealed that US implementation had long become a systemic concern to the entire Membership. In many of its defensive cases, especially trade remedy cases, the United States had substantially delayed or even completely ignored its compliance obligations. The recent paralysis of the Appellate Body had further exacerbated the situation. In the "US – Softwood Lumber VII" dispute (DS533) and in the "US – Tariff Measures" dispute (DS543), the United States had chosen to avoid multilateral disciplines simply by appealing into the void. These actions had severely undermined the effectiveness of the WTO dispute settlement system. Article 21.1 of the DSU makes it clear that: "[p]rompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all

Members". Therefore, China urged the United States to fulfil its implementation obligation 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.20 – WT/DS478/22/Add.20)

1.23. The Chairman drew attention to document WT/DS477/21/Add.20 – WT/DS478/22/Add.20, 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 his country had provided a status report pursuant to Article 21.6 of the DSU. Indonesia reiterated its commitment to implementing the DSB's recommendations and rulings in these disputes. Indonesia had also taken note of the continued concerns raised by New Zealand and the United States at previous DSB meetings, in particular with regard to measures 1–17. With respect to Measure 18, as Indonesia had indicated at the 18 December 2020 DSB meeting, the new Law that addressed this specific Measure, namely Law No. 11/2020 on Job Creation, had been promulgated and had entered into force on 2 November 2020. The Government of Indonesia was currently working on the implementing regulations of Law 11/2020. Indonesia would continue to engage with New Zealand and the United States regarding matters related to the DSB's recommendations and rulings.

1.25. The representative of New Zealand wished to thank Indonesia for its status report and acknowledged Indonesia's commitment to comply fully with the DSB's recommendations and rulings in this dispute. However, both compliance deadlines had long since expired, and a number of measures remained non-compliant. These included Measure 18 and the continued enforcement of limited application windows and validity periods, harvest period import bans, import realization requirements and 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. New Zealand would be watching closely as the application windows for the 2021 import period opened. New Zealand understood that Indonesia's Parliament had recently passed the Job Creation Bill. However, New Zealand did not yet have the information necessary to assess what impact this would have on Indonesia's compliance with the DSB's recommendations and rulings in this dispute, in particular in respect of Measure 18. New Zealand strongly encouraged Indonesia to achieve full compliance in this dispute.

1.26. 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 and meaningfully resolve this dispute.

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. He then invited the representative of the European Union to speak.

2.2. The representative of the European Union said that despite the repeated indications by the United States that the DSB's recommendations and rulings had been fully implemented by adopting the Deficit Reduction Act, disbursements under the Continued Dumping and Subsidy Offset Act (CDSOA) had been made every year since. Every disbursement that still took place under this legal basis was clearly an act of non-compliance with the DSB's recommendations and rulings in this

dispute. For this Agenda item to be considered resolved and removed from the DSB's surveillance, the United States had to fully stop transferring collected duties. The EU would continue to place this item on the Agenda of DSB meetings as long as the United States had not fully implemented the DSB's recommendations and rulings and the disbursements had not ceased completely. The EU would continue to insist – as a matter of principle – independently of the cost resulting from the application of such limited duties. The EU reiterated its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit implementation reports in this dispute since 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 his country wished to thank the European Union for placing this item on the Agenda of the present meeting. Canada agreed with the EU that the Byrd Amendment should remain subject to the surveillance of the DSB until the United States ceased to administer 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 – had been 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. On 26 June 2020, the EU had notified that it would apply 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 18 December 2020 DSB meeting, the EU had once again called on the United States to abide by its "clear obligation" under Article 21.6 of the DSU for the United States to submit a status report in this dispute. Notably, the EU 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 *had implemented* the DSB's recommendations. The widespread practice of Members – including the European Union as a responding party – confirmed this understanding of Article 21.6. Indeed, at recent meetings, three Members – Australia, Brazil, and China – had informed the DSB that they had come into compliance with the DSB 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 status reports 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 announced that it had implemented the DSB recommendations. The EU 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 EU would have inscribed that dispute as an item on the present meeting's Agenda. The EU had taken neither action. Therefore, it was once again clear that the EU did not truly believe that there was a "clear obligation" under Article 21.6 of the DSU to submit a status report after a party had claimed compliance. The EU 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 his delegation wished to recall 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 persisted as long as the redistribution of collected duties continued. The circumstances of this case with regard to relevant DSU provisions and procedures were therefore entirely different from those in the DS472 dispute.

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 EU had argued – under the previous Agenda item – that where the EU 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 of the DSU". Under this Agenda item, however, the EU argued that by submitting a compliance communication, the EU 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 EU provided no explanation for how it read Article 21.6 of the DSU to contain this limitation. The EU 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 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 EU 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 during previous DSB meetings, the United States had implied that the EU was taking inconsistent positions under Article 21.6 of the DSU, depending on whether the EU was a complaining party or a defending party in a dispute. The US assertions were without merit. As the EU had repeatedly explained during past DSB meetings, the crucial point for the defending party's obligation to provide status reports to the DSB was the stage of the dispute. In the "EC – Large Civil Aircraft" (DS316) case (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 EU wished to recall that in the Airbus case, the EU had notified a new set of compliance measures to the DSB. That new set of compliance measures had been a clear demonstration that the EU – contrary to the United States in the parallel "US – Large Civil Aircraft (second complaint)" case (DS353) (the Boeing-case) – was serious about and committed to achieving compliance. That new set of compliance measures had been subject to an assessment by a compliance panel and that panel report had been issued on 2 December 2019. As noted in the EU's statement made at the 18 December 2019 DSB meeting, the EU believed that significant aspects of the compliance panel report could not be regarded as legally correct and were very problematic from a systemic perspective when it came to assessing compliance with the subsidy disciplines of the WTO Agreements. It was in order to have these legal errors corrected that the EU had filed an appeal against the compliance panel report on 6 December 2019. The EU was concerned that with the current blockage of the two-step multilateral dispute settlement system, the EU was losing the possibility of a proper appellate review of the serious flaws contained in the panel report. While the blockage continued, the EU stood ready to discuss with the United States alternative ways to deal with this appeal. The EU was also committed to finding a balanced negotiated solution with the United States that would allow leaving both aircrafts disputes behind them. The EU noted that these considerations did not, however, alter the fact that the compliance proceeding in this dispute had not been concluded. Whether or not the matter was "resolved" in the sense of Article 21.6 of the DSU remained the very subject matter of this ongoing litigation. The EU asked how it could be claimed that the defending party should submit "status reports" to the DSB in these circumstances. The EU 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 EU noted that its reading of the provision was supported by other WTO Members. The

