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Dispute Settlement Body
28 May 2021

MINUTES OF MEETING

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

Chairman: H.E. Mr Didier Chambovey (Switzerland)

Prior to the adoption of the Agenda, the Chairman welcomed all delegations participating in the virtual meeting of the DSB and recalled a few technical instructions regarding the virtual meeting. He said that if a Member was unable to take the floor during the meeting because of a technical issue, the delegation could inform himself or the Secretariat and that Agenda item would remain open until the delegation could take the floor. In the alternative, the item would remain open temporarily, the meeting would proceed to the next Agenda item, and the DSB would revert to the open item after the technical issue had been resolved. If a technical issue remained unresolved, the delegation had the option to send the statement to the Secretariat with the request that it be read out by the Secretariat on behalf of that delegation during the meeting so that the statement could be reflected in the minutes of the meeting. Before turning to the adoption of the Agenda, the Chairman said that he wished to make a short statement regarding item 4 of the proposed Agenda of the 28 April DSB meeting, pertaining to the DS574 dispute. He recalled that the matter was removed from the proposed Agenda to allow time for the Chair's consultations with each interested party regarding this Agenda item. He wished to inform delegations that immediately following the 28 April DSB meeting, he himself, as the new Chair of the DSB, had engaged in consultations with each interested party regarding this matter. He said that those consultations were ongoing.

The DSB took note of the statement and adopted the Agenda.

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

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.215)

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.190)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.153)

D. United States – Anti-dumping and countervailing measures on large residential washers from Korea: Status report by the United States (WT/DS464/17/Add.37)

E. United States – Certain methodologies and their application to anti-dumping proceedings involving China: Status report by the United States (WT/DS471/17/Add.29)

F. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.24 – WT/DS478/22/Add.24)

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

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

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.215)

1.2. The Chairman drew attention to document WT/DS184/15/Add.215, 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 17 May 2021, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations of the DSB that had yet to be addressed, the US Administration would confer with the US Congress with respect to the appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan said that Japan thanked the United States for the latest status report and its statement. Japan once again called on the United States to fully implement the DSB 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.190)

1.6. The Chairman drew attention to document WT/DS160/24/Add.190, 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 17 May 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 said that the European Union thanked the United States for its status report and its statement. The European Union referred to its previous statements and wished to resolve this case 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.153)

1.10. The Chairman drew attention to document WT/DS291/37/Add.153, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

1.11. The representative of the European Union said that the Standing Committee meeting had been held online on 19 April 2021. The Commission had presented one authorization and one

renewal authorization.[2] The Standing Committee did not reach an opinion. The Commission would present the two authorisation decisions at the online meeting of the Appeal Committee on 9 June 2021. In addition, a Standing Committee meeting had been held online on 17 May 2021. The Commission had presented three authorisations and one renewal authorisation.[3] Due to the current public health situation, the vote would take place by written procedure ending ten working days after the date of the meeting concerned. The United States frequently referred to Member States' justifications issued during the meetings of the Standing Committee and Appeal Committee as being "political" and "not science-based". The European Union underlined that the final decision taken on the authorization was clearly science-based, as genetically modified organisms (GMOs) were authorised where the European Food Safety Authority (EFSA) had finalised its scientific opinion and concluded that there were no safety concerns. As repeatedly explained by the European Union and confirmed by the US delegation during the EU-US consultations held on 22 October 2020, efforts to reduce delays in authorisation procedures were constantly maintained at a high level at all stages of the authorisation procedure. It was also important to recognise the increased transparency in the EFSA's scientific assessment of GMOs, resulting from the new Transparency Regulation[4], which should help to reinforce trust in the safety of the authorised GMOs. The European Union acted in line with its WTO obligations. Finally, the European Union recalled that its approval system was not covered by the DSB's recommendations and rulings.

1.12. The representative of the United States thanked the European Union for its status report and its statement. The European Union continued to impose undue delays on the approval of biotech products. The United States had described these problems in detail, at nearly every monthly meeting of the DSB since the European Union began submitting status reports more than thirteen years prior. To recall, the DSB had found two basic types of WTO-inconsistencies with the EU measures affecting the approval and marketing of biotech products. First, the DSB had found that the European Union had imposed undue delays on product applications, in breach of EU obligations under Annex C of the SPS Agreement. Second, the DSB had found that even where the European Union had approved a particular product, in many instances EU member States nonetheless banned those products without a scientific basis. The European Union had failed to correct either of those problems.

