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Dispute Settlement Body
27 January 2020

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 27 JANUARY 2020

Chairman: H.E. Dr David Walker (New Zealand)

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1.1. The Chairman noted that there were nine sub-items under this Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. He recalled that Article 21.6 required that: "[u]nless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and shall remain on the DSB's Agenda until the issue is resolved". Under this Agenda item, he invited delegations to provide up to date information about their compliance efforts. He also reminded delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "[r]epresentatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record". He then turned to the first status report under this Agenda item.

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.203)

1.2. The Chairman drew attention to document WT/DS184/15/Add.203, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the dispute 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 16 January 2020, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the DSB's recommendations and rulings 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 wished to thank the United States for its most recent status report and for its statement made at the present meeting. Japan, once again, called on the United States to fully implement the DSB's recommendations and rulings so as to resolve this matter.

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

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.178)

1.6. The Chairman drew attention to document WT/DS160/24/Add.178, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the dispute 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 16 January 2020, in accordance with Article 21.6 of the DSU. The US Administration would continue to confer with the European Union, and to 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 wished to thank the United States for its status report and for its statement made at the present meeting. The EU wished to refer to its statements made at previous DSB meetings under this Agenda item. The EU wished to resolve this dispute as soon as possible.

1.9. The representative of China said that his country noted that this was the 179th status report submitted by the United States in this dispute. However, these reports were not different from one another and none of them indicated any progress on implementation. Nearly two decades after the DSB had adopted the Panel Report in this dispute, the United States continued to fail to bring its WTO-inconsistent measures into conformity with WTO rules. By not complying with its implementation obligations, the United States had been continuously failing to accord the minimum standard of protection required by the TRIPS Agreement and had become the only WTO Member who failed to implement the DSB's recommendations and rulings under the TRIPS Agreement. Article 21.1 of the DSU made it clear that prompt compliance was essential to the effective resolution of disputes. China urged the United States to faithfully honour its commitments under the DSU and the TRIPS Agreement by implementing the DSB's recommendations and rulings in this dispute without further delay.

1.10. 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.141)

1.11. The Chairman drew attention to document WT/DS291/37/Add.141, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the dispute concerning measures affecting the approval and marketing of biotech products.

1.12. The representative of the European Union said that the EU continued to progress with the authorizations where the European Food Safety Authority had finalized its scientific opinion and concluded that there were no safety concerns. On 9 December 2019, a draft authorization for a new GM soybean[1] had been presented for a vote in a member States Committee with a "no opinion" result. This measure was then to be submitted for a vote in the Appeal Committee on 23 January 2020. As the EU had repeatedly explained, and as confirmed by the United States during the EU-US biannual consultations held on 12 June 2019, efforts to reduce delays in authorization procedures were constantly maintained at a high level at all stages of the authorization procedure. This had resulted in a clear improvement of the situation. During previous DSB meetings, the United States had referred to what was known as the EU "opt-out Directive". The EU wished to reiterate that the DSB's recommendations and rulings did not cover that "opt-out Directive". The EU acted in line with its WTO obligations. Finally, the EU also wished to recall that the EU approval system was not covered by the DSB's recommendations and rulings.

1.13. The representative of the United States thanked the European Union (EU) for its status report and its statement made at the present meeting. The United States continued to see persistent delays that affected dozens of applications that had been awaiting approval for an extended period. The EU had previously suggested that the fault was with the applicants. The United States disagreed; US concerns related to delays at every stage of the approval process resulting from the actions or inactions of the EU and its member States. The EU had also suggested during the 18 December 2019 DSB meeting that the United States "appears" to acknowledge that there was no ban on genetically engineered ("GE") products in the EU. This statement was incorrect. It was, and had consistently been, the position of the United States that the EU had failed to lift all of the WTO-inconsistent member-State bans covered by the DSB's recommendation. The DSB had adopted findings that, even where the EU had approved a particular product, in many instances EU member States had banned those products for certain uses without a scientific basis. This included not only the two member States subject to panel findings – Austria and Italy. There were seven additional member States that had previously maintained bans on cultivation and had since opted out of cultivation under the EU's legislation: Bulgaria, France, Germany, Greece, Hungary, Luxembourg, and Poland. There were also eight member States that had not previously banned cultivation of MON-810 but had since opted out of cultivation under the EU's legislation: Croatia, Cyprus, Denmark, Latvia, Lithuania, Malta, the Netherlands, and Slovenia. Further, Austria and Italy appeared to maintain bans on other products subject to specific panel findings. The EU's only response, which it continued to repeat, was that the member States did not restrict marketing or free movement of MON-810 in the EU. As the United States had noted at the 18 December 2019 DSB meeting, this answer did nothing to address US concerns. The restrictions adopted by EU member States restricted international trade in these products and had no scientific justification. Indeed, this was why the DSB had adopted findings that such restrictions on MON-810 were in breach of the EU's WTO commitments. The United States urged the EU to ensure that all of its measures affecting the approval of biotech products, including measures adopted by individual EU member States, were based on scientific principles, and that decisions were taken without undue delay.

