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**Dispute Settlement Body  
19 June 2017**

## MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD  
ON 19 JUNE 2017

*Chairman: Mr. Junichi Ihara (Japan)*

Prior to the adoption of Agenda, the representative of the European Union recalled that at the 22 May 2017 DSB meeting two proposals regarding the AB matters were on the Agenda in relation to items 10 and 11. The proposals concerned the launching of the procedures for the appointment of two new Appellate Body members to fill the two vacancies that would arise in 2017. At that meeting, the EU had requested to reverse the order of discussion of the two proposals due to the fact that the EU's proposal under item 11 of the Agenda was more far-reaching than the proposal under item 10 submitted by several Latin American countries. The EU noted that at that meeting most Members who had spoken made statements in relation to both proposals. The EU further noted that, under the present DSB Agenda, a similar situation existed whereby two proposals dealing with the same matter had been tabled under Agenda items 8 and 9. The EU considered that the proposal under Agenda item 9 was most far-reaching. In agreement with the countries that had put forward a proposal under Agenda item 8, the EU requested to reverse the order of discussion of the proposals under items 8 and 9. In the EU's view, this was in line with the rules of procedure for meetings of the DSB.

The Chairman said that the proposed Agenda would be amended, as requested by the European Union.

The Agenda was adopted as amended.

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

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.173)

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.148)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.111)

D. European Union – Anti-dumping measures on biodiesel from Argentina: Status report by the European Union (WT/DS473/17)

1.1. The Chairman noted that there were four 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: "Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and shall remain on the DSB's Agenda until the issue is resolved". Under this Agenda item, the Chairman invited delegations to provide up-to-date information about compliance efforts and to focus on new developments, suggestions and ideas on progress towards the resolution of disputes. He also reminded delegations that, as was provided for in Rule 27 of the Rules of Procedure for DSB meetings: "Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record". 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.173)**

1.2. The Chairman drew attention to document WT/DS184/15/Add.173, 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 8 June 2017, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that his country thanked the United States for its statement and its status report. 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.148)**

1.6. The Chairman drew attention to document WT/DS160/24/Add.148, 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 8 June 2017, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the EU, and work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

1.8. The representative of the European Union said that his delegation thanked the United States for its status report and its statement. The EU referred to its previous statements made on this matter and said that it 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.111)**

1.10. The Chairman drew attention to document WT/DS291/37/Add.111, 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, as his delegation had stated at the 22 May 2017 DSB meeting, the draft authorisation decision for one type of genetically modified maize<sup>1</sup> (for food and feed use) and the draft proposals for the authorisation of three types of maize<sup>2</sup> (for cultivation) had been submitted for a vote at the Appeal Committee on 27 March 2017, with a "no opinion" result. Furthermore, on 16 May 2017, the draft authorisation decisions for one type of genetically modified maize<sup>3</sup>, and one type of genetically modified cotton<sup>4</sup> (for food and feed use), had been submitted for a vote at the Appeal Committee, with a "no opinion" result. It was now for the Commission to decide on these authorisations. On 12 June 2017, the draft authorisation decision for one type of genetically modified soybean (for food and feed use) had been submitted for a vote at the Member States committee, with a "no opinion" result. These measures would be submitted for discussion and possible opinion to the

<sup>1</sup> Maize Bt11 × 59122 × MIR604 × 1507 × GA21.

<sup>2</sup> Bt11, 1507 and MON810 (renewal).

<sup>3</sup> DAS-40278-9.

<sup>4</sup> GHB119.

Appeal Committee in July 2017. The EU said that it continued to be committed to acting in line with its WTO obligations. More generally, and as it had stated previously on many occasions, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.12. The representative of the United States said that the United States thanked the EU for its status report and its statement. EU measures affecting biotech products continued to result in lengthy, unpredictable, and unexplained delays in approvals. These delays and the resulting uncertainty in biotech approvals in the EU undermined the commercial interests of both US and EU farmers. The failure to approve biotech corn products was a source of particular concern to the United States. A number of corn products had received the approval of the EU's scientific authority, yet had remained stalled for months now at the level of the EU Appeals Committee or the EU Commission. The United States urged the EU to take action on these biotech approvals without further delay.

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

#### **D. European Union – Anti-dumping measures on biodiesel from Argentina: Status report by the European Union (WT/DS473/17)**

1.14. The Chairman drew attention to document WT/DS473/17, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning anti-dumping measures on biodiesel from Argentina.

1.15. The representative of the European Union said that the EU intended to comply with the DSB's recommendations and rulings by the agreed RPT which expired on 10 August 2017. The European Commission had launched a review investigation. The investigation was ongoing and interested parties had the possibility to provide comments. The interested parties included the companies from Argentina that were affected by the measure.

1.16. The representative of Argentina said that his country welcomed the status report submitted by the EU. Argentina was an interested party to the EU review, initiated on 20 December 2016 pursuant to the "WTO Enabling Regulation", on the anti-dumping measures imposed on Argentine biodiesel. Argentina was closely monitoring developments in these proceedings. Argentina hoped that the European Commission would circulate its findings on both (i) the cost of production of biodiesel when constructing the normal value and on (ii) production capacity and capacity utilization in the context of the injury determination, as soon as possible. Argentina said that it also hoped that the findings would be in line with the Panel and Appellate Body's findings in this dispute. Argentina believed that a review, consistent with the DSB's recommendations and rulings, should result in full market access for biodiesel from Argentina.

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

## **2 IMPLEMENTATION OF THE RECOMMENDATIONS OF THE DSB**

A. China – Anti-dumping measures on imports of cellulose pulp from Canada

B. United States – Certain methodologies and their application to anti-dumping proceedings involving China

2.1. The Chairman recalled that, in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of the DSB's recommendations and rulings in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned had to inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. The Chairman proposed that sub-items 2A and 2B be considered separately.

**A. China – Anti-dumping measures on imports of cellulose pulp from Canada**

2.2. The Chairman recalled that at its meeting on 22 May 2017, the DSB had adopted the Panel Report in the dispute on: "China – Anti-Dumping Measures on Imports of Cellulose Pulp from Canada". He invited the representative of China to inform the DSB of its intentions in respect of implementation of the DSB's recommendations and rulings.

2.3. The representative of China recalled that on 22 May 2017, the DSB had adopted the Panel Report in the dispute: "China – Anti-Dumping Measures on Imports of Cellulose Pulp from Canada" (DS483). According to Article 21.3 of the DSU, China informed the DSB of its intentions to implement the DSB's recommendations and rulings in a manner that respected its WTO obligations. China said that it would need a reasonable period of time in order to do so. Pursuant to Article 21.3(b) of the DSU, China had already reached an agreement with Canada regarding this matter, which had been notified to the DSB on 1 June 2017. China and Canada had agreed that the reasonable period of time for China to implement the DSB's recommendations and rulings in this dispute would be 11 months, beginning on 22 May 2017. Accordingly, the reasonable period of time would expire on 22 April 2018.