1.13. Moreover, the European Union had expanded the scope of such EU member State bans, with over a dozen members adopting bans on products approved at the European Union level. In addition, the European Commission has also proposed legislation that would expand such "opt out" bans to products intended for use in food and feed. The United States failed to see how the opt out for cultivation, or the Commission's attempt to introduce opt outs for food and feed safety authorizations, represented "efforts to reduce delays … at a high level at all stages of the authorization process." The United States had reiterated this at every US-EU consultation, including the meeting held on 22 October 2020. 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. For example, EU member States at the Standing Committee continue to cite "*no agreed national position*", "*negative public opinion*", and "*political reasons*" as justifications for reaching "no opinion" regarding product approvals. The United States failed to see how the EU's current approval process addressed the undue delays contemplated in "EC – Approval and Marketing of Biotech Products" (DS291). The United States requested that the European Union move to issue final approvals for all products that had completed science-based risk assessments at EFSA, including those products that were with the Standing Committee and Appeals Committee.

1.14. The representative of the European Union said that the United States' statement was a step backwards as compared to recent meetings. The United States had started raising issues that it had abandoned in previous statements, such as the opt out directive and alleged bans imposed by EU

[2] Meeting of 19 April 2021: authorisation of oilseed rape Ms8xRf3xGT73 and sub-combinations for food and feed (except isolated seed protein for food) and renewal authorisation of GT73 for feed.

[3] Meeting of 17 May 2021: authorisation for food and feed of soybean DAS-81419-2, soybean DAS-81419-2 × DAS–44406–6, maize 1507 × MIR162 × MON810 × NK603 and sub-combinations; and renewal authorisation of maize Bt 11 for food and feed.

[4] Regulation (EU) 2019/1381 of the European Parliament and of the Council of 20 June 2019 on the transparency and sustainability of the EU risk assessment in the food chain and amending Regulations (EC) No 178/2002, (EC) No 1829/2003, (EC) No 1831/2003, (EC) No 2065/2003, (EC) No 1935/2004, (EC) No 1331/2008, (EC) No 1107/2009, (EU) 2015/2283 and Directive 2001/18/EC (OJ L 231, 6.9.2019, p. 1-28).

member States, as well as references to the European Union's comitology process. WTO agreements did not require full international harmonisation and left some regulatory space or autonomy to individual WTO Members. The European Union had different regulatory approaches towards non-GMOs and GMOs but, in all cases, such regulations did not discriminate between imported and domestic like products. Regarding the opt out directive and alleged bans, the European Union repeated that no EU member State had imposed any "ban". Under the terms of the opt out directive, an EU member State could adopt measures restricting or prohibiting cultivation only when such measures were in line with EU law and were reasoned, proportional, non-discriminatory, and based on compelling grounds. The free movement of seeds was embedded in Article 22 of Directive 18 of 2001, which provided that an EU member States may not prohibit, restrict or impede the placing on the market of GMOs, as products, or in products, which comply with the requirements of the Directive. The European Union also noted that according to the provisions of that opt-out Directive, in particular Article 26b, point 8, the measures adopted under the Directive must not affect the free circulation of authorised GMOs inside the European Union. Currently, the EU Common Catalogue of varieties of agricultural species included 150 varieties of maize MON810, which were allowed to be marketed in the European Union. To date, the Commission had never received any complaints from seed operators or other stakeholders concerning the restriction of marketing of MON810 seeds in the European Union. This confirmed the smooth functioning of the internal market of MON810 seeds.

1.15. 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.37)

1.16. The Chairman drew attention to document WT/DS464/17/Add.37, 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.

1.17. The representative of the United States said that the United States had provided a status report in this dispute on 17 May 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 recommendations concerning those anti-dumping and countervailing duty orders. The United States would consult with interested parties on options to address the recommendations of the DSB relating to other measures challenged in this dispute.