1.14. The representative of the European Union said that, as it had stated at previous DSB meetings, the WTO Agreement did not require full international harmonization and left some regulatory space or autonomy to individual WTO Members. The European Union had different regulatory approaches to non-GMOs and GMOs but, in all cases, such regulations did not discriminate between imported and domestic like products. Contrary to what the United States had just asserted, no EU member State had imposed any "ban". Under the terms of the EU 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. Contrary to the statement of the United States, the free movement of seeds was embedded in Article 22 of Directive 18 of 2001 which provided that: "[m]ember States may not prohibit, restrict or impede the placing on the market of GMOs, as or in products, which comply with the requirements

[1] Soybean MON 87708 x MON 89788 x A5547-127.

of this Directive". The EU also noted that, according to the provisions of the opt-out Directive (Article 26b, point 8), the measures adopted under the Directive "shall not affect the free circulation of authorised GMOs" in the EU.

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.25)

1.16. The Chairman drew attention to document WT/DS464/17/Add.25, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the dispute 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 16 January 2020, 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 (May 6, 2019)). With this action, the United States had completed implementation of the DSB's recommendations concerning those anti-dumping and countervailing duty orders. The United States continued to consult with interested parties on options to address the DSB's recommendations relating to other measures challenged in this dispute.

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

1.19. The representative of Canada said that the United States continued to fail to comply with the DSB's ruling, arising out of the Appellate Body report in this dispute, that the "differential pricing methodology" (DPM) had been "as such" WTO-inconsistent. It had also ignored the DSB's recommendation that the United States bring itself into compliance with its obligations. Instead, the United States continued to apply the "as such" inconsistent differential pricing methodology in investigations with respect to foreign companies and continued to collect cash deposits from foreign exporters based on its inconsistent methodology. The reasonable period of time to implement the DSB's recommendations relating to the "as such" WTO-inconsistency of the DPM had expired more than two years ago. However, in its status report of 16 January 2019, the United States had merely stated that it continued to consult with interested parties. Moreover, the continued use by the United States of the DPM had forced Members to resort to several dispute settlement proceedings concerning this measure. This was an inefficient and unnecessary use of WTO dispute settlement resources. Canada remained deeply concerned with the continued US failure to comply with the DSB's recommendations and rulings in this dispute. This failure seriously undermined the security and stability of the multilateral trading system.

1.20. The representative of the United States recalled that Canada had commenced a dispute settlement proceeding against the United States concerning the use of a differential pricing analysis and zeroing. Canada had lost that dispute before the panel. The United States was willing, of course, to discuss Canada's concerns bilaterally.

1.21. 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.17)

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

1.23. The representative of the United States said that the United States had provided a status report in this dispute on 16 January 2020, in accordance with Article 21.6 of the DSU. As explained

in that report, the United States continued to consult with interested parties on options to address the DSB's recommendations.

1.24. The representative of China said that, on 22 May 2017, the DSB had adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, which had found that certain measures taken by the United States were inconsistent with the requirements of the Anti-Dumping Agreement, which included: (i) the use of zeroing under the W-T methodology was "as such" inconsistent with Article 2.4.2; (ii) the so-called "single rate presumption" as such violated Article 6.10 and 9.2; and (iii) the "adverse facts available" was a norm of general and prospective application which could be subject to future "as such" challenges. China wished to recall that, at the 19 June 2017 DSB meeting, the United States had stated its intention to implement the DSB's recommendations and rulings in this dispute. However, more than 17 months after the expiry of the reasonable period of time, China still could not identify any concrete implementation action from the United States. The WTO-inconsistent measures had remained intact and continued to infringe on China's legitimate interests provided for in the covered agreements. On 1 November 2019, the Arbitrator appointed pursuant to Article 22.6 of the DSU had determined the level of nullification or impairment incurred by China was US$ 3.579 billion. This amount, which was the third largest in the history of the WTO, revealed the level of hardship which Chinese workers and companies faced as a result of the WTO-inconsistent methodologies used by the United States. While China awaited to hear concrete implementations from the United States, China stood ready to take appropriate and proportionate actions to safeguard its legitimate interests in due course. As a matter of fact, the failure of the United States to fulfil its implementation obligation, especially with respect to various trade remedy disputes, had become a systemic issue. Over the years, rather than fully implementing the DSB's recommendations and rulings, the United States had chosen to ignore those that adversely impacted its interests. The United States either had left its WTO-inconsistent measures intact or had applied certain cosmetic changes which had not fundamentally removed such non-conformity. This left WTO Members no other choice but to repeatedly bring those issues which had already been decided before panels and before the Appellate Body. Article 21.1 of the DSU was clear: "[p]rompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members". China urged the United States to faithfully honour its implementation obligation and to fully comply with the DSB's recommendations and rulings in this dispute without further delay.

1.25. The representative of the United States said that the United States was aware of the decision of the Arbitrator concerning the level of nullification or impairment. China's decision to pursue that arbitration was disappointing, and not constructive. The United States was troubled that the Arbitrator had applied an approach to determining the amount of impact on China that had no foundation in economic analysis. Specifically, the first step of the Arbitrator's two-step approach necessarily inflated and overstated the impact. The United States had explained this to the Arbitrator. Even China had argued against the use of a two-step approach. It was unfortunate that the Arbitrator had nevertheless applied its two-step approach over the objections of the United States and China. The United States remained willing to discuss this matter with China on a bilateral basis.