2.4. The representative of Canada said that his country thanked China for its statement and welcomed China's commitment to implementing the DSB's recommendations and rulings in this dispute. Canada extended its appreciation to China for its engagement in the negotiations on the reasonable period of time and hoped that China would implement the DSB's recommendations and rulings in an expeditious manner so that this dispute could be promptly resolved.

2.5. The DSB took note of the statements, and of the information provided by China regarding its intentions in respect of implementation of the DSB's recommendations.

**B. United States – Certain methodologies and their application to anti-dumping proceedings involving China**

2.6. The Chairman recalled that at its meeting on 22 May 2017, the DSB had adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, pertaining to the dispute on: "United States – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China". He invited the representative of the United States to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

2.7. The representative of the United States said that on 22 May 2017, the DSB had adopted the Panel and Appellate Body Reports in the dispute "United States – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China" (DS471). At the present meeting, as was provided in the first sentence of Article 21.3 of the DSU, the United States stated that it intended to implement the DSB's recommendations and rulings in this dispute in a manner that respected US WTO obligations. The United States said that it would need a reasonable period of time for implementation. In accordance with Article 21.3(b) of the DSU, the United States would discuss this matter with China with a view to reaching agreement on the period of time.

2.8. The representative of China said that his country thanked the United States for its statement made at the present meeting regarding its intentions to implement the DSB's recommendations and rulings to bring its measures into compliance with its WTO obligations. China hoped that the United States would implement the DSB's recommendations and rulings as soon as possible. China noted that the United States would need a reasonable period of time for implementation, and said that it was ready to discuss the length of the reasonable period of time with the United States at the earliest convenience to both parties.

2.9. The DSB took note of the statements, and of the information provided by the United States regarding its intentions in respect of implementation of the DSB's recommendations.

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

#### **A. Statement by the European Union**

3.1. The 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 the European Union to speak.

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

3.3. The representative of Canada said that his country thanked the EU for having put this item on the DSB Agenda. Canada shared the EU's view that the Byrd Amendment was still subject to the DSB's surveillance until such time as the United States ceased to implement it.

3.4. The representative of Brazil said that his country thanked the EU for keeping this item on the DSB Agenda. As a party to the Byrd Amendment disputes, Brazil wished to refer to its previous statements made on this matter. In particular, Brazil wished to refer to its statements regarding the continuation of illegal disbursements, which should cease immediately. Brazil renewed its calls on the United States to fully comply with the DSB's recommendations and rulings in this dispute. Until then, the United States was under an obligation to submit status reports, pursuant to Article 21.6 of the DSU.

3.5. The representative of the United States said that, as the United States had noted at previous DSB meetings, the Deficit Reduction Act – which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 – had been enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that the EU had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, over nine years ago. With respect to the EU's request for status reports in this matter, as the United States had already explained at previous DSB meetings, there was no obligation under the DSU to provide further status reports once a Member had announced that it had implemented the DSB's recommendations and rulings, regardless of whether the complaining party disagreed about compliance. As the United States had noted previously, the EU had demonstrated repeatedly that it shared this understanding, at least when it had been the responding party in a dispute. Once again, at the present meeting the EU had provided no status report for one or more disputes in which there was a disagreement between the parties on the EU's compliance. If the EU considered that it had no obligation to provide status reports once it has announced that it had implemented the DSB's recommendations and rulings in a dispute, then surely the same applied to other Members under any reasonable reading of the DSU.

3.6. The DSB took note of the statements.

### **4 RUSSIA – TARIFF TREATMENT OF CERTAIN AGRICULTURAL AND MANUFACTURING PRODUCTS: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB**

#### **A. Statement by the European Union**

4.1. 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 the European Union to speak.

4.2. The representative of the European Union said that his delegation referred to its statement on this made under "Other Business" at the 22 May 2017 DSB meeting and to the text of Article 21.6 of the DSU. The EU had requested to include this matter on the Agenda of the present meeting for reasons of transparency. The EU took note of the written communication circulated by

the Russian Federation regarding this matter and said that it appreciated Russia's communication in this regard.

4.3. The representative of the Russian Federation said that his country wished to refer to its statement made at the DSB meeting on 22 May 2017 and to its communication dated 8 June 2017 contained in document WT/DS485/11. As Russia had already stated, it had fully implemented the DSB's recommendations and rulings in this dispute prior to the expiry of the reasonable period of time. The Common Customs Tariff of the Eurasian Economic Union and the duties subject to this dispute had been amended by virtue of the following Decisions of the Board of the Eurasian Economic Union: No. 13, adopted on 31 January 2017, for measures 1-5; No. 85, adopted on 2 June 2015, for measures 6-8; No. 40, adopted on 16 May 2016, for measure 9; and No. 54, adopted on 21 August 2015, for measures 10 and 11. Russia had provided the EU with copies of all of the relevant decisions and actions concerning implementation in this dispute. Russia said that it was ready to provide copies of its implementing documents to any interested Member, upon request.

4.4. The representative of Japan said that the parties to this dispute had notified the DSB of their agreement, regarding the reasonable period of time (RPT), on 10 November 2016. Assuming that this notification date was the date of establishment of the RPT, which could have been earlier, it appeared that the Article 21.6 six-month time-period had expired on 10 May 2017. Thus the DSB meeting after six months following the date of establishment of the RPT had been the regular DSB meeting in May. That meeting had been held on 22 May 2017, as scheduled. The deadline for inscription of Agenda items was 11 May 2017. It appeared that Russia was required to, and had had the opportunity to inscribe the issue of its implementation on the Agenda of the 22 May 2017 regular DSB meeting and should have provided its first status report prior that meeting. However, it had not done so. Japan said that the DSB had the authority, under Article 2.1 of the DSU, to maintain surveillance over the implementation of its recommendations and rulings in its administration of the DSU. Article 21.6 of the DSU embodied and specified the operation of that authority. Japan noted that the parties to a dispute played an important part in allowing the DSB to carry out that function. Accordingly, the obligations under Article 21.6 of the DSU had to be taken seriously and had to be discharged faithfully by all WTO Members concerned so as to ensure the effective functioning of the DSB.

4.5. The representative of the European Union said that his delegation thanked Russia for its written communication and its explanation. The EU would closely monitor this situation and looked forward to working with Russia in order to resolve this dispute.