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

1.19. The representative of Canada said that the United States continued to not conform with the DSB decision contained in the Appellate Body report concerning the case of large residential washers. The United States continued to use the FPD method (fixed-priced differential) which was "as such" incompatible with the WTO Agreements. Thus, the United States was ignoring the DSB recommendations and was not complying with its obligations. To the contrary, the United States continued to apply the FPD method "as such" in investigations on foreign companies and continued to collect cash deposits from foreign companies based on this WTO-inconsistent methodology. Although the reasonable period of time to implement the DSB's recommendations with respect to the "as such" inconsistency of the FPD had expired three years ago, in its most recent status report the United States indicated that it was still consulting with interested parties. Furthermore, the ongoing use of the FPD by the United States was forcing Members to have recourse to a number of dispute settlement procedures. This was, therefore, an ineffective and wasteful use of resources allocated to WTO dispute settlement. Canada remained seriously concerned by the fact that the United States was still not conforming to the DSB's recommendations and decisions in this case. This violation seriously undermined security and predictability of the multilateral trading system.

1.20. 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.29)

1.21. The Chairman drew attention to document WT/DS471/17/Add.29, 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.

1.22. The representative of the United States said that the United States had provided a status report in this dispute on 17 May 2021, in accordance with Article 21.6 of the DSU. As explained in that report, the United States would consult with interested parties on options to address the recommendations of the DSB.

1.23. The representative of China said that China thanked the United States for its latest status report. However, China's grave concern with respect to the US compliance remained unresolved. It was regrettable that 33 months after the expiry of the reasonable period of time, the United States continued to fail to implement the adopted rulings and recommendations in this dispute. What was worse was that none of its status reports could indicate any concrete compliance action. Prompt compliance was critical to the effectiveness and credibility of the dispute settlement system, which was in the best interests of the whole Membership. China urged the United States to honour its implementation obligations, in accordance with Article 21.1 of the DSU, by bringing itself into full compliance in this dispute, without further delay.

1.24. 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.24 – WT/DS478/22/Add.24)

1.25. The Chairman drew attention to document WT/DS477/21/Add.24 – WT/DS478/22/Add.24, 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.

1.26. The representative of Indonesia said that Indonesia was submitting its status report pursuant to Article 21.6 of the DSU. Indonesia wished to reiterate its strong commitment to implementing the recommendations and ruling of the DSB in these disputes. With regard to measure 18, as reported in previous DSB meetings, through the enactment of Law No. 11 of 2020 on Job Creation, all Articles in the relevant Laws that had been found to be inconsistent with WTO rules, had been amended and were no longer in existence. With respect to measures 1–17, substantial adjustments had been continuously carried out in order to be consistent with the recommendations and rulings of the DSB. Those adjustments included the removal of the disputed measures in the relevant MoA and MoT regulations, including, *inter alia*, harvest period restriction, import realization requirements, six-months harvest requirement, and reference price. Indonesia continued to note concerns raised by New Zealand and the United States in these disputes. Indonesia would continue to engage with New Zealand and the United States regarding the recommendations and rulings of the DSB.

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

1.28. 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. With respect to Measures 1 to 17, the United States understood that Indonesia had revised certain regulations, but the United States was still waiting to hear more from Indonesia on how such actions would address the DSB's

recommendation and bring its measures into full compliance. The United States remained willing to work with Indonesia to fully resolve this dispute.

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

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

A. Statement by the European Union

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

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

2.3. The representative of Canada said that Canada thanked the European Union for having placed this item on the Agenda. Canada shared the EU's view that the Byrd Amendment remained under the surveillance of the DSB until the United States ceased to apply it.

2.4. The representative of the United States said that, as the United States had noted at previous DSB meetings, the Deficit Reduction Act – which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 – was enacted into law more than 15 years ago in February 2006. The Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, more than 13 years prior. 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 European Union's approach to this Agenda item. The European Union presently applied an additional duty of 0.012% on certain imports of the United States. There was no trade rationale for inscribing this item month after month. The United States indicated that, as the European Union had done many times before, at the April DSB meeting, the European Union had once again called on the United States to abide by its "clear obligation" under Article 21.6 for the United States to submit a status report in this dispute. Notably, the European Union did not call on any other Member in any other dispute to abide by this so-called "clear obligation," despite the fact that several Members were in the same situation as the United States. As the United States had explained repeatedly, there was no obligation under the DSU for a Member to provide further status reports once that Member announced that it *has implemented* the DSB recommendations. The widespread practice of Members – including the European Union as a responding party – confirmed this understanding of Article 21.6. Canada, despite the views expressed in its statement at the present meeting, shared this view as the responding party in "Canada – Measures Relating to the Feed-in Tariff Program" (DS426). Canada explained to the DSB that, because it had submitted a notification of compliance, "there was no further obligation on Canada to provide status reports to the DSB", which Canada cited as "consistent with DSU provisions and the DSB practice."[5] Canada maintained this systemic position that it was not required to submit a status report to the DSB if it had informed the DSB that it had taken the necessary steps to comply.