1.26. 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.12 – WT/DS478/22/Add.12)

1.27. The Chairman drew attention to document WT/DS477/21/Add.12 – WT/DS478/22/Add.12, which contained the status report by Indonesia on progress in the implementation of the DSB's recommendations in the dispute concerning importation of horticultural products, animals and animal products.

1.28. The representative of Indonesia said that his country had submitted this report pursuant to Article 21.6 of the DSU. At the present meeting, Indonesia wished to reiterate its commitment to implementing the DSB's recommendations and rulings in these disputes. Indonesia took note of the continued concerns, especially with respect to specific measures, raised by New Zealand and the United States at previous DSB meetings. Indonesia also wished to inform that substantial adjustments to the Ministry of Agriculture (MoA) and Ministry of Trade (MoT) Regulations, which were relevant to these disputes, had continually been made. The measures at issue in these disputes, such as: (i) harvest period restrictions; (ii) the import realization requirement; (iii) the six-month

harvest requirement; and (iv) reference prices, had been removed and were no longer in place. With regard to Measure 18, as Indonesia had stated at previous DSB meetings, the drafts of amendments to the relevant laws had been finalized by the Indonesian Government. As specified in Indonesia's domestic laws and regulations, any law to be amended had to be inserted in the list of National Legislation Program, a list that was jointly agreed or approved by the Government and the Parliament of Indonesia. Indonesia wished to highlight that the amendments pertaining to the laws at issue in these disputes had already been included in this list. The Government and the Parliament of Indonesia would soon discuss the draft amendments to these relevant laws. Indonesia would continue to engage with New Zealand and the United States regarding matters related to the DSB's recommendations and rulings.

1.29. The representative of New Zealand said that his country acknowledged the steps that had been taken by Indonesia and Indonesia's commitment to comply fully with the DSB's recommendations and rulings. Both compliance deadlines that had been agreed between the parties had expired. New Zealand was seriously disappointed that full compliance had still not been reached. New Zealand was particularly concerned about the failure to remove Measure 18 and the continued enforcement of: limited application windows and validity periods; harvest period import bans; import realization requirements; and restrictions placed on import volumes based on storage capacity. New Zealand was also very concerned that, to date, no import recommendations had been issued for the 2020 import period for New Zealand horticultural products. This delay was a barrier to trade. If it was not resolved promptly, it could undermine the progress made towards compliance to date. New Zealand strongly encouraged Indonesia to take appropriate steps, swiftly, to achieve long-term, commercially meaningful, compliance with the WTO decision.

1.30. The representative of the United States said that Indonesia continued to fail to bring its measures into compliance with WTO rules. The United States and New Zealand agreed that significant concerns remained with the measures at issue, including the continued imposition of: harvest period restrictions, import realization requirements, warehouse capacity requirements, limited application windows, limited validity periods, and fixed licensed terms. The United States remained willing to work with Indonesia to fully and meaningfully resolve this dispute. The United States understood that Indonesia claimed to have "completed its enactment process" of certain regulations, but the United States was still waiting to hear from Indonesia on whether and how such action would bring its measures into full compliance. It also remained unclear how Indonesia's proposed legislative amendments would address Measure 18 and when Indonesia would complete its process. The United States looked forward to receiving further detail from Indonesia regarding the changes to its regulations and laws, especially with respect to Ministry of Agriculture Regulation 39/2019 on RIPH requirements and Regulation 46/2019 on Strategic Horticultural Commodities.

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

G./H. Brazil – Certain measures concerning taxation and charges: Status reports by Brazil (WT/DS472/16/Add.2 – WT/DS497/14/Add.2)

1.32. The Chairman drew attention to documents WT/DS472/16/Add.2 and WT/DS497/14/Add.2, which contained the status reports by Brazil on progress in the implementation of the DSB's recommendations in the disputes regarding certain measures concerning taxation and charges.

1.33. The representative of Brazil requested that the two sub-items under this Agenda item be considered together as they pertained to the same matter. He said that Brazil had submitted status reports in these disputes on 16 January 2020, in accordance with Article 21.6 of the DSU. Brazil wished to recall that three programmes had expired before the adoption of the reports of the Panel and of the Appellate Body. These programmes were: INOVAR-AUTO, which had expired on 31 December 2017 pursuant to Law 12,715/2012; PATVD, which had expired on 22 January 2017 pursuant to Law 11,484/2007; and Digital Inclusion, which had expired on 30 December 2015 pursuant to Law 13,241/2015. These programmes had expired and had not been renewed. Therefore, there were no further obligations with regard to the DSB's recommendations made regarding those programmes. With regard to the findings on "Processos Produtivos Básicos" (PPBs), Brazil had either revoked or replaced all implementing orders found to be inconsistent with the SCM Agreement. All PPBs currently in effect were consistent with Brazil's WTO obligations. Brazil had provided additional information about the implementing orders directly to the EU and Japan. As to the findings on the Informatics and PADIS programmes, the Government of Brazil had enacted Law 13.969 of 26 December 2019, bringing those measures into conformity with Brazil's WTO

obligations within the agreed RPT. Brazil was, therefore, in full compliance with the DSB's recommendations and rulings in these disputes.