view of the European Union was further supported by Article 2 of the DSU on the administration of the dispute settlement rules and procedures: where, further to the disagreement between the parties on compliance, a matter was with the adjudicators, it was temporarily taken out of the DSB's surveillance.

3.4. The EU considered that instead of progressively stepping-up retaliatory measures, the EU and the United States should step them down. With that in mind, the EU reaffirmed its determination to obtaining a long-term resolution to the WTO aircrafts disputes. A balanced negotiated settlement was the only way to avoid mutually imposed countermeasures. The EU's willingness to find a negotiated solution was also shown by its notification dated 21 August 2020, which had been discussed at previous DSB meetings, 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. These additional and extraordinary measures went far beyond what was required in order to discharge the EU's compliance obligations under Article 7.8 of the SCM Agreement. The EU had procured these additional, extraordinary and costly compliance measures in an effort to persuade rational and reasonable stakeholders in the United States, including consumers, employers, workers, government officials and entities, airlines and other economic operators, that now was the time to draw a line under these disputes. It was not in the interests of anyone that the EU and the United States proceed to, or continue, mutually assured retaliation, and certainly not in the current economic climate.

3.5. 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 drew attention to the communication from the European Union contained in document WT/DS592/3. He then invited the representative of European Union to speak.

4.2. The representative of the European Union said that Indonesia had had a policy in place for a number of years designed to boost its industrial capacities at the intermediate stages of stainless steel production. This policy included a number of measures aimed at developing a rapid increase of Indonesian production for exports in the steel sector. As a result of Indonesia's measures, stainless steel capacity in Indonesia had grown from zero in 2015 to 6 million metric tonnes in 2020, while the capacity in the EU had been reduced from 9.5 million tonnes to 8.4 million tonnes in a very short period of time. In order to reach and support this exponential growth, Indonesia had a number of measures in place that heavily affected trade in stainless steel raw materials. One of the measures maintained by Indonesia was an export prohibition on nickel ore. Varying degrees of restrictions on exports of nickel ore had been in place since 2014 at the latest and enforced in different manners and through different sets of rules throughout the years. As of January 2020, a full ban was in place on all exports of nickel ore, which in this way remained reserved for the Indonesian industry only. In addition, Indonesia had domestic processing requirements in place for nickel ore and iron ore. These requirements obliged businesses to enhance the value added of the raw materials in Indonesia prior to exporting them, by subjecting them to mandatory processing and purification operations in Indonesia. These requirements unduly restricted exports of unprocessed raw materials. These measures were in clear violation of Indonesia's WTO obligations, specifically the prohibition of restricting exports of products, in this case raw materials for the production of stainless steel, to other WTO Members. The EU urged Indonesia to bring these measures in line with its WTO obligations. To this end, the EU requested the establishment of a panel to fully assess and rule on the legality of Indonesia's measures. The EU also stood ready to discuss with Indonesia reciprocal interim arrangements that would preserve the availability of appeal review in this and other disputes on the basis of Article 25 of the DSU, either through an arbitration agreement as set forth in Annex 1 of the Multi-party interim appeal arbitration arrangement (MPIA) or through such an agreement concluded on an ad hoc basis.

4.3. The representative of Indonesia said that given consultations held in good faith between Indonesia and the EU on 30 January 2020, his country expressed regret that the EU had decided to move forward with a request for the establishment of a panel in this dispute at the present meeting. During consultations, Indonesia had provided comprehensive responses to all questions raised by the EU and had engaged constructively with the EU towards finding accommodating solutions for

both parties. In this regard, Indonesia welcomed the fact that the European Union had decided not to further pursue claims under the GATT 1994 and the SCM Agreement in relation to certain measures that had been subject to consultations. Indonesia believed that progress could still be achieved in relation to other measures at issue. Accordingly, Indonesia believed that it was premature for the EU to request the establishment of a panel at the present meeting. For this reason, Indonesia was not in a position to agree with this panel request. Indonesia stood ready to consult further with the EU regarding this matter.

4.4. The representative of the European Union said that his delegation also expressed regret that consultations had failed to settle this dispute. As a result, the EU needed to proceed with the panel process. The EU remained available to find a mutually agreed solution at any time, provided that such solution included the elimination of the violating measures by Indonesia.

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

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 drew attention to the communication from Hong Kong, China contained in document WT/DS597/5. He then invited the representative of Hong Kong, China to speak.

5.2. The representative of Hong Kong, China said that his delegation was requesting the establishment of a panel to examine the revised US origin marking requirement that 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 which required that 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" for the purposes of the said revised origin marking requirement. Hong Kong, China strongly objected to this arbitrary, unilateral, unnecessary and unjustifiable requirement. The revised origin marking requirement impaired Hong Kong, China's rightful and legitimate interest under the relevant WTO covered agreements. It was also inconsistent with, among others, the fundamental WTO obligation to provide Most-Favoured-Nation (MFN) treatment to all Members and 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.