4.6. The representative of the Russian Federation said that his country thanked Japan for its statement. He said that, in accordance with Article 21.6 of the DSU, as a common rule, the issue of implementation of the DSB's recommendations and rulings had to be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and had to remain on the DSB Agenda until the issue was resolved. Thus, there was no doubt that a responding party was obliged to inform Members on the steps it had taken to implement the DSB's recommendations and rulings in a particular dispute. However, as the DSB practice demonstrated, when the DSB's recommendations and rulings had been implemented within the six months referred to in Article 21.6 of the DSU, Members had resorted to various options. Such options included making statements on implementation under "Other Business" or circulating a communication without making any oral statement at all. In both such cases, status reports were not submitted. Following the established practice, based on the letter and the spirit of the DSU, Russia had made a statement on its full implementation in this dispute at the DSB meeting held on 22 May 2017. For more clarity, and in addition to its oral statement, Russia had circulated a communication, contained in document WT/DS485/11, regarding the steps it had taken to fully implement of the DSB's recommendations and rulings in this dispute. In Russia's view, its statement and communication fully addressed the procedural concerns that any Member, including the EU and Japan, could have on this matter.

4.7. The representative of Japan said that his country thanked Russia for its response to Japan's concerns. Japan noted that Russia had referred to its statement made under "Other Business" at the 22 May 2017 DSB meeting and its notification of compliance to the DSB. The last sentence of Article 21.6 of the DSU provided that "[a]t least 10 days prior to each such DSB meeting, the Member concerned shall provide the DSB with a status report in writing". The deadline for filing a status report for the 22 May 2017 DSB meeting had been 11 May 2017. Japan noted that the



notification of compliance to which Russia had referred was dated 8 June 2017. Thus, even assuming that this notification could constitute a status report, in Japan's view, Russia had missed the deadline for filing its status report.

4.8. The DSB took note of the statements.

## **5 UNITED STATES – COUNTERVAILING MEASURES ON CERTAIN PIPE AND TUBE PRODUCTS FROM TURKEY**

### **A. Request for the establishment of a panel by Turkey (WT/DS523/2)**

5.1. The Chairman recalled that the DSB had considered this matter at its meeting on 22 May 2017 and had agreed to revert to it. He then drew attention to the communication from Turkey contained in document WT/DS523/2 and invited the representative of Turkey to speak.

5.2. The representative of Turkey recalled that, at the 22 May 2017 DSB meeting, the United States had objected to Turkey's first request for the establishment of a panel, contained in document WT/DS523/2. At that meeting, Turkey had also briefly discussed the reasons why it had brought this matter before the DSB. Therefore, Turkey would not wish to reiterate these points at the present meeting. Turkey regretted that a second request was necessary in order to move forward with the proceedings. Turkey considered that it was in both parties' interests, in order to reach a prompt resolution of this dispute, to proceed efficiently with the establishment and composition of a panel. Turkey therefore requested, for the second time, that the DSB establish a panel, with standard terms of reference, to examine the matter set forth in its panel request.

5.3. The representative of the United States said that, as had been explained at the 22 May 2017 DSB meeting, the United States was disappointed that Turkey had sought the establishment of a panel in this matter. For example, the United States failed to understand Turkey's interest in pursuing a challenge to a determination that had been vacated in the course of domestic litigation. Despite this, Turkey had not chosen to narrow its panel request. Furthermore, Turkey appeared to have listed certain items in its panel request, including alleged "practices", that would not be measures and therefore would not form part of the matter referred by the DSB to the panel for examination. The United States said that it regretted that Turkey would seek to use WTO resources in this manner, particularly at a time when the WTO dispute settlement system faced a number of challenges. Accordingly, the United States did not consider that Turkey's complaint was warranted. If Turkey nonetheless determined to pursue this matter further, the United States would vigorously defend US measures and interests before the panel.

5.4. 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.

5.5. The representatives of Brazil, Canada, China, the European Union, Japan, Kazakhstan, Korea, the Russian Federation and Saudi Arabia reserved their third-party rights to participate in the Panel's proceedings.

## **6 COLOMBIA – MEASURES RELATING TO THE IMPORTATION OF TEXTILES, APPAREL AND FOOTWEAR**

### **A. Recourse to Article 21.5 of the DSU by Panama: Request for the establishment of a panel (WT/DS461/22)**

6.1. The Chairman recalled that the DSB had considered this matter at its meeting on 22 May 2017 and had agreed to revert to it. He drew attention to the communication from Panama contained in document WT/DS461/22 and invited the representative of Panama to speak.

6.2. The representative of Panama recalled that, on 9 March 2017, his country had requested consultations with Colombia under Article 21.5 and Article 4 of the DSU, Article 19 of the Customs Valuation Agreement and Article XXII of the GATT 1994 with respect to certain implementing measures resulting from the implementation of the DSB's recommendations and rulings in "Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear" (DS461). The consultations had taken place in Geneva on 28 March 2017. Unfortunately, they had failed to



resolve this dispute. Consequently, at the DSB meeting on 22 May 2017, Panama had requested the establishment of a panel under Article 21.5 of the DSU. Since, at that meeting, Colombia had objected to the establishment of a panel, Panama reiterated its request that a panel be established pursuant to Article 6 of the DSU. Panama said that the panel to be established at the present meeting represented an important step in Panama's efforts to ensure that Colombia complied with its obligations under the WTO Agreements. Panama had challenged Colombia's measures concerning textile and footwear imports in two WTO proceedings and two panels and the Appellate Body had confirmed that Colombia was in breach of its WTO obligations. Nonetheless, Colombia had still failed to implement the DSB's recommendations and rulings and had continued to impose restrictions on trade in these products from Panama. For more than ten years, Panama had been requesting Colombia to regulate its imports of textiles and footwear without violating its obligations under the WTO Agreements. It was therefore critically important for Panama, especially at this stage in the proceedings, that this case was concluded expeditiously and in an orderly manner.

6.3. The representative of Colombia said that, at the 22 May 2017 DSB meeting, his country had informed Members that it had been engaged in consultations with Panama to discuss mutual concerns regarding this dispute. Colombia had sought to address Panama's concerns. Without prejudice to these efforts, Colombia welcomed Panama's decision to settle this dispute in line with the most recent decisions adopted by the DSB.<sup>5</sup> In doing so Panama had recognized the need to evaluate the compliance measures that had been adopted by Colombia in the light of Article 21.5 of the DSU, before proceeding with the examination of the request for suspension of concessions under Article 22.2 of the DSU. Colombia recalled that it had implemented the DSB's recommendations and rulings promptly and effectively, before the expiry of the reasonable period of time. It had done this by issuing Decree 1744 which had brought the compound tariff into conformity with the covered Agreements and which had adjusted the tariff levels applicable to imports of apparel and footwear in such a way as to not exceed Colombia's bound tariff-rate. As to Decree 1745, the subject matter of Panama's new complaint, Colombia reiterated that it was a customs measure with the necessary and legitimate policy objective of exercising customs control over imports of apparel and footwear. The Decree accordingly sought to ensure that trade operations were governed strictly by the principles underlying legal and fair trade, and was consistent with WTO rules. Colombia recalled that the customs measure in question contained none of the provisions concerning the compound tariff that had been the subject of the DSB's recommendations and rulings in DS461. The customs measure had not yet been evaluated by a panel, which meant that it should not be part of the Article 21.5 review. This was the reason for Colombia's opposition to the establishment of a panel at the 22 May 2017 DSB meeting. Without prejudice to the foregoing, Colombia reiterated its willingness to reach an agreement with Panama that would bring these disputes to a final close and said that it firmly believed that this could be achieved.