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

2.5. The United States noted that, at recent meetings, three other Members – China, Brazil, and Australia – had acted consistently with this systemic position. Each Member 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 had not provided a status report since announcing compliance – just like the United States. The European Union was the complaining party in one of those disputes (DS472). If the European Union believed status reports were "required" under the DSU, it would have insisted that the responding Member provide a status report in that dispute, or the European Union would have inscribed that dispute as an item on the Agenda of the present meeting. The European Union took neither action. At the April DSB meeting, the European Union claimed once again that the circumstances between DS472 and the present dispute were "entirely different," but the United States was still waiting for the European Union to actually articulate the supposed difference between the two disputes. Through its actions, the European Union had once again demonstrated that it did not truly believe that there was a "clear obligation" under Article 21.6 to submit a status report after a party has claimed compliance. The European Union had simply invented a rule for this dispute, involving the United States, that it did not apply to other disputes involving other Members.

2.6. The representative of Canada said that Canada wished to provide some clarification regarding some observations made by the United States at the present meeting. With regard to the Byrd Amendment (DS217), Canada said that the DSB had authorized suspension of concessions and, since the matter remained unresolved, the United States had the obligation to provide status reports regarding the implementation of recommendations, in accordance with Articles 21.6 and 22.8 of the DSU. For that reason, Canada maintained its position that the Byrd Amendment should remain under the surveillance of the DSB until such a time that the United States stopped applying it. In "Canada – Measures Relating to the Feed-in Tariff Program" (DS426), the complainants did not request the establishment of a panel under Article 21.5 to examine the conformity of Canada's implementation, nor did the complainants request authorization to suspend concessions under Article 22.6. Moreover, the complainants expressed their satisfaction regarding the measures taken by Canada to comply with its obligations. In such circumstances, Members could conclude that the question of implementation of DSB recommendations had been resolved. Consequently, Canada no longer had the obligation to submit status reports under Article 21.6 of the DSU.

2.7. The representative of the European Union said that the European Union recalled that the CDSOA had been found to be in breach of WTO rules for transferring anti-dumping and countervailing duties to US industry, and 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, as most recently shown by the report of the US Customs and Border Protection for the financial year 2020. The circumstances of this case with regard to relevant DSU provisions and procedures were therefore entirely different from those in the DS472 dispute.

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

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

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

3.4. The representative of the European Union said that the United States had again stated that the European Union was taking inconsistent positions under Article 21.6 of the DSU, depending on whether the European Union was a complaining party or a defending party in a dispute. That US assertion was without merit. As the European Union had repeatedly explained in past meetings of the DSB, the crucial point for the defending party's obligation to provide status reports to the DSB was the stage of the dispute. In the Airbus case, the dispute was at a stage where the defending party did not have an obligation to submit status reports to the DSB. The European Union wished to remind delegations that in the Airbus case the European Union had notified a new set of compliance measures to the DSB. That new set of compliance measures was subject to an assessment by a compliance panel and that panel report had been circulated on 2 December 2019. As noted in its statement at the December 2020 meeting of the DSB, the European Union was of the view that significant aspects of the compliance panel report could not be regarded as legally correct and were very problematic from a systemic perspective when it came to assessing compliance with the subsidy disciplines of the WTO agreements.

3.5. The European Union said that in order to have those legal errors corrected, the European Union had filed an appeal against the compliance panel's report on 6 December 2019. The European Union was concerned that with the current blockage of the two-tier multilateral dispute settlement system, it was losing the possibility of a proper appellate review of the serious flaws contained in the panel report. While the blockage continued, the European Union stood ready to discuss with the United States alternative ways to deal with its appeal. The European Union was also committed to finding a balanced negotiated solution with the US that would allow leaving both aircraft disputes behind them. Those 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 remained the very subject matter of that ongoing litigation. How could it be said that the defending party should submit "status reports" to the DSB in those circumstances? The European Union would be very concerned with a reading of Article 21.6 of the DSU that would require the defending party to notify the purported "status of its implementation efforts" through the submission of status reports to the DSB, while dispute settlement proceedings on that precise issue were ongoing.