5.3. Hong Kong, China said that for many decades before the implementation of the revised origin marking requirement at issue, goods originating from Hong Kong had been marked as products of "Hong Kong" origin. The United States had now imposed a restriction requiring goods originating from Hong Kong to be marked as products of "China". The revised requirement disregarded the fact that Hong Kong, China was a separate customs territory and a Member of the WTO in its own right. The revised requirement was also blatantly discriminatory in nature, because it did not extend to products of Hong Kong origin immediately and unconditionally the same advantages, favours, privileges, or immunities that the United States extended to like products originating in the territory of other countries and customs territories. The United States also did not accord to the products of Hong Kong treatment with regard to origin marking requirements no less favourable than the treatment that the United States accorded to like products of other countries and customs territories. Nor did the United States administer its origin marking requirements in a uniform, impartial and reasonable manner.

5.4. Hong Kong, China said that the revised origin marking requirement imposed unnecessary burdens upon its business enterprises and caused confusion to consumers. Both before and after the resumption of the exercise of sovereignty by the People's Republic of China on 1 July 1997, goods produced in Hong Kong had been marked, correctly, as products of "Hong Kong" or "Made in Hong Kong". This was how their products were known around the world, including among consumers in the United States. The unilateral imposition of the revised origin marking requirement confused the market, and its business enterprises now needed to mark their products in one way when destined for sale in the United States, and in the correct way when destined for sale elsewhere. Not only was this revised requirement logistically burdensome, but it also undermined the investments that its business enterprises had made in developing the Hong Kong brand. It should be further

noted that Hong Kong, China had its own laws and regulatory regimes, for example product safety standards and licensing requirements. Therefore, consumers in the United States should not be deprived of such factual and important information if a product originated from Hong Kong. The revised origin marking requirement also disregarded the fundamental objective of the Agreement on Rules of Origin, which sought to determine, objectively, precisely and accurately, the origin of imported products. In respect of products produced in Hong Kong, the United States imposed a requirement that mandated the fulfilment of a certain condition not relating to manufacturing or processing, as a prerequisite for the determination of their origin. The United States also failed to administer its rules of origin in a consistent, uniform, impartial and reasonable manner. The above was clearly not WTO-consistent. Hong Kong, China said that from the standpoint of the multilateral trading system, it was deeply erroneous for any WTO Member to impose on another Member a unilateral and arbitrary origin marking requirement that bore no relationship to the actual origin of the product under the WTO regime and that misinformed consumers that the product originated from a third WTO Member. The proper determination of a product's origin should be a technical and rules-based exercise exclusively informed by the facts surrounding its manufacturing or processing, and not an occasion for political theatrics. Otherwise, rules of origin would lose their function of relating the origin of an imported product to a particular WTO Member, which was the basis to determine many of the rights and obligations in relation to that product under international trade law. The application of rules of origin should in no circumstances be deployed as a means for achieving political ends.

5.5. Hong Kong, China said that it had requested consultations with the United States on 30 October 2020. Consultations had been held on 24 November 2020, but the parties had failed to reach a mutually satisfactory solution to resolve this dispute. Hong Kong, China reiterated that the revised origin marking requirement imposed by the United States was not WTO-consistent and had substantial trade and systemic implications for the multilateral trading system. As a result, Hong Kong, China requested that the DSB establish a panel with standard terms of reference to examine this matter. In the meantime, Hong Kong, China continued to urge the United States to honour its commitments under the WTO covered agreements and immediately withdraw its revised requirement.

5.6. The representative of the United States said that the United States regretted the request by Hong Kong, China and was not in a position to support the proposed decision. As Members knew, a new US President had been inaugurated on 20 January 2021 and the United States was currently transitioning to a new Administration.

5.7. The representative of Hong Kong, China said that his delegation took note of the circumstances mentioned by the United States. Hong Kong, China still considered it necessary and appropriate for a panel to be established to examine this matter in accordance with the DSU provisions.

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

6 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/675)

6.1. The Chairman drew attention to document WT/DSB/W/675 which contained new nominations proposed by Ecuador for inclusion on the Indicative List of Governmental and Non-Governmental Panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/675.

6.2. The DSB so agreed.

7 APPELLATE BODY APPOINTMENTS: PROPOSAL BY AFGHANISTAN; ANGOLA; ARGENTINA; AUSTRALIA; BANGLADESH; BENIN; PLURINATIONAL STATE OF BOLIVIA; BOTSWANA; BRAZIL; BURKINA FASO; BURUNDI; CABO VERDE; 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)

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

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

7.3. The representative of the European Union said that his delegation wished to refer to the EU statements made on this issue at previous DSB meetings, starting in February 2017, as well as to its statements made at the General Council meetings, including at the 9 December 2019 General Council meeting. Since 11 December 2019, the WTO no longer guaranteed access to a binding, two-tier, independent and impartial resolution of trade disputes. This was in clear breach of the WTO Agreements. As the EU had stated repeatedly, 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 EU renewed its call on all WTO Members to engage in a constructive discussion so that the AB vacancies could be filled as soon as possible. The EU thanked all Members that had co-sponsored the proposal to launch the AB selection processes. The EU invited all other Members to endorse this proposal.

7.4. The representative of the Russian Federation said that her country wished to thank Mexico for its statement made on behalf of the co-sponsors. The Appellate Body crisis was a problem that struck at the heart of this Organization. While the Appellate Body remained only in text of the WTO

Agreement, certain WTO Members continued to file appeals into the void. As of the present meeting, the resolution of seven disputes was effectively blocked. This was a clear indication that WTO Members did not have an adequate alternative to the Appellate Body. Unfortunately, this represented a stalemate for WTO Members and blocked panel reports. However, the downside of appeals into the void did not cause risks only for complainants. On a broader scale, the confidence in the WTO as a whole was being severely undermined. Russia was greatly concerned with the critical condition of the Appellate Body and its consequences for the multilateral trading system. Russia was determined to continue working with all WTO Members, including the United States and its new administration, towards a constructive dialogue aimed at resolving the AB crisis. It was also important to start thinking of how to prevent such problems in the future. It was Russia's top priority to immediately launch the AB selection processes. At the same time, Russia was committed to engaging constructively in negotiations on AB reform.