6.4. The representative of the United States said that, as the United States had expressed previously, it was important to align the three proceedings in this dispute. In doing so, the question of whether the measure at issue was currently in compliance with Colombia's WTO obligations could and should be taken into account in determining the level of nullification and impairment in the Article 22.6 proceeding. Specifically, any level of suspension of concessions determined in that proceeding had to be equivalent to the current level of nullification and impairment, in accordance with Articles 22.4 and 22.7 of the DSU. Therefore, the arbitrator in the Article 22.6 arbitration should examine the issue of compliance, together with the Article 21.5 panel comprised of the same three individuals. The arbitrator should determine a level of nullification or impairment based on the current situation, to the extent the situation, and the nullification, might have changed since the end of the reasonable period of time. Ensuring equivalence between the level of suspension of concessions and the current level of nullification and impairment was necessary to ensure that the dispute settlement system operated efficiently. Otherwise, the system could actually provoke further litigation if countermeasures authorized and imposed were in excess of the current level of nullification that flowed from the findings of the compliance panel.

6.5. The representative of Mexico said that his country would not comment on the substance of this dispute. In response to the statements made by the United States, Mexico wished to comment on the determination of nullification and impairment in light of the Article 22.6 Arbitrator's findings

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<sup>5</sup> Award of the Arbitrator, "US - Tuna II" (Mexico), paras. 3.20, 3.42-3.46.

in DS381. The Arbitrator in the DS381 dispute had determined that the compliance period extended to the end of the reasonable period of time, which then determined the measure to be analysed in order to assess the level of nullification and impairment. Mexico said that Members would be able to read the Arbitrator's decision in the DS381 dispute to gain a better understanding of the matter, which was not as it had been reflected in the US statement.

6.6. The representative of the European Union recalled that his delegation had participated as a third party in the panel and appeal proceedings in this dispute. Therefore, pursuant to Articles 10.1 to 10.3 of the DSU, the EU reserved its right to participate as a third party in the proceedings with regard to any disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the DSB's recommendations and rulings. In this regard, the EU had also reserved its third-party rights in the compliance proceedings requested by Colombia. With regard to the panel request at issue, the EU considered that this situation fell under Article 9.1 of the DSU and hence both compliance proceedings could be merged. In this regard, and taking into account the second sentence of Article 9.1 of the DSU, the EU considered that the matter should be referred to the compliance Panel that had been requested by Colombia and that had already been established, given that this appeared to be feasible.

6.7. The representative of Japan wished to refer to Japan's statement made at the 22 May 2017 DSB meeting with respect to the issue raised by the United States.

6.8. The representative of Brazil reiterated his country's concerns regarding the systemic and procedural implications of having recourse to Article 22.2 (and 22.6) of the DSU before concluding the proceedings set out in Article 21.5 of the DSU. The DSB was now faced with a situation where there were two compliance panels referring to what was essentially the same subject matter. This had increased the complexity of the issue. Brazil encouraged the parties to find a mutually agreed solution in order to better harmonize these proceedings.

6.9. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by Panama in document WT/DS461/22. The Panel would have standard terms of reference.

6.10. The representatives of Australia, China, Ecuador, the European Union, Guatemala, Honduras, India, Indonesia, Japan, Kazakhstan, Korea, the Russian Federation, Singapore, Chinese Taipei and the United States reserved their third-party rights to participate in the Panel's proceedings.

## **7 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/599)**

7.1. The Chairman drew attention to document WT/DSB/W/599 which contained additional names proposed by Argentina and the European Union (Finland) for inclusion on the Indicative List of Governmental and Non-Governmental Panelists, in accordance with Article 8.4 of the DSU. The Chairman proposed that the DSB approve the names contained in document WT/DSB/W/599.

7.2. The DSB so agreed.

## **8 APPOINTMENT OF APPELLATE BODY MEMBERS: PROPOSAL BY THE EUROPEAN UNION (WT/DSB/W/597/REV.1)**

8.1. The Chairman said that this item was on the Agenda of the present meeting at the request of the European Union. He then drew attention to the communication contained in document WT/DSB/W/597/Rev.1 and invited the representative of the European Union to speak.

8.2. The representative of the European Union wished to refer to the statements made by the EU on the issue of Appellate Body appointments at previous DSB meetings. The EU's proposal followed the models of similar DSB decisions in the past. The proposal incorporated the proposal made by Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru, and in addition, it provided for the launching of the selection process for the replacement of Professor Van den Bossche. The proposal provided for the selection process to be conducted and concluded as soon as possible. The EU fully supported the selection of new Appellate Body members without delay. The EU encouraged all

Members to support its proposal, so that both selection processes could be launched at the present meeting.

8.3. The representative of the United States said that, given the ongoing transition in the US political leadership and the recent confirmation of a new US Trade Representative, the United States was not in a position to support the proposed decision to launch a process to fill a position on the Appellate Body that would only become vacant in December 2017. Nevertheless, the United States said that it was willing to join a consensus for the DSB to take the decision proposed by Mexico, Argentina, Brazil, Chile, Colombia, Guatemala, and Peru. That decision was focused on a process to fill a position that would become vacant in less than one month's time.

8.4. The representative of the European Union said that his delegation regretted the fact that, once again, the DSB was not in a position to move forward with the Appellate Body selection process. The EU noted that Professor Van den Bossche's term would end on 11 December 2017. Given this the EU believed that the selection process to fill this post should also be launched without delay. The EU again expressed its disappointment that it had not been possible to move forward again at the present meeting.

8.5. The representative of Israel said that his country was taking the floor to express its serious concern with the lack of progress regarding the Appellate Body selection process. Not long ago the DSB had dealt with a process that had hindered the ability of the Appellate Body to function properly. Once again, Members found themselves with the possibility of having an incomplete membership of the Appellate Body for an extended period of time. This would be extremely undesirable. Israel was concerned that this situation could eventually have an impact on the credibility of the Appellate Body. At present there were two proposals on the table and both were motivated by the prospect of finding a solution. There were a couple of differences between them. The main one, in Israel's view, was the time-frame. Israel believed that Members should look beyond these differences and agree to move forward by starting the selection process as soon as possible.