1.34. The representative of the European Union said that his delegation wished to thank Brazil for its status report and for its statement made at the present meeting. The European Union wished to resolve this dispute as soon as possible and was following Brazil's implementation efforts very closely. The EU recalled that the reasonable period of time agreed by the parties had expired on 31 December 2019. In addition, as agreed between the parties in document WT/DS472/15, the time period for the withdrawal of all of the subsidies that had been found to be prohibited had expired on 21 June 2019. The European Union took note of the steps taken by Brazil. According to Brazil, these steps brought its measures into full compliance in this dispute, as set out in its status report and as Brazil had indicated to the EU, once again, at the present meeting. The European Union recalled that full and prompt compliance pursuant to Article 21 of the DSU required the withdrawal or modification of the WTO-inconsistent measure at issue and that any measure taken to comply also had to be WTO-consistent. All prohibited subsidies had to be withdrawn "without delay". The European Union was currently analysing whether Brazil was in full compliance with the DSB's recommendations and rulings in this dispute. The EU reserved its position to take further action.

1.35. The representative of Japan said that his country wished to thank Brazil for its status report and for its statement made at the present meeting. Japan reiterated its call for a full and prompt implementation of the DSB's recommendations and rulings in this dispute, as agreed between the parties. Japan recalled that the reasonable period of time had expired on 31 December 2019, and that the agreed reasonable period of time for the withdrawal of the prohibited subsidies had expired on 21 June 2019. Japan also took note of Brazil's announcement that it considered that it was now in full compliance with the DSB's recommendations and rulings in this dispute. In this regard, Japan was still in the process of examining Brazil's announcement. In the meantime, it appeared that the Law 13.969 of 26 December 2019 referred to by Brazil in its status report and at the present meeting would only take effect in April 2020. This seemed to suggest that the WTO-inconsistent programmes at issue in this dispute were still in effect. Japan asked Brazil whether it could explain how this issue would be addressed. Japan was also concerned that, under the Law 13.969, it still appeared that certain requirements to become eligible for tax credits remained unchanged under the Law 13.969. Japan recalled that such requirements also had to be brought into compliance with WTO rules. Japan further reserved its position in this respect. Moreover, Japan was concerned that there still remained certain Implementing Orders in force which constituted prohibited subsidies. Japan looked forward to consulting with Brazil so as to ascertain that Brazil was in full compliance with the DSB's recommendations and rulings in this dispute. Japan continued to closely monitor Brazil's measures taken to comply and reserved all of its rights to take further action.

1.36. The DSB took note of the statements.

I. China - Domestic support for agricultural producers: Status report by China (WT/DS511/15)

1.37. The Chairman drew attention to document WT/DS511/15, which contained the status report by China on progress in the implementation of the DSB's recommendations in the dispute concerning domestic support for agricultural producers.

1.38. The representative of China said that China had provided its status report in this dispute in accordance with Article 21.6 of the DSU. After the adoption of the Panel Report, relevant Chinese government agencies had conducted intensive consultations with the aim of implementing the DSB's recommendations and rulings in this dispute. Given the complexity of the measures at issue and the sensitivity of the subject matter in this dispute, China's internal process with respect to amending relevant measures was still ongoing. China would accelerate the internal process and fulfil its implementation obligation in due course.

1.39. The representative of the United States thanked China for its statement made at the present meeting. The United States noted that the parties informed the DSB, on 10 June 2019, that the United States and China had agreed that the reasonable period of time for China to implement the DSB's recommendations and rulings would expire on 31 March 2020. China had informed the DSB on 17 January 2020 that it had been actively studying implementation. The United States appreciated China's statement that it would accelerate the process to amend the relevant measures. The United States looked forward to hearing more detail from China on the result of its study, and

was prepared to engage bilaterally with China on the specific amendments it would make to bring its measures into compliance.

1.40. The representative of the European Union said that the EU wished to thank China for this first status report and looked forward to receiving more substantive information on the measures taken by China to implement the DSB's recommendations and rulings and the timelines for their implementation at future DSB meetings.

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

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

A. Statement by the European Union

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

2.2. The representative of the European Union said that his delegation requested, once again, that the United States stop transferring anti-dumping and countervailing duties to the US industry. Even if the amounts had considerably decreased, the most recent report under the Continued Dumping and Subsidy Offset Act of 2000 (from December 2018) showed that amounts were still, in practice, being disbursed. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations and rulings. The EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit status reports in this dispute. The EU would continue to place this item on the Agenda of DSB meetings as long as the United States had not fully implemented the WTO ruling and the disbursements ceased completely. This was a matter of principle which justified the cost resulting from the application of WTO rules.

2.3. The representative of Canada said that his country wished to thank the European Union for placing this item on the Agenda of this DSB meeting. Canada agreed with the European Union that the Byrd Amendment should remain subject to the surveillance of the DSB until the United States ceased to administer it.