3.6. The European Union noted that its reading of the provision was supported by other WTO Members. The view of the European Union was further supported by Article 2 of the DSU, on the administration of the dispute settlement rules and procedures, where, further to disagreement between the parties on compliance, a matter is with the adjudicators, the matter is temporarily taken out of the DSB's surveillance. Under Article 21.6 of the DSU, the issue of implementation was to remain on the DSB's agenda until the issue was resolved. In the Byrd Amendment case, the European Union did not agree with the assertion by the United States that it had implemented the DSB recommendations and rulings. This meant that the issue remained unresolved for the purposes of Article 21.6 of the DSU. If the US did not agree that the issue remained unresolved, nothing prevented it from seeking a multilateral determination through a compliance procedure, just like the European Union was doing in the Airbus case.

3.7. The representative of the United States said that the United States was aware that the European Union had filed yet another notice of supposed compliance. The United States disagreed that the European Union had achieved compliance. The European Union asserted in its 2020 so-called "compliance notice" that it had amended 2 of 8 launch aid measures that had been found in the

second compliance report to continue to cause adverse effects. Therefore, the European Union admittedly had made no changes to 6 WTO-inconsistent measures. Unfortunately, the amendments the European Union had made to French and Spanish A350 XWB launch aid were marginal and insufficient to withdraw those subsidies. Indeed, the European Union had claimed compliance repeatedly in 16 years of the dispute. The United States found persuasive the second compliance panel report, which rejected the European Union's assertions and found that 8 EU launch aid subsidies continued to cause adverse effects. The European Union had also expressed doubt about US compliance in DS353 (US – Large Civil Aircraft). But, no one could deny that Washington State terminated the aerospace tax break – and the European Union had not denied it. The text of the measure was public, and its terms were notified to the WTO and the European Union. This was the sole measure found to cause adverse effects in the compliance proceeding and the sole basis for countermeasures authorized by the WTO. As it clearly had been withdrawn, the European Union had no basis for countermeasures of any kind.

3.8. The representative of the European Union said that the US statement under this agenda item was, once again, a step backwards when compared to previous statements. Similarly to the EC – Biotech case, the United States had once again brought up comments on various items that it had stopped referring to, in recent DSB meetings. The European Union was therefore obliged to respond to the latest statement of the United States. The United States had mentioned that the European Union had amended only two out of the eight measures and had admitted to making no changes to the other six measures that the panel had found to be WTO-inconsistent. With regard to the additional Repayable Launch Investments (RLI) not covered by the EU notification, which were mentioned by the United States, the European Union reiterated its position as expressed in previous DSB meetings, that the compliance proceedings in this dispute had not been concluded due to the current blockage of the two-tier multilateral dispute settlement system. Moreover, some of the measures mentioned by the United States had actually been amended and the European Union had fully explained this to the United States. Finally, it had to be noted that the other contested measures related to the Repayable Launch Investment for the development of the A380 aircraft model. It was well known that Airbus had decided already in 2019 to completely wind down the A380 programme. The last Airbus 380 rolled out of the production line in Toulouse in September 2020. The production line was closed and employees had been moved to other operations. Consequently, the A380 RLI could not cause any more adverse effects to the United States.

3.9. The representative of the United States said that the US goal throughout this dispute had been to stop EU subsidies that harmed US workers and manufacturers, and to ensure a level playing field. The United States had re-engaged with the European Union on this important dispute and looked forward to making swift and substantial progress.

3.10. The DSB took note of the statements.

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

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

4.1. The Chairman recalled that the DSB had considered this matter at its meeting on 28 April 2021 and had agreed to revert to it should a requesting Member wish to do so. He then drew attention to the communication from Australia contained in document WT/DS598/4 and invited the representative of Australia to speak.

4.2. The representative of Australia said that on 16 December 2020, the Australian Government had requested WTO dispute settlement consultations with China with respect to the imposition of a 73.6% anti-dumping duty and a 6.9% countervailing duty on Australian barley exports to China. The measures were set out in Notices No. 14 and 15 of 2020, both issued on 18 May 2020 by the Ministry of Commerce of the People's Republic of China. Unfortunately, those consultations, held on 28 January 2021, and subsequent exchange of information, had failed to resolve this matter. At the DSB meeting on 28 April 2021, Australia had requested the establishment of a WTO dispute settlement panel to examine this matter. China had not agreed to that request. While Australia remained ready to engage in bilateral discussions with China, Australia was disappointed that it had still not seen any concrete steps to respond to its legitimate concerns. As a result, Australia again requested the establishment of a WTO panel to examine this matter, with standard terms of

reference. Australia valued China and Australia's strong economic and community ties and remained open to further discussions with China with a view to resolving the issues Australia had raised.