8.6. The DSB took note of the statements.

## **9 PROPOSAL REGARDING THE APPELLATE BODY SELECTION PROCESS (WT/DSB/W/596/REV.1)**

9.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru. He drew attention to the communication contained in document WT/DSB/W/596/Rev.1 and he invited the respective delegations to speak.

9.2. The representative of Mexico, speaking on behalf of Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru, recalled that, at the 22 May 2017 DSB meeting, the above-mentioned countries had proposed that a decision be taken to start the selection process for the vacancy that would arise after 30 June 2017. However, no consensus had been reached either on this proposal or on the proposal contained in document WT/DSB/W/597. Mexico was concerned about the current situation. Article 17.1 of the DSU stipulated that the Appellate Body had to be composed of seven members. As of 1 July 2017, there would only be six members on the Appellate Body. Although there had been a time when there were only five members on the Appellate Body, the risk that a similar situation would be repeated – and becoming accustomed to it – should be of concern to all Members. At the 22 May 2017 DSB meeting, many delegations had expressed a preference for initiating two selection processes, which would be ideal under the present circumstances. However, it had also been stated that, in any case, at least one selection process should be initiated as soon as possible. In light of the above, Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru had now submitted a revised proposal (WT/DSB/W/596/Rev.1). That proposal was based on past decisions by the DSB that comprised the following four elements: (i) to launch a selection process to replace Mr. Ricardo Ramírez Hernández, whose second term of office would expire on 30 June 2017; (ii) to establish a Selection Committee; (iii) to set a deadline of 10 July 2017 for submitting nominations of candidates; and (iv) to request that the Selection Committee issue its recommendation by 22 November 2017 at the latest.

9.3. The representative of the European Union said that, as his delegation had previously stated, the EU fully supported the launching of the selection processes for new Appellate Body members as quickly as possible. In fact, the EU proposal entirely incorporated the proposal made by Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru. The EU said that it regretted that it had not been possible to reach consensus on the proposal that it had put forward. In light of past practice, there was no reason why one selection process should be singled out at this point. The EU encouraged the Chairman to continue his consultations with Members on this issue, so that both processes could be launched as quickly as possible. The EU regretted that unfortunately the processes would not be launched at the present meeting.

9.4. The representative of Pakistan, speaking in relation to both Agenda items 8 and 9, said that his country was not a frequent user of the dispute settlement system but attached significant value to it as an important pillar of the WTO system. This system of binding dispute settlement made the WTO unique compared to other multilateral Organizations. The dispute settlement system was presently facing a great challenge. It would not be able to carry on its work efficiently due to the vacancy in the Appellate Body, arising from the expiration of the term of one Appellate Body member at the end of June 2017. This was to be considered in the context of the Appellate Body's very heavy workload. Since the DSB meeting held on 25 January 2017, the DSB Chairman had submitted two approaches for consultations with Members for a new selection process to fill the two upcoming vacancies on the Appellate Body: one single process to fill both vacancies or two independent processes for each vacancy. However, as of the present meeting, it was disappointing to note that no consensus had been reached on these matters. The term of office of one Appellate Body member would expire at the end of June 2017, but the selection process to fill this vacancy had not started yet. Pakistan thanked the Membership for its continued effort on this issue, and particularly thanked the EU as well as Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru for putting forward their respective proposals on the Appellate Body selection process. Pakistan urged Members to show flexibility on these proposals so as to launch the selection process without further delay. This would allow the Appellate Body to continue its work with minimal disruption. Pakistan said that Members should come up with a formulation for clear time-lines to fill the vacancy whenever it arose. It stressed the importance of the work of the Appellate Body and the heavy workload the Appellate Body was currently facing. As the DSU made clear, vacancies had to be filled as they arose. Therefore, a delay in initiating the selection process to fill the vacancy of an Appellate Body member would be detrimental to the work, as well as to the legitimacy, of the DSB.

9.5. The representative of Turkey, speaking in relation to both Agenda items 8 and 9, said that his country was disappointed that the DSB was still not in a position to initiate the Appellate Body selection process. Although every Member had spoken about the importance of the WTO dispute settlement system and a well-functioning Appellate Body, Turkey regretted that Members were not in a position to reach consensus, even after a couple of months of discussion. Turkey said that it did not have a preference for either of the proposals, because both could work. It urged Members who had concerns with any of these proposals to act responsibly and to continue to consult with the Chairman and other Members in order to start the selection process as soon as possible.

9.6. The representative of Ecuador, speaking in relation to both Agenda items 8 and 9, said that the situation faced by Members in the DSB should be resolved as soon as possible so as to preserve the credibility of the WTO. Ecuador believed that the way forward would be to adopt a decision, as soon as possible, to launch the selection process for the vacancy which would arise after 30 June 2017, to replace Mr. Ricardo Ramírez-Hernández. Subsequently, a selection process should be launched to fill the vacancy that would arise on 12 December 2017, to replace Mr. Peter Van den Bossche. The revised proposal set out in document WT/DSB/W/596/Rev.1, contained only two changes to the previously proposed timelines. The revised proposal in document WT/DSB/W/597/Rev.1, submitted by the EU, contained only one change in paragraph 4. Ecuador was concerned that time was passing but Members were not complying with the requirement stipulated in Article 17.1 of the DSU that the Appellate Body had to be composed of seven members. Ecuador was flexible as to whether there should be one single process for the two AB positions or two separate processes. It was important for the DSB to take a decision one way or the other. Members should make their positions known in order to understand the situation and to reach a consensus through dialogue. Ecuador recognized the enormous amount of work that had been done by the DSB and believed that a lack of action regarding this matter would aggravate the situation. Ecuador believed that many Members had similar positions concerning this situation. Therefore, Ecuador appealed to Members to move away from inflexible positions in order to get

out of the impasse faced by the DSB. This would enable the DSB to approve the process put forward by several Latin American countries to carry out a single selection process to replace Mr. Ricardo Ramírez-Hernández.

9.7. The representative of El Salvador said her country thanked the delegations of Argentina, Brazil, Chile, Guatemala, Mexico and Peru for their revised proposal. El Salvador considered that this selection process should start as quickly as possible to replace Mr. Ricardo Ramírez-Hernández, whose term of office would end on 30 June 2017. El Salvador was flexible and believed that it was very important to get out of the current deadlock. El Salvador would continue to monitor this matter very closely.