7.5. The representative of Indonesia said that his country wished to refer to its statements made at previous DSB meetings under this Agenda item. Members continued the long-standing discussion on the effort to immediately launch the Appellate Body selection processes. Notwithstanding the fact that the current situation had adversely impacted the interests of the majority of WTO Members in terms of bringing predictability to global trade, Members had yet to agree on a solution to the current crisis. Hence, given the situation, it should be the utmost priority of all Members to solve this crisis. Indonesia offered its long-standing commitment to constructively engage and contribute to the effort to resolve this issue. Indonesia, once again, urged all Members to give serious attention, willingness and commitment towards the immediate appointment of new Appellate Body members.

7.6. The representative of Colombia said that the effective settlement of disputes was at the core of the multilateral trading system. If for an extended period of time there was no workable solution to resolve disputes, this could result in a progressive erosion of WTO Members' rights and commitments. The incentives to strictly follow a given discipline, to strictly communicate about it and monitor it or to act in good faith during negotiations over new rules would progressively weaken. Colombia co-sponsored the proposal under this Agenda item and invited Members to collectively unblock the AB selection processes as a multilateral solution to the current impasse. Colombia had seen with concern a significant number of new disputes risking the possibility of remaining unresolved should they be appealed into the void after the panel stage. This was particularly worrisome from the perspective of small and medium-sized Members. In the interim, while Members collectively put in place a multilateral solution, Colombia wished to invite other Members to join the MPIA. It was time to avoid the progressive erosion of Members' rights and obligations under the DSU and other pillars that came with a non-fully functioning dispute settlement mechanism.

7.7. The representative of Thailand said that his country supported the statement made by Mexico on behalf of the co-sponsors. Thailand reiterated its continued concern about the fact that all vacancies in the Appellate Body remained unfilled. This reflected deeply divergent views among Members. Thailand noted the high importance that Members had placed on a two-tier dispute settlement system, as many Members continued to file for appeals before a non-functioning Appellate Body. Therefore, Thailand strongly urged Members to find possible ways to reach a solution expeditiously in order to resume the full functioning of the Appellate Body. Thailand stood ready to engage constructively with Members in these efforts.

7.8. The representative of China said that his country supported the statement made by Mexico on behalf of the 121 Members that co-sponsored this proposal. China wished to refer to its statements made at previous meetings of the DSB and the General Council on this important matter. China reiterated its firm support for a two-tier, independent and impartial dispute settlement system. The current two-tier dispute settlement system was an integral part of the Uruguay Round Single Undertaking. Articles 17.1 and 17.2 of the DSU specifically required that WTO Members maintain a standing Appellate Body by promptly filling its vacancies. In other words, absent consensus, there was no legitimate reason for any Member to disrespect this legal obligation and try to unilaterally rewrite the negotiated outcome. As Members had observed in 2020, a non-functioning Appellate Body had seriously undermined the security of the multilateral trading system, especially in this once-in-a-century pandemic when the world needed such security more than ever. The continued Appellate Body paralysis, accompanied by an increasing number of "appeals into the void", made it easier for WTO-inconsistent measures to avoid sanctions. When old rules began to lose their enforceability, Members had less appetite for negotiating new rules. Hence, if Members truly wished to reinvigorate the WTO's negotiating pillar, the right direction for Members was to further strengthen rather than cripple the dispute settlement pillar. China believed that the status quo was

unsustainable. China called on Members to constructively participate in solutions-based consultations and to launch the AB selection processes without further delay. China stood ready to further engage with Members on this important matter.

7.9. The representative of India said that his country wished to refer to its statements made at previous DSB meetings on this matter. Since 11 December 2019, the WTO no longer guaranteed access to a binding, two-tier, independent and impartial system for the resolution of trade disputes, as there was no standing Appellate Body to hear appeals from panels. Therefore, India requested that all WTO Members resolve this matter and work on filling the outstanding AB vacancies as set out in Article 17.2 of the DSU.

7.10. The representative of Korea said that his country noted that many Members had continuously voiced their concerns over the Appellate Body impasse and the urgency to revive the two-tier dispute settlement system. His country supported the statement made by Mexico on behalf of the co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.19. Korea urged all Members to engage constructively in the discussions aimed at resolving this important issue as soon as possible.

7.11. The representative of New Zealand said that her country reiterated its support for the co-sponsored proposal and wished to refer to its statements made at previous DSB meetings on this matter. New Zealand continued to urge all Members to engage constructively on the issues with a view to urgently addressing this very serious situation.

7.12. The representative of South Africa said that his country supported the statements made by Mexico on behalf of the co-sponsors and by Nigeria on behalf of the African Group. South Africa wished to recall its statements made at previous DSB meetings on this matter. Once again, South Africa emphasized the need to resolve the current impasse urgently and to find a permanent solution to the appointment of the members of the Appellate Body. Therefore, South Africa called on all Members to ensure that they discharged their collective duty to select and appoint Appellate Body members as soon as possible. The resolution of the appointment process of Appellate Body members had to be high on Members' agenda going forward. His delegation stood ready to further engage with all Members on this very important issue.

7.13. The representative of Nigeria, speaking on behalf of the African Group, said that the Group wished to refer to their statements made at previous DSB meetings on this very important issue. The Group also wished to thank Mexico for its statement made at the present meeting on behalf of the co-sponsors of the AB proposal. The Group wished to express regret that up to now the DSB had failed in the performance of its function under Article 17.2 of the DSU. This was clearly in breach of the rules despite the overwhelming number of Members submitting this joint proposal. Therefore, the Group urged the DSB to urgently fulfil its obligation under the DSU, which was to fill vacancies as they arose so as to ensure that the Appellate Body did not collapse permanently. The African Group believed that procedural matters could be addressed alongside substantive issues. The African Group encouraged Members to sincerely engage constructively with each other in order to finally put this issue to rest. The African Group stood ready to engage constructively with other Members.