4.3. The representative of China said that China regretted that Australia had decided to further its panel request with regard to this dispute. China referred to its statement made at the 28 April 2021 DSB meeting. China would vigorously defend itself in the ensuing proceedings and was confident that its challenged measures would be found to be consistent with relevant WTO rules. That being said, China remained open to engage faithfully with Australia with a view to reaching a positive resolution to this dispute.

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

4.5. The representatives of Brazil, Canada, the European Union, India, Japan, New Zealand, Norway, the Russian Federation, Singapore, Ukraine, the United Kingdom, and the United States reserved their third-party rights to participate in the Panel's proceedings.

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

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

5.1. The Chairman recalled that the DSB had considered this matter at its meeting on 28 April 2021 and had agreed to revert to it, should a requesting Member wish to do so. He then drew attention to the communication from Malaysia contained in document WT/DS600/6 and invited the representative of Malaysia to speak.

5.2. The representative of Malaysia said that Malaysia wished to reiterate its previous statement made at the 28 April 2021 DSB meeting. On 15 January 2021, Malaysia had requested consultations with the European Union as well as with France and Lithuania pursuant to Article 4 of the DSU, Article XXII of the GATT 1994, Article 1 of the TBT Agreement, and Article 30 of the SCM Agreement. That request had been circulated on 19 January 2021 in document WT/DS600/1. Consultations had been held on 17 March 2021 with the objective of reaching a mutually agreeable solution. Regrettably, the consultations had failed to achieve the intended objective. Therefore, once again, Malaysia was requesting that a panel be established pursuant to Articles 4.7 and 6 of the DSU, to examine certain measures imposed by the European Union and EU member States affecting palm oil and oil-palm cropped based biofuels from Malaysia.

5.3. The representative of the European Union said that the European Union regretted Malaysia's decision to request a WTO panel on certain measures concerning palm oil and oil palm crop-based biofuels from Malaysia, adopted by the European Union and certain member States. Malaysia was of course entitled to bring this matter to dispute settlement in the WTO, but the European Union firmly believed that the measures at stake were fully justified. For those reasons, the European Union was confident that it would prevail in this dispute, and that its actions would be declared in line with the WTO rules. The European Union stood ready to discuss with Malaysia reciprocal interim arrangements that would preserve the availability of appeal review in this and other disputes, on the basis of Article 25 of the DSU, for as long as the Appellate Body was not functioning, and a good example of such an arrangement was the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). The European Union warmly invited Malaysia to enter into the MPIA or to form a similar arrangement with the European Union.

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 Australia, Brazil, Canada, China, Colombia, El Salvador, Guatemala, India, Indonesia, Japan, Korea, Norway, the Russian Federation, Singapore, Thailand, Ukraine, the United Kingdom, and the United States reserved their third-party rights to participate in the Panel's proceedings.

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

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

6.2. The representative of Mexico, speaking on behalf of the co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.19, said that the delegations in question had agreed to submit the joint proposal to launch the selection processes for the vacancies of the Appellate Body members. Mexico, on behalf of these 121 Members, wished to state the following. The large number of Members submitting this joint proposal reflected a common concern with the present situation in the Appellate Body that was seriously affecting the overall dispute settlement system, against the best interest of its Members. WTO Members had a responsibility to safeguard and preserve the Appellate Body, the dispute settlement system, and the multilateral trading system. Thus, it was their duty to proceed, without further delay, with the launching of the selection processes for the Appellate Body members, as submitted to the DSB. The proposal sought to: (i) start seven selection processes (one process to replace Mr Ricardo Ramírez-Hernández, whose second term had expired on 30 June 2017; a second process to fill the vacancy resulting 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 Graham whose second term had expired on 10 December 2019; and a seventh selection process to replace Ms Hong Zhao, whose first four-year term of office had expired on 30 November 2020); (ii) to establish a Selection Committee; (iii) to set a deadline of 30 days for the submission of candidates; and (iv) to request that the Selection Committee issue its recommendation within 60 days after the deadline for nominations of candidates. The proponents were flexible regarding the deadlines for the selection processes, but Members should consider the urgency of the situation. The proponents continued to urge all Members to support this proposal in the interest of the dispute settlement and multilateral trading systems.