9.8. The representative of Korea, speaking in relation to both Agenda items 8 and 9, said that his country expressed serious concern about the current situation where the DSB had failed to launch the Appellate Body selection process. Taking into account the recent developments regarding the Appellate Body's workload, Korea stressed that it was desirable to avoid any vacancy in the Appellate Body. Thus, Members had to place priority on resolving the deadlock regarding the launch of the selection process, with a sense of urgency. Korea noted that under Article 17.2 of the DSU vacancies on the Appellate Body shall be filled as soon as they arose without providing detailed rules on the selection process. Specifically, there was no rule in the DSU on whether or not the selection process for two separate vacancies in the same year should be launched and carried out at the same time. Nevertheless, Korea highlighted that all Members had an obligation to fill those vacancies. Korea said that it did not intend to take sides with any Member as to whether to launch the selection process for the two vacancies simultaneously or not. In Korea's view, in order to ensure the proper functioning of the Appellate Body, vacancies should be filled in a timely manner. In this regard, Members bore the responsibility to assure the selection process could proceed, without delay, in a fair and balanced manner. If any Member disagreed with launching of the selection process at the present meeting, Korea would ask that such Member provide a detailed explanation on its rationale regarding this matter. In conclusion, Korea urged all Members to recognize the seriousness of the current situation, to be flexible how the selection process should be launched, and to make every effort to launch the selection process as soon as possible.

9.9. The representative of Egypt speaking in relation to both Agenda items 8 and 9, said that his country was concerned about the current deadlock regarding the appointment of members to fill the upcoming vacancies on the Appellate Body. Egypt believed that the Appellate Body represented the crown jewel of the WTO and distinguished the WTO from other international organizations. This contributed to its relevance for the international trade regime. Consequently, Egypt said that it had taken note of the proposals and considered them to be positive. Egypt regretted the lack of consensus on this matter and believed that it was important that Members were flexible in order to reach a desirable and necessary consensus so that the Appellate Body could function well.

9.10. The representative of Canada, speaking in relation to both Agenda items 8 and 9, said that his country thanked the proponents of both proposals. Canada reiterated the statements made at previous DSB meetings on this issue. Canada agreed with other Members that the Membership needed to launch a selection process as soon as possible. Canada noted that Mr. Van den Bossche's term would expire in less than six months. Canada also noted that the United States has indicated that its Administration was still in transition. Canada would be pleased to participate in a special DSB meeting before the regular meeting in July if a solution were to be found. Hopefully, that period should provide enough time for Members to define their respective positions.

9.11. The representative of Panama said that, like previous speakers, his country was concerned about the delay in the launching of the Appellate Body selection process and the insistence on combining two processes, which, in Panama's view, would only cause problems. In light of the heavy workload of the dispute settlement system, the selection process had to be initiated as soon as possible. Panama noted that if by September or November 2017, the DSB had not dealt with these matters, next year there could be as many as three processes to deal with at the same time. This would have serious consequences for the system, as had been pointed out by other Members. Panama noted that Mr. Ramírez was the only Spanish speaking member of the Appellate Body. Once he was no longer a member of the Appellate Body, this would have a negative impact on the work carried out in Spanish. The DSB had to deal with this situation as soon as possible. In light of the current situation that the process to replace Mr. Ramírez could not be launched at the present

meeting, the DSB had to meet its responsibility and to eliminate any disruptions to the system. Panama said that, if Mr. Ramirez was available, the DSB could consider extending his term of office until his successor was found. However, Panama noted that such an extension might prove to be controversial. If Mr. Ramirez was available, the DSB could take a decision to extend his term of office. The present situation affected all Members and therefore all Members had to take responsibility to minimize the effect of any disruptions to this system.

9.12. The representative of Australia, speaking in relation to both Agenda items 8 and 9, said that her country thanked those delegations that had put forward revised proposals. Australia recalled its interventions at recent DSB meetings on this issue and restated its deep disappointment at the failure of the DSB to reach consensus on a selection process or processes to fill upcoming vacancies on the Appellate Body – one of which was now imminent. As a result of this failure, the DSB had also failed to meet its obligations under Article 17.2 of the DSU to appoint new Appellate Body members to fill vacancies as they arose. The DSB also risked undermining the credibility and good functioning of the dispute settlement system, in which all Members had a shared responsibility and interest. Members were all aware of the current pressures faced by the dispute settlement system, and the challenges that lay ahead, particularly at the Appellate Body level. In that light, Australia repeated the call it had made at the 22 May 2017 DSB meeting for all Members to demonstrate pragmatism, flexibility and good faith in order to reach agreement as soon as possible on a process, or processes, to ensure the appointment of members to the Appellate Body was not further delayed.

9.13. The representative of China, speaking in relation to both Agenda items 8 and 9, said that his country welcomed the proposals submitted by the respective Members regarding the Appellate Body selection process. China referred to its previous statements on this matter and reiterated its systemic concern regarding the delay of the Appellate Body selection process. China recalled that, in this speech made on 8 June 2017, the Chairperson of the Appellate Body, Mr. Ujal Singh Bhatia, said that he expected the Appellate Body decisions to be increasingly delayed as numerous complicated cases were appealed at the same time. If new Appellate Body members could not be selected as vacancies arose, there was no doubt that the current delay would be even more severe. To ensure the smooth operation of the Appellate Body and the whole WTO dispute settlement system, China called upon Members to be more flexible and constructive, and to initiate the appointment process without further delay.

9.14. The representative of Japan, speaking in relation to both Agenda items 8 and 9, said that his country thanked proponents for their respective proposals. Like at the 22 May 2017 DSB meeting, Japan wished to express its agreement with the general thrust of the proposals that the DSB should act expeditiously and launch the selection process or processes without delay. Japan said that it was ready to join consensus with others to support either proposal. Thus it was unfortunate, indeed regrettable, that the DSB was not in a position to launch the selection process or processes at the present meeting. This was so especially because Mr. Ramírez-Hernández's term would expire very soon. This meant that, as from 1 July 2017, the Appellate Body would only have six members. Pursuant to Article 17.1 of the DSU the Appellate Body "shall be composed of seven persons". Japan noted that, according to Rule 15 of the Working Procedures for Appellate Review, Mr. Ramírez-Hernández could "complete the disposition of any appeal to which [he] was assigned while a Member" and he had to be "deemed" to be a member of the Appellate Body "for that purpose only". As the language and the title of this rule suggested, this was a transitional provision which was limited in scope and application, addressing only the exceptional circumstances where the change in members of the division hearing appeal could not serve the timely and orderly conduct and work of appellate reviews, as Japan understood it. Japan also noted that the expiry of Mr. Van den Bossche's term was only months away. Given the time and resources needed to select his replacement, it had now become a pressing need to launch a selection process to replace him as soon as possible. Appointing a member of the Appellate Body was one of the important functions entrusted to the DSB under the DSU. Japan urged all Members concerned to exercise flexibility and to act in a constructive manner so that the DSB could perform its important function, as contemplated in the DSU, without further delay.

9.15. The representative of Honduras, speaking in relation to both Agenda items 8 and 9, said that her country wished to express its deep concern for the current situation in the DSB. She noted that Mr. Ricardo Ramírez-Hernández's mandate would expire in 11 days and the DSB had not even started a selection process to replace him. Pursuant to Article 17.2 of the DSU, vacancies had to

be filled as they arose. For this reason Honduras called on all Members to show flexibility and a willingness to find a rapid solution so as to strengthen the multilateral trading system.