7.14. The representative of Switzerland said that her country wished to refer to its statements made at previous DSB meetings on this matter. Members should continue to try to resolve the current AB impasse. Switzerland called on all Members to engage constructively to find concrete solutions. At the start of a year filled with uncertainty, Switzerland remained hopeful and reiterated the importance of finding a solution. Switzerland urged all WTO Members to join discussions in order to overcome the current situation. Switzerland remained committed to working with all Members to achieve this goal. Ensuring that the appellate stage once again became fully functional in the interest of all Members remained Switzerland's priority.

7.15. The representative of Canada said that his country supported the statement made by Mexico and shared the concerns expressed by other Members at the present meeting. Canada invited WTO Members that had not yet co-sponsored the proposal contained in document WT/DSB/W/609/Rev.19 to consider joining the 121 Members calling for the launch of the AB selection processes. The critical mass of WTO Members behind this proposal was a clear testimony to the importance that they all 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 of great concern. Canada reiterated

that it was fully committed to discussions on matters related to the functioning of the Appellate Body. Canada's priority remained to find a long-lasting multilateral resolution to the impasse that covered all Members, including the United States. In the meantime, Canada and 23 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.

7.16. The representative of Japan said that his country wished to refer to its statements made at previous DSB meetings on this matter. Japan supported the proposal contained in document WT/DSB/W/609/Rev.19. Japan completely shared the sense of urgency of other WTO Members regarding an expeditious reform of the WTO dispute settlement system. 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 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 reforming he system. Members had to face the present situation, whereby the Appellate Body had become virtually non-operational, seriously. Meanwhile, seven cases had already been appealed into the void. For that purpose, Japan would spare no effort in collaborating with other Members.

7.17. The representative of the United States said that the United States was not in a position to support the proposed decision. As Members knew, a new US President had been inaugurated on 20 January 2021 and the United States was currently transitioning to a new Administration.

7.18. The representative of Singapore said that his country thanked Mexico for its statement and said that Singapore supported Mexico's statement. Singapore wished to refer to its statements made at previous DSB meetings on this matter. Singapore reiterated its strong systemic interest in the maintenance of the two-tier binding WTO dispute settlement mechanism that was underpinned by negative consensus. The unblocking of the AB selection processes had to remain the paramount priority for all Members, especially with the continued filing of appeals, including a new appeal that had just been filed. Singapore urged all Members, including the United States, to constructively engage in finding a lasting multilateral solution to this matter.

7.19. The representative of Turkey said that his country wished to thank Mexico for having placed this item on the Agenda of the present meeting. As a co-sponsor of this proposal, Turkey stressed the urgent need to launch the AB selection processes and to find a multilateral solution to this persistent impasse. Turkey recognized the importance of maintaining the two-tier, binding dispute settlement system. Turkey did not see an alternative to a well-functioning Appellate Body. Turkey believed that the demise of the current dispute settlement system posed a risk to the entire multilateral trading system. Turkey believed that in the absence of a functioning Appellate Body, predictability and security as prescribed in WTO rules and as had been built over the years would gradually fade away. Turkey maintained its confidence in the resumed functioning of the Appellate Body and stood ready to engage constructively to help overcome this impasse.

7.20. The representative of Afghanistan said that his country continued to maintain its view that a well-functioning DSB was essential to the multilateral trading system and to the WTO itself. Afghanistan believed that it was important to ensure full and fair enforcement of rules and obligations of Members and reiterated the importance of the dispute settlement system in promoting a rules-based, open, transparent, inclusive, non-discriminatory and equitable international trade system. Hence, Afghanistan wished to thank Mexico for its statement on behalf of the co-sponsors and reiterated its support for the two-tier WTO dispute settlement system. Afghanistan called upon all Members to fill the Appellate Body vacancies without any further delay. His delegation was ready to engage with all Members to overcome this challenge as soon as possible.

7.21. The representative of the United Kingdom said that his country continued its support for the proposal to launch the AB selection processes. The United Kingdom supported a dispute settlement system which was compulsory, binding, impartial, and with two-tier adjudication, as the best means of ensuring the fair resolution of disagreements and preventing recourse to unilateral measures. As 2021 began, the United Kingdom reiterated its commitment to work constructively with all Members to restore to full functioning their dispute settlement system. The United Kingdom had listened

carefully to concerns raised and would continue to listen. The United Kingdom recognized the need for reform. All Members had to work constructively together if they were to reach lasting solutions for the two-stage process, which should be a central pillar of their multilateral trading system. The United Kingdom recognized that in a consensus-based organization such as the WTO, any dispute resolution mechanism had to carry the trust and support of all Members. The United Kingdom stood ready to engage with all Members in the solutions-based discussions that had to take place ahead of the next Ministerial Conference. The United Kingdom looked forward to the important discussions to come. Nevertheless, the United Kingdom believed that these discussions should not preclude access to two-stage dispute settlement in the interim. Therefore, the United Kingdom called on all Members to launch the Appellate Body selection processes for all seven vacancies so that Members could restore the system to full functioning while Members hastened towards a permanent solution.