2.4. The representative of the United States said that, as the United States had noted at previous DSB meetings, the Deficit Reduction Act – which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 – had been enacted into law in February 2006, nearly 14 years ago. Accordingly, the United States had implemented 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, more than 12 years ago. Even aside from this, the United States questioned the trade rationale for inscribing this item on the DSB's Agenda. In May 2019, the EU had notified the DSB that disbursements related to pre-October 2007 EU exports to the United States had totalled US$ 4,660.86 in fiscal year 2018. As such, the EU had announced it would apply an additional duty of 0.001 percent on certain imports of the United States. These minuscule tariffs vividly demonstrated what had been evident for years – it was not common sense that was driving the EU's approach to this Agenda item. The EU suggested it had requested the DSB's consideration of this item "as a matter of principle", but the EU's principles shifted depending on whether it was the complaining or responding party. As the United States had explained repeatedly, there was no obligation under the DSU for a Member to provide further status reports on the progress of its implementation once that Member announced that it had implemented the DSB's recommendations. The practice of Members – including the European Union as a responding party – confirmed this widespread understanding of Article 21.6. Accordingly, since the United States had informed the DSB that it had come into compliance in this dispute, there was nothing more for the United States to report in a status report.

2.5. The DSB took note of the statements.

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

A. Statement by the United States

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

3.2. The representative of the United States noted that, once again, the European Union had not provided Members with a status report concerning the "EC – Large Civil Aircraft" dispute (DS316). As the United States had noted at several recent DSB meetings, the EU had argued – under a different Agenda item – that, where the EU as a complaining party did not *agree* with another responding party Member's "*assertion* that it has implemented the DSB ruling", "the issue remains unresolved for the purposes of Article 21.6 DSU". Under this Agenda item, however, the EU argued that, by submitting a compliance communication, the EU no longer needed to file a status report, *even though* the United States as the complaining party did *not* agree with the EU's *assertion* that it had complied. The EU's position appeared to be premised on two unfounded assertions, neither of which was based on the text of the DSU. First, the EU had erroneously argued that, where "a matter is with the adjudicators, it is temporarily taken out of the DSB's surveillance". There was nothing in the DSU text to support that argument, and the EU provided no explanation for how it read Article 21.6 of the DSU to contain this limitation. Of course, this would be a convenient limitation on Article 21.6 for the purposes of this dispute, as the DSB had authorized the United States to impose countermeasures of approximately US$ 7.5 billion annually due to the adverse effects on the United States from subsidies provided by the EU and four member States. But that limitation did not exist in the text of Article 21.6. Second, the EU once again relied on its incorrect assertion that the EU's initiation of compliance panel proceedings meant that the DSB was somehow deprived of its authority to "maintain surveillance of implementation of rulings and recommendations". Yet again, there was nothing in Article 2 of the DSU or elsewhere that limited the DSB's authority in this manner. It was another invention of the EU. The EU was not providing a status report because of its assertion that it had complied, demonstrating the EU's principles varied depending on its status as complaining or responding party. Perhaps the EU chose not to report on the progress in its implementation because, rather than actually attempt to achieve compliance in this dispute, the EU had pursued a strategy of endless and meritless litigation. The recently circulated report of the second compliance panel showed how misguided the EU's strategy was. The second compliance panel, like the prior one, had rejected the EU's claim of compliance. But despite yet another finding of non-compliance, the EU had chosen to appeal the panel report, seeking yet more litigation in this 15-year dispute. The representative of the United States asked the EU whether it would not be more productive for the EU and its member States to focus on resolving this dispute. In sum, the US position on status reports had been consistent and clear: under Article 21.6 of the DSU, once a responding Member announced to the DSB that it had complied, there was no further "progress" on which it could report and, therefore, no further obligation to provide a status report. But as the EU allegedly disagreed with this position, it should for future meetings provide status reports in this "EC – Large Civil Aircraft" dispute (DS316). The EU could report on the progress in its implementation in this dispute in light of the five separate WTO reports finding that the EU and four member States had failed to comply with WTO subsidy rules.

3.3. The representative of the European Union said that, as during previous DSB meetings, the United States had, once again, asserted that the EU was taking inconsistent positions under Article 21.6 of the DSU, depending on whether the EU was a complaining party or a defending party in a dispute. The United States also referred to the EU's appeal filed against the report of the second compliance panel as an example of the EU's "misguided approach" pursuing "endless and meritless litigation ... instead of attempting to achieve compliance". Both US assertions were without merit. As the EU 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 "EC – Large Civil Aircraft" dispute (DS316), the dispute was at a stage where the defending party did not have an obligation to submit status reports to the DSB. As previously mentioned, in this dispute the EU had notified a new set of compliance measures to the DSB. That new set of compliance measures had been a clear demonstration that the EU – contrary to the United States in the parallel "US — Large Civil Aircraft (2nd complaint)" dispute (DS353) – was serious about and committed to achieving compliance. That new set of compliance measures had been subject to an assessment by a compliance panel and the panel's report had been issued on 2 December 2019. As noted in the