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

6.4. The representative of the European Union said that the European Union referred to its previous statements on this matter. Since 11 December 2019, the WTO no longer guaranteed access to binding, two-tier, independent and impartial resolution of trade disputes. A fully functioning WTO dispute settlement system was critical for a rules-based multilateral trading system. This was why the most urgent area of WTO reform involved finding an agreed basis to restore such a system and proceeding to the appointment of the members of the Appellate Body. This task had to be addressed as a priority. As the European Union had consistently noted, WTO Members had a shared responsibility to resolve this issue as soon as possible, and to fill the outstanding vacancies, as required by Article 17.2 of the DSU. The European Union agreed that meaningful reform was needed

in order to achieve this objective. The European Union therefore renewed its call on all WTO Members to engage in a constructive discussion as soon as possible in order to restore a fully functioning WTO dispute settlement system. The European Union thanked all Members that had co-sponsored the proposal to launch the appointment processes.

6.5. The representative of Norway said that Norway wished to be fully associated with the statement made by Mexico, and shared the concerns expressed by previous Members. As Norway had stated at previous meetings, it was deeply concerned with the ongoing situation where the Appellate Body was unable to perform its functions, against the interests of all Members. This had put the multilateral rules-based trading system into a crisis. Norway had endorsed the MPIA as a contingency measure, however, Norway's priority remained finding a long-lasting multilateral resolution to the impasse. Norway continued to call on the United States to unblock the appointments of Appellate Body members.

6.6. The representative of China said that China supported the statement delivered by Mexico on behalf of 121 co-sponsors and called upon more Members to join the proposal. China referred to its previous statements on this urgent matter and reiterated its firm commitment to an independent and impartial two-tier dispute settlement system. In accordance with Article 17.2 of the DSU, Members bore a collective duty to ensure a standing Appellate Body by filling vacancies as they arose. It was regrettable that the US persistent blockage continued to obstruct the whole Membership from honouring this important treaty obligation. Nothing could do more to erode Members' confidence in the multilateral trading system than the demise of the Appellate Body. It was unimaginable that the WTO could be successfully reformed without a functional two-tier dispute settlement system. In this regard, restoring the functioning of the Appellate Body had to remain a priority for the entire Membership. China called on all Members to engage constructively in solution-based discussions with a view to breaking the selection impasse at the earliest possible date.

6.7. The representative of Indonesia said that Indonesia wished to refer to its previous statements made at previous DSB meetings under this Agenda item. Indonesia continued to urge all Members to accord their serious attention, willingness, and commitment to the immediate appointment of the Appellate Body members.

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

6.9. The representative of Thailand said that Thailand supported the statement made by Mexico on behalf of all the co-sponsors. Thailand, like other co-sponsors, was concerned with the impairment of the dispute settlement system due to the Appellate Body impasse. Thailand strongly advocated for prompt and practical solutions and underlined the importance of the two-tier, multilateral dispute system as some Members continued to file appeals before the Appellate Body. Thailand urged all Members to constructively engage in finding a long-lasting solution to the AB impasse and reminded Members that their goal was to revive a fully functioning dispute settlement system for all. Thailand stood ready to engage with all Members in this effort.

6.10. The representative of India said that India wished to refer to its previous statements and reiterated its serious concerns on this matter. The dispute settlement system that was binding, two-stage and impartial was a core priority for India. India therefore requested all WTO Members to resolve this matter and work on filling the outstanding vacancies, as set out in Article 17.2 of the DSU.

6.11. The representative of the United Kingdom said that the United Kingdom continued to support a fully functioning dispute settlement system as the best means of enforcing the rules Members had negotiated and ensuring the fair resolution of disagreements. The United Kingdom would continue

to engage with all Members to support efforts to find common ground and solutions on dispute settlement reform.

6.12. The representative of Korea said that Korea referred to its previous statements and noted that many Members had consistently voiced their concerns over the impasse of the Appellate Body and also over the urgency to revive the two-tier dispute settlement system. Korea fully supported the statement made by Mexico on behalf of the co-sponsors and urged all Members to engage constructively in relevant discussions to resolve this important matter as soon as possible.