7.22. The representative of Mexico, speaking on behalf of the 121 co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.19, expressed regret that for the thirty-ninth occasion, Members had still not been able to launch the AB selection processes and had thus continuously failed to fulfil their duty as Members of this Organization. The fact that a Member might have concerns about certain aspects of the functioning of the Appellate Body should not serve as a pretext to impair and disrupt its work as well as the work of the dispute settlement system in general. There was no legal justification for the current blockage of the AB selection processes, which resulted in nullification and impairment of Members' rights. As Article 17.2 of the DSU clearly stated: "[v]acancies shall be filled as they arise". No discussion should prevent the Appellate Body from continuing to operate fully and Members had to comply with their obligation under the DSU to fill the AB vacancies. Mexico noted with deep concern that due to the continued failure to act at the present meeting, the Appellate Body would continue to be unable to perform its functions, against the best interest of all Members.

7.23. The representative of Mexico said that her country wished to refer to its statements made at previous DSB meetings under this Agenda item. For more than two years, Mexico had continuously been deeply concerned by this unprecedented situation with a non-operative and non-existing Appellate Body. The proposal supported by 121 Members sought the launch of seven AB selection processes to fill the seven seats on the Appellate Body. This situation was unsustainable. Members should not become accustomed to it. All ongoing disputes were being affected by the lack of a fully functioning dispute settlement system. This undermined the right of all Members to resort to an appellate stage and jeopardized speedy compliance with and adoption of panel reports. As Members could see at the present meeting, to date there had been seven appeals into the void. Mexico urged those Members that had not already done so to support the proposal contained in document WT/DSB/W/609/Rev.19. Mexico remained ready to engage constructively and make concrete proposals aimed at resolving this matter.

7.24. The Chairman said that he wished to inform delegations that the delegation of Brazil was encountering technical difficulties and had therefore requested that its statement be delivered by the Secretariat on its behalf under this Agenda item. He then requested the Secretariat to read out the statement on behalf of Brazil.

7.25. As requested by the Chairman, the representative of the Secretariat read out the following statement on behalf of the delegation of Brazil: Brazil said that his country wished to thank Mexico for presenting the proposal on behalf of the co-sponsors. Brazil wished to refer to its statements made at previous DSB meetings. Brazil stood ready, as it had always been, to engage with all Members in order to find a lasting solution to this impasse.

7.26. The Chairman thanked 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. He noted that as Members were aware, this matter required a political engagement on the part of all WTO Members.

7.27. The DSB took note of the statements.

8 STATEMENT BY JAPAN REGARDING THE PANEL REPORT IN THE DISPUTE ON: "KOREA - SUNSET REVIEW OF ANTI-DUMPING DUTIES ON STAINLESS STEEL BARS" (DS553)

8.1. The representative of Japan, speaking under "Other Business", said that his country wished to express its appreciation to the Panel members and the WTO Secretariat for their tireless work in this dispute. Japan also wished to express its gratitude to third party participants for their contributions in this case. This dispute had been caused by repeated extensions of anti-dumping duties over a 15-year period against stainless steel bars originating from Japan as a result of multiple sunset reviews by Korea. The Panel had appropriately concluded that the likelihood of injury determination in the third sunset review by Korea had not been reasoned and adequate. Specifically, the Panel had found that Korea had not conducted "unbiased and objective" evaluations of facts. Korea had concluded that Japanese imports would increase in volume and weaken the price competitiveness of Korea's domestic products due to the price drop upon the removal of anti-dumping duties. In reaching this conclusion, Korea had not taken into account the following facts, among others, that were critical to this case, namely: (i) that prices of Japanese imports would remain substantially higher than those of domestic like products and other imports even after the removal of the anti-dumping duties; and (ii) that third-party imports whose prices were at levels lower than domestic like products and which occupied a substantial market share represented a substantial source of price pressure on the Korean market. The Panel had rightly determined that these deficiencies in Korea's review were central to its aforementioned conclusion, and thus necessarily invalidated its overall likelihood-of-injury determination. Japan considered that the Panel's finding was critically meaningful as it made clear that Article 11.3 of the Anti-Dumping Agreement shall function as a discipline that would not allow an abusive application of sunset reviews. Given the objective and sound assessment made by the Panel, Japan expressed deep disappointment at Korea's decision to appeal the Panel Report to the non-functioning Appellate Body. Korea's decision to appeal effectively sent this dispute into the void. In this regard, Japan wished to highlight that Korea had changed its methodology for purposes of its fourth sunset review following the outcome of the Interim Report of the Panel and had continued applying the anti-dumping duties to this day. Korea's change of methodology, though still considered to be inconsistent with the WTO Agreements, clearly demonstrated that Korea itself could only admit that the methodology in its third sunset review, which Japan had disputed in this case, was inconsistent with the WTO Agreements. Therefore, given the principle of prompt settlement of disputes and the proper implementation of the Anti-Dumping Agreement, Japan considered that Korea's decision to appeal the Panel Report was only meant to delay the implementation of recommendations, based on the objective and sound findings of the Panel, to bring its measure into conformity with its obligations under the Anti-Dumping Agreement. Japan strongly hoped that Korea will comply with its obligations under the WTO Agreements, and terminate the anti-dumping duties on stainless steel bars from Japan.

8.2. The representative of Korea said that his country had exercised its right to appeal the Panel Report in this dispute on 22 January 2021. Given the circumstances, Korea had felt obliged to present the errors of law associated with the Panel Report before the Members so as to clarify that its appeal of the Panel Report in this dispute was based on valid and legitimate concerns. In good faith, therefore, Korea had filed its Notice of Appeal in a form and manner that presented in sufficient detail the problems that it had with the Panel Report in this dispute. In particular, Korea wished to stress that Korea's appeal did not purport to unduly delay the resolution of dispute. Rather, it purported to address serious legal flaws in the Panel Report that could very well have overarching and systemic implication *vis-à-vis* the multilateral trading system and its dispute resolution function. Korea respectfully invited Members to review its Notice of Appeal for the specific reasons of its appeal. Although Korea's Notice of Appeal was meant to serve the role of an appellate submission in the absence of any further instructions by the Appellate Body, as explicitly stated in its Notice of Appeal, Korea reserved its right to file a proper appellate submission to further elaborate its case should such opportunity presents itself. Regarding Japan's assertion that the Panel's findings were proper, Korea appreciated Japan's views on the Panel Report. It was unsurprising that Korea and Japan had diverging views on the matter. Korea, of course, believed that the Panel Report was deeply flawed and referred to its Notice of Appeal for details of its rationale.