statement made by the EU at the 18 December 2019 DSB meeting, the EU believed that significant aspects of the compliance panel's report could not be regarded as legally correct. Quite to the contrary, they were very problematic from a systemic perspective in relation to the assessment of compliance with the subsidy disciplines of the WTO Agreements. It was in order to have these legal errors corrected, and not to continue litigation for the sake of litigation, that the EU had filed an appeal against the compliance panel's report on 6 December 2019. The EU was concerned that, with the current blockage of the two-step multilateral dispute settlement system, the EU was losing the possibility of a proper appellate review of the serious flaws contained in that panel report. While the blockage of the United States regarding the Appellate Body continued, the EU stood ready to discuss with the United States alternative ways to deal with this appeal. The EU was also committed to finding a balanced and negotiated solution with the United States that would allow leaving both aircraft disputes behind. These considerations did not, however, alter the fact that the compliance proceeding in this dispute had not been concluded. Whether or not the matter was "resolved" in the sense of Article 21.6 of the DSU remained the very subject matter of this ongoing litigation. The EU asked how it could be said that the defending party should submit "status reports" to the DSB in such circumstances. The EU would be very concerned with a reading of Article 21.6 of the DSU that would require the defending party to notify the purported "status of its implementation efforts" through the submission of status reports to the DSB, while dispute settlement proceedings on that precise issue were ongoing. The EU noted that its reading of the provision was supported by other WTO Members. The EU's view was further supported by Article 2 of the DSU on the administration of the dispute settlement rules and procedures: where, further to the disagreement between the parties on compliance, a matter was with the adjudicators, it was temporarily taken out of the DSB's surveillance. Under Article 21.6 of the DSU, the issue of implementation had to remain on the DSB's Agenda until the issue was resolved. In the "US — Offset Act (Byrd Amendment)" dispute (DS217), the EU did not agree with the US assertion that it had implemented the DSB's recommendations and rulings. This meant that the issue remained unresolved for the purposes of Article 21.6 DSU. 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 procedure, asking for a confirmation of its assertion that the Byrd Amendment measure had been repealed in line with the WTO findings, just like the EU was doing in the "EC – Large Civil Aircraft" dispute (DS316).

3.4. The DSB took note of the statements.

4 AUSTRALIA – ANTI-DUMPING MEASURES ON A4 COPY PAPER

A. Report of the Panel (WT/DS529/R and WT/DS529/R/Add.1)

4.1. The Chairman recalled that, at its meeting on 27 April 2018, the DSB had established a Panel to examine the complaint by Indonesia pertaining to this dispute. The Report of the Panel contained in document WT/DS529/R and WT/DS529/R/Add.1 had been circulated on 4 December 2019 as an unrestricted document. The Panel Report was now before the DSB for adoption at the request of Indonesia. This adoption procedure was without prejudice to the right of Members to express their views on the Panel Report.

4.2. The representative of Indonesia said that Indonesia's challenge in this dispute had raised a number of important issues. The first issue raised was whether Australia had acted inconsistently with Article 2.2 of the Anti-Dumping Agreement by failing to examine whether domestic market sales "permit a proper comparison" and, thus, whether Australia had improperly disregarded domestic market sales solely on the basis of finding that a "particular market situation" had existed. The Panel had agreed with Indonesia and had found Australia's measure to be inconsistent with Article 2.2 of the Anti-Dumping Agreement. The second issue raised was whether Australia had acted inconsistently with Australia's obligations under Article 2.2.1.1, first sentence, of the Anti-Dumping Agreement by disregarding two Indonesian producers' recorded costs of hardwood pulp in constructing the normal value for those producers. The Panel had agreed with Indonesia and had found Australia's measure to be inconsistent with Article 2.2.1.1 first sentence of the Anti-Dumping Agreement. The third issue raised related to whether Australia had acted inconsistently with Article 2.2 of the Anti-Dumping Agreement in calculating certain Indonesian producers' cost of production. The Panel had agreed with Indonesia and had found Australia's measure to be inconsistent with Article 2.2 of the Anti-Dumping Agreement. In this regard, Indonesia welcomed the Panel's findings and decisions in this dispute. Indonesia wished to thank the Panel and the Secretariat for their hard work and professionalism in this dispute. Indonesia also wished to thank Australia for working together with Indonesia in a spirit of cooperation in order to reach an agreement not to appeal the

Panel Report. Indonesia looked forward to Australia's prompt implementation of the DSB's recommendations and rulings in this dispute.

4.3. The representative of Australia said that her country wished to thank the Panel and the Secretariat for their time and efforts in this dispute. While disappointed with the outcome, Australia intended to work closely with Indonesia to ensure prompt implementation of the DSB's recommendations and rulings within the framework of Australia's anti-dumping system, in a manner consistent with Australia's WTO obligations. Australia and Indonesia had agreed not to appeal the Panel Report, and to engage in good faith negotiations of a reasonable period of time for Australia to bring its measures into conformity with the DSB's recommendations and rulings, in accordance with Article 21.3(b) of the DSU. This was consistent with Australia's strong support for the rules-based multilateral trading system. Australia noted that this dispute had addressed important systemic issues not previously considered within the dispute settlement system, notably with respect to the interpretation of the phrase "particular market situation" under Article 2.2 of the Anti-Dumping Agreement. Australia welcomed the Panel's findings on this issue, which recognized that situations arising from government intervention could, under certain circumstances, constitute a "particular market situation". Australia also acknowledged the clarification provided by the Panel regarding the methodologies required to find that a "particular market situation" did not "permit a proper comparison" under Article 2.2, and to construct normal value under Articles 2.2 and 2.2.1.1 of the Anti-Dumping Agreement. Australia would provide the DSB with a further update on its intentions with respect to implementation of the DSB's rulings within the time-frame prescribed by Article 21.3 of the DSU.