6.13. The representative of Canada said that Canada supported the statement made by Mexico and shared the concerns expressed by other Members at the present meeting. Canada invited WTO Members that had not yet sponsored the proposal to consider joining the 121 Members calling for the launch of the selection processes. The critical mass of WTO Members behind the proposal was a clear testimony to the importance that Members 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 solution-oriented discussions on matters related to the functioning of the Appellate Body, and encouraged the United States to constructively engage in those discussions. Canada's priority remained finding a long-lasting multilateral resolution to the impasse that covered all Members, including the United States. In the meantime, Canada and 24 other WTO Members had endorsed the MPIA as a contingency measure to safeguard their rights to binding two-stage dispute settlement in disputes amongst themselves. The MPIA was open to all WTO Members. Canada invited all WTO Members to consider joining the MPIA to safeguard their dispute settlement rights to the greatest extent possible, until they collectively found a permanent solution to the Appellate Body impasse. Canada remained available to discuss the MPIA with any interested Member.

6.14. The representative of Japan said that Japan referred to its statements made at previous DSB meetings and supported the AB proposal. Japan absolutely shared the sense of urgency for reform of the dispute settlement system. As Japan had stated consistently, it considered it the utmost priority to achieve an expeditious reform that would contribute to a long-standing solution to the structural and functional problems of the dispute settlement system. A long time had passed since the Appellate Body virtually ceased its operation and in the meantime a number of cases had been appealed into the void. Japan considered it essential that every WTO Member, as the owner of the system, took the situation seriously and engaged in a constructive discussion toward the reform of the dispute settlement system. Japan spared no efforts to collaborate with all WTO Members to that end.

6.15. The representative of Nigeria, speaking on behalf of the African Group, said that the Group wished to refer to its previous statements made under this Agenda item. The Group wished to join others in supporting the statements made by Mexico. The African Group continued to regret that up to the present moment, the DSB had failed to fill the vacancies of the Appellate Body. Therefore, the Group urged the DSB to urgently fulfil its obligation under the DSU to fill vacancies as they arose, through the proposal for Appellate Body appointments, so as to maintain the two-tier dispute settlement system and restore the fully functioning Appellate Body. This would ensure predictability of the multilateral trading system.

6.16. The representative of Switzerland said that Switzerland also wished to refer to its statements made on this matter at previous DSB meetings. A fully functioning Appellate Body was in everybody's interest. Switzerland hoped that new momentum could be provided to solve the present situation in which Members had found themselves for a very long time. Switzerland was ready to work very hard to pursue this objective and vigorously encouraged all Members to work in a constructive way to find a solution to remove the AB blockage.

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

6.18. The representative of Brazil said that Brazil once again thanked Mexico for the presentation of the proposal on behalf of the co-sponsors, and wished to refer to its previous statements made

under this Agenda item. As Brazil had stated before the General Council, Members needed to restore the multilateral integrity of the dispute settlement system, including by preserving two levels of adjudication with a reformed Appellate Body. To that end, a key deliverable in MC12 should be a Ministerial Understanding on the role and procedures of the Appellate Body, which could guide Members toward a lasting solution to this impasse. Brazil stood ready to engage with all Members as soon as possible to secure such an outcome.

6.19. The representative of Singapore said that Singapore thanked Mexico for its statement, which it strongly supported. Singapore wished to refer to its past statements on this matter and reiterated its strong systemic interest in the maintenance of the two-tier binding WTO dispute settlement system. Embarking on the Appellate Body selection process remained the paramount priority for all Members. Singapore urged all Members, including the United States, to engage constructively to find a lasting multilateral solution.

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

6.21. The representative of Mexico said that her country wished to express its deep concern regarding this unprecedented situation regarding the Appellate Body that was not operational. Over the years, Mexico and 121 Members had continued to make statements requesting that the AB proposal be adopted by the DSB. All ongoing disputes were being affected because Members did not have an Appellate Body which was fully operational. This undermined the right of all Members to have a two-tier dispute settlement system and stood in the way of the prompt settlement of disputes. For that reason, Mexico urged Members who had not done so to accept the AB proposal. Mexico stood ready to continue working in a very positive way with constructive proposals to find a solution to this problem.

6.22. The Chairman thanked all delegations for their statements. He said that as in the past, the DSB would take note of the statements expressing the respective positions, which would be reflected in the minutes of the meeting. He said that, as Members were aware, this matter required a political engagement on the part of all WTO Members, and he hoped that Members would be able to find a solution to this matter as soon as possible. He said that his door was open to all delegations wishing to contact him directly on this matter.

6.23. The DSB took note of the statements.