8.3. At the present meeting, Korea wished to briefly illustrate the problem with regard to the Panel Report. The problem in this dispute could be summarized by pointing to the Panel's "result-driven" approach. The Panel had adopted such an approach in order to reach a predetermined finding. This had been vividly revealed at an early stage in the dispute. Unfortunately, the Panel not been able to depart from its predetermined outcome despite having been forced to explicitly abandon its original

bias. In reaching that predetermined outcome, the Panel had overstepped its mandate by making findings that Japan's request had never sought. The Panel had exercised a false judicial economy after artificially dissecting a key matter between an issue on which it had been forced to rule in favour of Korea and an issue on which it had continued to build upon, only to mischaracterize the key matter that had been before it. The Panel had also committed a multitude of errors of law by engaging in *de novo* reviews and by applying impermissible double standards of proof. The Panel had then effectively introduced new legal standards of its own making into Articles 11.3 and 6.8 of the Anti-Dumping Agreement while neglecting to apply the correct legal standard under Article 11.3. Korea, once again, respectfully noted Japan's position. At this point, it would suffice to say that there certainly would be an opportunity for Japan and Korea to voice their disagreement. Regarding Japan's accusation that Korea had made an appeal into the void, Korea believed that Japan was well aware that Korea was deeply concerned with the Panel's findings in this dispute. Indeed, Korea had taken issue with the manner in which the Panel had conducted the proceeding on multiple occasions and even during the course of the Panel proceeding. Korea had elected to pursue an adjudicative pathway to redress the problems that it had identified. All such concerns had been proven to be real and serious, as demonstrated in Korea's Notice of Appeal.

8.4. Korea duly understood Japan's concerns, as the complaining party, and its wish for a quick resolution of this dispute. Therefore, Korea had offered Japan multiple options to remedy the situation, including alternative arbitration under Article 25 of the DSU. Korea respected Japan's decision to turn down all of Korea's proposed options, as doing so was within its right. However, it was incorrect to say that Korea had appealed this case into the void. Korea opposed any undue suggestion that it had appealed the Panel Report in bad faith. Korea believed that the current unusual circumstances in which the Appellate Body was unable to properly fulfil its role should not be conceived as granting unfettered discretion to a panel. If a panel erred in its findings or decisions, its report should be properly challenged and modified at the appellate level. This was especially true if a panel report was so problematic that it had potentially deteriorating implications for the dispute settlement system as a whole. In light of the foregoing and owing to errors in the Panel's findings, Korea considered it inevitable that the current matter be referred to an appellate procedure. At the same time, Korea would remain committed to supporting the restoration of a functioning Appellate Body. Regarding Japan's assertion that the Korea Trade Committee's fourth sunset review confirmed that the Panel's findings were proper, with respect, Korea was slightly puzzled by Japan's reference to the KTC's fourth sunset review. In that fourth sunset review, the Korean Investigating Authorities had reached the same conclusion as it had in the third sunset review, i.e., that the stainless steel bars from Japan were a cause of injury to Korea's domestic industry. In any event, as Japan was aware, during the Panel proceeding Korea had explained various methodological considerations adopted by the Korean Trade Committee during the underlying third sunset review. The Panel, while accepting the validity of such considerations, had rejected most of them as being *ex post* rationalizations. In the parallel fourth sunset review, the Korean Trade Committee had naturally applied the same methodologies as explicitly as possible. The result in the fourth sunset review had remained the same as in the third sunset review because the said methodologies had actually been adopted during the third sunset review, as Korea had submitted to the Panel. If anything, therefore, the fourth sunset review supported Korea's case in this dispute.

8.5. The representative of the European Union said that this was yet another dispute that illustrated the grave consequences of the blockage of AB appointments since 2017. That blockage frustrated the essential rights of Members that had been agreed multilaterally in the DSU. The EU referred to its statement under Agenda item 6 of the 28 September 2020 DSB meeting, where the EU had elaborated on these consequences and on the possibility of appeals being adjudicated upon through appeal arbitration based on Article 25 of the DSU, consistently with the principles of the DSU.

8.6. The representative of Canada said that since 11 December 2019, the Appellate Body had effectively been non-functioning. Article 3.10 of the DSU provided that, where a dispute arose, Members would engage in dispute settlement proceedings in good faith and in an effort to resolve the dispute. The inability of the Appellate Body to carry out its appellate review responsibilities had undermined the established process under the DSU for dispute settlement. But the obligation in Article 3.10 to make good faith efforts to resolve the dispute still stood. In the context of specific disputes, solutions existed to address the current Appellate Body impasse. In particular, disputing parties could agree to resort to procedures such as those set out in Annex 1 to the MPIA (document JOB/DSB/1/Add.12) to complete the appeal process. Canada believed that it was crucial for all disputing parties to adhere to their good faith commitment under Article 3.10 of the DSU by making every effort to find an acceptable solution. Furthermore, Canada reiterated its invitation to Korea

and Japan to consider joining the MPIA to safeguard binding and two-stage dispute settlement in disputes that involved them and other MPIA participants.

8.7. The representative of the Russian Federation said that her country wished to refer to its statements made at previous DSB meetings with respect to the practice of appealing panel reports "into the void". The Russian Federation reiterated its disappointment with the fact that WTO Members continued to file appeals notwithstanding the Appellate Body's critical state. With the appeal notified by Korea, the resolution of seven disputes was effectively blocked. Russia was deeply concerned that actions that prevented the settlement of disputes, in particular appeals into the void, aggravated the WTO dispute settlement mechanism crisis and inevitably undermined confidence in the WTO.