4.4. The representative of the Russian Federation said that her delegation respected the decision of the parties to this dispute to submit the Panel Report for adoption by the DSB. Accordingly, this Report would be adopted at the present meeting, in accordance with the requirements of the DSU. However, the Russian Federation could not help but raise numerous concerns with regard to the reasoning and findings of the Panel in this Report. The Russian Federation believed that the Panel's conclusions could threaten the security and predictability of the multilateral trading system and, more specifically, the "security and predictability of the reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other trade barriers to trade" which was "an object and purpose of the WTO Agreement".[2] In this dispute the Panel had deviated from customary rules of interpretation of public international law and, therefore, its interpretations and reasoning were legally flawed. Consequently, this had led to tainted findings. In its statement, Russia did not intend to make a full-blown presentation of all the Panel's errors. However, some of those errors definitely deserved special attention. First, the Panel had made several errors in its interpretation of the terms "particular market situation" (in paras. 7.21, 7.22 (including footnote 59) and 7.54 of its Report). Such errors were illustrated by the following statements of the Panel: (i) "while the expression 'the particular market situation' is constrained by the qualifiers 'particular' and 'market', it nevertheless cannot be interpreted in a way that comprehensively identifies the circumstances of affairs constituting the situation that an investigating authority may have to consider" (at para. 7.21); (ii) "the market situation must be distinct, individual, single, specific but that does not necessarily make it unusual or out of ordinary – i.e. exceptional" (at para. 7.22); and (iii) "a fact specific and case-by-case analysis of the particular market situation is necessarily called for" (at para. 7.54). In other words, the Panel had decided that: (i) there could be several "particular market situations" in the sense of Article 2.2 of the Anti-Dumping Agreement; (ii) such "particular market situations" did not need to satisfy definite or even predictable characteristics; and (iii) they were ordinary and could be found anywhere, should the circumstances of the case be satisfactory. In practice, the Panel seemed to suggest that there were simply no rules governing the inquiries of the investigating authorities into whether there was "a particular market situation", and the only matter that the Panel needed to find were facts relevant to the specific case. Should the Panel be right, the investigators' hands would be untied to find dumping where there was actually none. As a result, WTO rules would no longer guarantee access to the markets of other WTO Members to fair-trading exporters. It was worth mentioning that the Panel grounded its analysis largely on the arguments of the parties and on circumstances specific to this dispute. Nevertheless, even if a panel had made interpretations for the purpose of a given dispute, it would be inadmissible for such panel not to ground its interpretations in any way on the language contained in Article 2.2 of the Anti-Dumping Agreement and in established jurisprudence. A panel should stop its analysis at the point

[2] Appellate Body Report, EC – Computer Equipment, para. 82.

beyond which the parties did not make further inquiries. The requirement of Article 3.2 of the DSU on customary rules of interpretation of public international law had to be respected.

4.5. Second, the Panel (at paras. 7.69-7.76 of its Report) had erroneously interpreted the phrase "permit a proper comparison" contained in Article 2.2 of the Anti-Dumping Agreement. The Panel had established additional tests and assessments which were not envisaged in the text of the Anti-Dumping Agreement. For instance, the Panel had stated (at para. 7.74 of its Report) that an investigating authority "needs to determine whether domestic sales of the like product in the ordinary course of trade do not permit a proper comparison between the export price and the domestic sales price because of the particular market situation or the low volume". This was an example of an inquiry which had not been envisaged in the text of Article 2.2 of the Anti-Dumping Agreement. Instead, Article 2.2 stated that due to a particular market situation, domestic sales of the like product "do not permit a proper comparison". Article 2.2 also provided that one of the methods for the determination of the margin of dumping described in this provision had to be applied. Findings which indicated otherwise, such as that of the Panel in this dispute, would amount to reading into a treaty words that were not there, a practice which the principles of treaty interpretation set out in Article 31 of the Vienna Convention neither required, nor condoned.[3]

4.6. Third, the Panel (at paras. 7.109-7.118 of its Report) had come to an erroneous conclusion when it had examined "whether the term 'normally' in the first sentence of Article 2.2.1.1 provides a separate basis to disregard an exporter's records". In light of the arguments of the parties, the Panel had concluded that the word "normally" provided "flexibility" for rejecting exporters' or producers' recorded costs. This interpretation, in fact, altered the obligation provided for in the first sentence of Article 2.2.1.1 of the Anti-Dumping Agreement, and with which the Appellate Body had disagreed.[4] Russia had also found that the opinions of the Panel expressed in paras. 7.116 to 7.119 of its Report were erroneous. More specifically, a derogation from this obligation was allowed "on the basis" of the term "normally", i.e. without any explicit provision permitting the derogation. On the contrary, current WTO jurisprudence confirmed that such a derogation from this obligation could be permitted only on the basis of an explicit provision permitting such derogation.[5] Should the word "normally" serve as a provision permitting a derogation, the two conditions contained in the first sentence of Article 2.2.1.1 would become redundant.