9.16. The representative of Paraguay said that his country would like to express its concern with the ongoing delays in the selection process for members of the Appellate Body. In this case the situation was even more delicate given the current workload of the Appellate Body. For this reason, Paraguay urged the DSB to agree to launch the first selection process as soon as possible so as to be able to fill the vacancy left by Mr. Ricardo Ramírez-Hernández at the end of June.

9.17. The representative of Hong Kong, China, speaking in relation to both Agenda items 8 and 9, said that her delegation would like to thank the EU and several Latin American Members for their revised proposals. Both proposals were acceptable to Hong Kong, China, and her delegation stood ready to join a consensus to support either of them. Hong Kong, China was disappointed with the current deadlock where Members were unable to reach consensus on the launching of the selection process for Appellate Body members. It urged Members to exercise flexibility and come up with a solution as soon as possible.

9.18. The representative of India, speaking in relation to both Agenda items 8 and 9, said that his country would like to express its concern regarding the delay in the initiation of the Appellate Body selection process. While India thanked both proponents for their proposals, it found it strange that a normal process would require proposals from Members. India noted that the EU's proposal was to fill the two vacancies with a timeline of October 2017. India noted that the other proponents had called for filling the single vacancy with a timeline of November 2017. For India, either of these two processes was fine considering that the filling of vacancies in the Appellate Body should be undertaken as a matter of routine. While India noted the position of both the EU and the United States on the appointment process, it was still not clear of the underlying rationale and justification of both positions for not joining consensus on either one of the processes. While it was India's understanding that the EU was not in favour of going ahead with the appointment of a single vacancy, the United States had stated that, given the ongoing transition in its leadership, it was not in a position to support the proposed decision to launch a process to fill a position on the Appellate Body that would only become vacant in December. India said it was trying to understand this impasse. It asked why the single vacancy that would arise on 30 June 2017 could not be filled immediately and what the rationale for not joining consensus on such a decision was. On the other hand, with regard to initiating the process to fill both vacancies that arose in 2017, India asked what the rationale was for stalling the process, especially when past practice in the WTO had probably witnessed such processes. India had sought to know what the past practice has been in this regard. Noting that the impasse was ongoing, India sought a factual account from the Secretariat, at the next DSB meeting, regarding previous Appellate Body member appointment processes where there had been single or simultaneous processes. Understanding past practice could be a useful guide to Members to understand the context of the present impasse better and come to a consensus decision in this regard. What was of concern to India was that the impasse in initiating the formal appointment process – a purely procedural matter – had been an issue for the DSB for about six months. It seemed likely that a few months further delay in filling the vacancies could lead to a situation of filling both vacancies simultaneously as a *fait accompli*. India urged those Members who had expressed reservations on either of the processes to reconsider their positions so that the DSB could formally initiate the selection process as soon as possible.

9.19. The representative of Singapore, speaking in relation to both Agenda items 8 and 9, said that his country would like to thank the EU and the group of Latin American countries for their revised proposals. Singapore expressed its serious systemic concerns and regrets on the lengthy delay in the launch of the Appellate Body selection process. Singapore urged Members to show flexibility with the proposals and to be pragmatic in coming to a consensus to launch the selection process or processes as soon as possible.

9.20. The representative of Chinese Taipei, speaking in relation to both Agenda items 8 and 9, said that her delegation shared the concern expressed by other Members on the delay of the selection process (or processes). In particular, Chinese Taipei was concerned that a vacancy on the Appellate Body would negatively affect the stable and efficient operation of the entire system. As it had mentioned at the 22 May 2017 DSB meeting, Chinese Taipei was ready to support either proposal, and looked forward to participating in any discussion or special meeting to facilitate a timely solution.



9.21. The representative of Viet Nam said that, as mentioned by her country at the 22 May 2017 DSB meeting, and as had been stated by many Members at the present meeting, Viet Nam was concerned that the process for selecting members for the Appellate Body had not been decided upon yet, without clear reason. In order to avoid the workload challenges caused by vacancies on the Appellate Body, as had occurred in the past, Viet Nam supported any proposal to accelerate the launch of the selection process. In case that the DSB could not initiate two processes at the same time, Viet Nam urged Members to consider the situation and to start the selection process to replace Mr. Ricardo Ramírez-Hernández, whose term of office would be expiring in only 11 days, as soon as possible – as had been proposed by Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru. Viet Nam said that it hoped that the DSB would soon find an appropriate and constructive solution to resolve this problem.

9.22. The representative of Switzerland said that his country appreciated the Chairman's efforts towards resolving this matter and thanked the proponents for their revised proposals. Like many others, Switzerland regretted that it had not yet been possible to reach consensus and move ahead with what should have been a standard procedure to fill vacancies on the Appellate Body. Switzerland shared the serious concerns expressed by other delegations about the detrimental consequences of the situation on the integrity of the multilateral trading system and, on the proper functioning of the WTO dispute settlement mechanism. Switzerland hoped that Members' positions would converge and enable both processes to be launched and be taken forward as soon as possible.

9.23. The representative of the Russian Federation said that her country would like to refer to its statement made at the 22 May 2017 DSB meeting. Russia highlighted its serious concerns over the current situation that would lead to unfilled vacancies on the Appellate Body at a time when it was facing unprecedented workload challenges that were only expected to grow. Russia urged all Members to resolve their differences to ensure the proper functioning of the Appellate Body and to ensure compliance with the very clear and explicit provisions of Article 17.2 of the DSU on this matter.

9.24. The representative of New Zealand said that her country thanked the Chairman for his ongoing efforts to find consensus on this important matter. New Zealand thanked the EU, and separately Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru, for their revised proposals to launch the Appellate Body selection process. New Zealand stated its agreement with the proponents, and the broader set of delegations that had intervened in this discussion over recent months, that the DSB urgently needed to start the selection process so that it could appoint new Appellate Body members and ensure that the, now inevitable, vacancy was kept as short as possible. While New Zealand saw systemic advantages, from an efficiency and expediency perspective, for dealing with both processes at the same time, as had been set out in the EU's proposal, New Zealand remained pragmatic and could also join consensus on the proposal from the Latin-American proponents to move forward on the first vacancy. New Zealand would have, in fact, liked to further consider the dates in the proposals. While this was now somewhat academic, in current circumstances, it did show the urgency with which this was viewed. New Zealand was deeply disappointed that Mr. Ramírez-Hernández's term would expire at the end of June 2017, and the DSB would not have even managed to launch a process to replace him, let alone to consider the candidates, or to begin the key task of actually agreeing on a candidate. Again, New Zealand urged all Members to reach a consensus on the Appellate Body selection process and to be pragmatic and constructive in this process so that candidates could be appointed as soon as possible. The DSB needed to give the Appellate Body the necessary resources to do its work, otherwise the delays the DSB created in agreeing a process would flow very directly into even lengthier delays in appeal hearings and reports. Like other Members, New Zealand said that it remained ready to engage in any process or special meetings that were considered necessary to facilitate a solution.