8.8. The representative of Japan said that while Japan reserved its right to develop formal and detailed legal rebuttals in its appellate submission once the Appellate Body resumed its activities, Japan had to emphasize that Korea's attempt to show that it had no choice other than to appeal on the basis of the alleged deficiencies in the Panel Report with a lengthy notice of appeal was unsuccessful. Since this item had been raised under "Other Business", Japan only wished to make brief comments on Korea's statement. Korea wrongfully alleged that the Panel had erred for, in particular: (i) having made findings beyond its mandate; and (ii) having introduced new legal standards regarding Article 11.3 of the Anti-Dumping Agreement, presumably, by applying the provisions of Article 3 of the Anti-Dumping Agreement to sunset reviews. With regard to Korea's first allegation, i.e., the allegation regarding the Panel's mandate, the claims in respect of which the Panel had made findings all appeared in Japan's panel request. Japan had clearly and appropriately made all relevant arguments in the course of the Panel proceeding. With regard to Korea's second allegation, i.e., the application of Article 3 of the Anti-Dumping Agreement, the Panel had specifically clarified that it had not applied that Article in this case. Moreover, Japan considered that Korea's remaining allegations were essentially allegations of errors that pertained to factual findings by the Panel. For example, the core of Korea's allegation of false judicial economy on cumulative assessment was merely that the Panel had allegedly erred in making a factual finding that "the ultimate conclusion [for Japanese products] … did not turn on a cumulative assessment". Korea mischaracterized an allegation of error regarding factual findings as an error of law. On the contrary, Japan considered that the Panel's factual findings in this case had been objective and reasonable and fully complied with the relevant standard under Article 11 of the DSU. Japan was also concerned with Korea's erroneous allegations regarding the Panel's "pattern of behaviour" and regarding *de novo* review, which had also been made during the Panel proceeding. Again, with regard to the issues on which Korea had made allegations in its notice of appeal, Japan considered that the factual findings and the legal analysis of the Panel were objective and sound, and fully complied with the relevant standard under Article 11 of the DSU. Accordingly, Japan considered that Korea's allegation of errors in the Panel Report was clearly unfounded and unreasonable and would not be upheld at the appellate level. Thus, Korea's appeal based on those invalid arguments would only delay the settlement of this dispute. As Korea had decided to appeal the Panel's findings, Japan would duly respond during the appellate review by the Appellate Body in accordance with the DSU, once the Appellate Body resumed its activities. Japan believed that it was necessary and urgent for all WTO Members to solve the systemic issues pertaining to the dispute settlement mechanism and to restore the functioning of the Appellate Body.

8.9. The Chairman noted that, pursuant to Rule 25 of the Rules of Procedure for GC/DSB meetings, the representatives should avoid unduly long debates under "Other Business".

8.10. The representative of Korea said that he would not delve into the legal arguments of this dispute, as these should be reserved for appellate review by the Appellate Body. However, Korea wished to note that the most important objective of the WTO system was not attaining a "prompt" settlement of disputes in and of itself. Above all, the WTO system sought to ensure security and predictability to the multilateral trading system. It served to preserve the rights and obligations of Members and to clarify the existing provisions in a manner that did not add to or diminish the rights and obligations of Members. Korea considered that the Panel's errors with respect to Articles 7.1 and 11 of the DSU, as well as Articles 6.8, 11.3, 11.4 and 17.6 of the Anti-Dumping Agreement were not consistent with such objectives. The Panel Report had to be reviewed by the Appellate Body precisely in order to ensure the proper operation of anti-dumping measures in accordance with the disciplines set out in the Anti-Dumping Agreement without diminishing Members' rights under that Agreement. For these reasons, Korea had been obliged to appeal this Panel Report.

8.11. The DSB took note of the statements.

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

9.1. The representative of Indonesia, speaking under "Other Business", said that his country wished to refer to its statement made at the 18 December 2020 DSB meeting regrading this dispute. Indonesia noted that there was an ongoing review by the Australian Anti-Dumping Review Panel (the Review Panel) regarding the decision by the Minister for Industry, Science and Technology (AND No. 2020/090). This review had been initiated on 30 October 2020 following an application submitted by Paper Australia Pty Ltd. Indonesia also noted Australia's statement made at the 18 December 2020 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". In light of this, Indonesia believed that Australia should provide information on the progress of the review to the DSB. Based on that statement, it remained possible for the Minister to revoke the decision terminating the anti-dumping measure against Indonesian producers of A4 Copy Paper. That decision had been the result of the interim review of the Australian Anti-Dumping Committee in relation to the implementation of the DSB's rulings and recommendations in this dispute. Should this occur, Indonesia believed that the effect would be to infringe on Indonesia's exports of A4 Copy Paper to Australia. Indonesia, therefore, strongly encouraged Australia to provide status reports to the DSB until the issue was resolved. Indonesia also urged Australia to ensure that all of its measures complied with the DSB's recommendations and rulings in this dispute. 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.

9.2. The representative of Australia said that as her country had stated at the 28 September 2020 DSB meeting, the decision of the Minister for Industry, Science, and Technology to revoke the anti-dumping measures at issue in this dispute had brought Australia into full compliance with the DSB's recommendations and rulings. Since the relevant anti-dumping measures had been – and remained – revoked, there was nothing further for Australia to report to the DSB regarding the status of its implementation. As Indonesia had noted, on 30 October 2020, the Australian Anti-Dumping Review Panel had initiated a review of the Minister's decision following an application by Paper Australia Pty Ltd. Unless and until the Minister's original revocation decision was altered in a manner that called into question whether Australia had implemented the Panel's findings, Australia considered the issue of implementation to be resolved. Australia would continue to engage constructively with Indonesia on this matter.

9.3. The DSB took note of the statements.