9.25. The representative of Costa Rica said that his country wished to join those Members who had expressed their concerns about the delays in the Appellate Body selection process or processes. The Appellate Body was the jewel in the dispute settlement crown and all Members had to ensure that it functioned properly. Costa Rica said that it believed that it was important to show pragmatism and responsibility and to comply with Article 17.2 of the DSU, which stipulated that vacancies had to be filled as they arose. Therefore Costa Rica considered that the DSB should start the selection processes or at least one process for the post currently held by Mr. Ricardo Ramírez-

Hernández whose term of office would expire very soon. The DSB would have to come to a rapid agreement in order to avoid any disturbances to the dispute settlement system.

9.26. The representative of Indonesia, speaking in relation to both Agenda items 8 and 9, said that her country took note of the revised proposals. However, Indonesia expressed its disappointment that the selection process had not yet been launched considering that this matter had been discussed during several DSB meetings. In this respect, considering the importance of the Appellate Body's ability to conduct its work, Indonesia encouraged Members to show flexibility in order to reach consensus so that the selection process could be launched without further delay.

9.27. The representative of Norway, speaking in relation to both Agenda items 8 and 9, said that her country would like to thank the proponents for their revised proposals. The well-functioning of the Appellate Body was Norway's primary interest when considering these proposals. Ensuring that all vacancies were filled as they arose was an important part of Norway's considerations. As it had already mentioned at the 22 May 2017 DSB meeting, Norway would be in a position to support either of the two proposals (as well as the revised ones). Norway said that it had a preference for the EU's proposal as it seemed to provide for a more efficient process that could facilitate the selection of new Appellate Body members for both of the vacancies within an agreed time-frame. Norway noted with regret that one Member was not in a position to agree to the EU's proposal. The proposal from the Latin American proponents only provided for the initiation of the process to replace one seat – the seat that would become vacant in July 2017. That proposal seemed to have been accepted by all but one Member, and it sought to resolve the most pressing matter out of the two proposals. Although Norway agreed with the EU that the second process should be launched without delay – and that it was indeed time to launch this second process – it failed to understand why the DSB could not agree to launch the process for selecting a new Appellate Body member for the seat that would become vacant in June 2017 – at the present meeting. Norway urged all Members to show the utmost flexibility in order to ensure that the DSB surpassed this deadlock for the benefit of the system.

9.28. The representative of Guatemala said that his country would like to thank Mexico for the statement made on behalf of the Latin-American proponents. Guatemala wished to take the opportunity to join those who had aired concern regarding the lack of consensus to initiate the Appellate Body selection process or processes. Guatemala said that normally form should follow substance, however, Members had now been discussing when and how the DSB would adopt a decision to initiate one or two selection processes for more than six months. The initiation of the selection process was just a formality which responded to the legal obligation of filling the vacancies of the Appellate Body as they arose so as to have a body made up of seven members. At the present meeting, once again, the DSB was in a situation where it could not launch a selection process to replace Mr. Ricardo Ramírez-Hernández, whose term of office expired at the end of June. In other words, in just 11 days. It was obvious that Members would not be able to fill this vacancy now. The WTO would, therefore, most likely, have an Appellate Body made up of six members for an extended period of time. Furthermore, as time passed, the question of whether or not to launch one or two selection processes would become irrelevant. The expiry of the term of office of Mr. Peter Van den Bossche was coming soon. Therefore, if the DSB wanted to fill that vacancy as it arose, it was necessary to initiate the selection process in the coming days. Otherwise the WTO would be, once again, in the regrettable situation of having an Appellate Body made up of five members. The lack of agreement on such simple issues, such as a formality to initiate a selection process, had serious consequences for the dispute settlement mechanism and the multilateral trading system. Guatemala urged Members to reflect and act pragmatically to resolve this issue as soon as possible.

9.29. The representative of Chile said that his country thanked Mexico for its statement made on behalf of Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru. In Chile's view, Members had to meet their responsibilities with regard to the selection of new Appellate Body members. In the very near future, the Appellate Body would have only six members. The fact that the selection process had not yet been launched had systemic implications. It was up to all Members to solve this systemic problem. Chile therefore regretted that the DSB could still not launch one or two selection processes at the present meeting. The DSB required the commitment of the whole Membership to preserve the credibility of the WTO. The DSB was one of the fundamental pillars in the regular functioning of the WTO. If Members could not guarantee the sustainability and the continuity of the work of the Appellate Body, responsibility belonged with them. The situation that the DSB currently faced created a very unfortunate precedent for the future work of the WTO. For

these reasons, Chile appealed to all Members to meet their responsibilities and to specify and clarify their respective positions so that the DSB could find a solution and to initiate the selection process as soon as possible.

9.30. The representative of Mexico, speaking on behalf of Argentina, Brazil, Colombia, Chile, Guatemala, Mexico and Peru, reiterated the disappointment of the respective countries about the lack of consensus, especially in view of its impact on the dispute settlement system and on the Appellate Body in particular. Under these circumstances, Mexico reiterated the willingness of the respective countries to work with the DSB Chair and to intensify consultations to resolve this situation.

9.31. The representative of Mexico said that, in addition to the previous statement, his country wished to note that around 26 delegations had taken the floor regarding the AB appointments. There had been calls for a flexible, responsible and pragmatic response to a situation which was becoming a matter of urgency and alternatives had been put forward that could be explored. Mexico reiterated its readiness to work under the leadership of the DSB Chairman.

9.32. The Chairman thanked Members for their statements. He noted that although the sense of urgency was shared by most Members, it was highly regrettable that the DSB was not yet in a position to agree to start the process or processes on the appointment of the Appellate Body members. As he had stated at the 22 May 2017 DSB meeting, he had held consultations with several delegations with strong stakes and interests in the matter. He had presented some concrete ideas in an effort to move this matter forward as soon as possible. Unfortunately, none of those ideas had gained consensus among the Members consulted. He further noted that the first vacancy would arise on 1 July 2017. In this regard, he wished to recall that Article 17.2 of the DSU stated that vacancies had to be filled as they arose. He emphasized that, in view of the time necessary to go through the selection process properly, it was also high time to start the selection process to fill the second vacancy. He urged, once again, all delegations to show more flexibility and to get necessary instructions from capitals in order to make a decision to launch the process or processes as soon as possible. Finally, he sought Members' understanding, support and cooperation regarding these matters.

9.33. The DSB took note of the statements.

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