4.7. To sum up, Russia said that the reasoning of the Panel in this dispute raised serious concerns. These concerns were comprehensible. As the Appellate Body had stated: "[t]he legitimate expectations of the parties to a treaty are reflected in the language of the treaty itself".[6] The Panel's conclusions in this dispute were not grounded in the text of the Anti-Dumping Agreement and blurred the legitimate expectations of WTO Members. Russia also wished to note that the Panel's interpretations were specific to this dispute. In practice, should investigating authorities follow such cursory interpretations, Members would face a growing number of anti-dumping measures that would have nothing to do with the actual dumping margins of the exporters. The ability of the exporters to defend their rights with anti-dumping proceedings would be practically nullified. Furthermore, the ability of WTO Members to defend the rights of exporters in WTO disputes would also be infringed. In fact, Russia believed that the Panel Report, which would be adopted at the present meeting, would fail to contribute to an effective dispute settlement system. As the Appellate Body had stated: "the legal interpretation embodied in adopted panel and Appellate Body reports becomes part and parcel of the *acquis* of the WTO dispute settlement system".[7] This would also be the case for the Panel Report in this dispute following its adoption at the present meeting. Should any future panel search for guidance in the reasoning of this Panel Report, its chances to resolve the dispute effectively would also be nullified, and challenged anti-dumping measures would, in practice, become unchallengeable. Thus, the Russian Federation wished to warn against the systemic consideration of this Panel Report. It should be acknowledged that the Panel's findings in this dispute were specific to this dispute and, most importantly, that they were specific to the positions of the parties in this dispute. The Russian Federation hoped that future panels would bear this in mind and be cautious when considering this Panel Report, and that they would avoid repeating the mistakes made by this Panel. At the same time, it was worth mentioning that the Russian Federation was unaware of whether any of the parties had considered appealing this Panel Report but had renounced to do so in light of the current Appellate Body crisis. Should that have been the case, this would be

[3] Appellate Body Report, India – Patents (US), para. 45.
[4] Appellate Body Report, *Ukraine – Ammonium Nitrate*, para. 6.87.
[5] Appellate Body Report, *US – Continued Zeroing*, para. 286.
[6] Appellate Body Report, *India – Patents (US)*, para. 45.
[7] Appellate Body Report, *US – Stainless Steel (Mexico)*, para. 160.

a vivid illustration of the urgent need to restore an effective Appellate Body whose work would raise no objection from the entire WTO Membership. The Russian Federation urged all Members to continue working together to resolve the Appellate Body crisis and to protect the multilateral trading system.

4.8. The representative of Thailand said that his country, as a third party in this dispute, wished to thank the Panel for its clear and well-written Report. Thailand recognized the importance of trade remedy disciplines in the rules-based multilateral trading system and would follow this matter closely and with interest.

4.9. The DSB took note of the statements and adopted the Panel Report contained in WT/DS529/R and WT/DS529/R/Add.1.

5 APPELLATE BODY APPOINTMENTS: PROPOSAL BY AFGHANISTAN; ANGOLA; ARGENTINA; AUSTRALIA; 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; URUGUAY; THE BOLIVARIAN REPUBLIC OF VENEZUELA; VIET NAM; ZAMBIA AND ZIMBABWE (WT/DSB/W/609/REV.16)

5.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Mexico, on behalf of a number of delegations. He drew attention to the proposal contained in document WT/DSB/W/609/Rev.16. He then invited the representative of Mexico to speak.

5.2. The representative of Mexico, speaking on behalf of the co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.16, said that the delegations in question had agreed to submit the joint proposal dated 16 January 2020 to launch the AB selection processes. She welcomed Nepal as a new co-sponsor of this proposal. Her delegation, on behalf of these 120 Members, wished to make the following statement. The increasing and considerable number of Members submitting this joint proposal reflected a common concern with the current situation in the Appellate Body that was seriously affecting its workings and 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 the Members' duty to launch the AB selection processes, as set out in the joint proposal before the DSB at the present meeting. This proposal sought to: (i) start six 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 occurred with the resignation of Mr. Hyun Chong Kim with effect from 1 August 2017; a third process to replace Mr. Peter Van den Bossche, whose second term 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; and a sixth process to replace Mr. Thomas R. Graham whose second term had expired on 10 December 2019; (ii) to establish a Selection Committee; (iii) to set a deadline of 30 days for the submission of candidacies; and (iv) to request that the Selection Committee issue its recommendation within 60 days after the deadline for nominations of candidates. The proponents were flexible in the determination of the deadlines for the AB selection processes. However, they believed that Members should consider the urgency of the situation. They continued to urge all Members to support this proposal in the interest of the multilateral trading system and the dispute settlement system.

5.3. The representative of the European Union said that his delegation wished to refer to its statements made on this issue at previous DSB meetings starting in February 2017, and to its statements made in the General Council meetings, including to its statement made at the

9 December 2019 GC meeting. From 11 December 2019 onward, the WTO no longer guaranteed access to a binding, two-tier, independent and impartial resolution of trade disputes. This was in clear breach of the WTO Agreements. As the EU had stated many times, 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 EU wished to thank all Members that had co-sponsored the proposal to launch the AB selection processes and invited all other Members to endorse this proposal.

5.4. The representative of Canada said that his country supported the statement made by Mexico and shared the concerns expressed by many Members on this matter. Canada welcomed Nepal and the Republic of Moldova to the growing list of co-sponsors that sought the launch of the AB selection processes. Canada invited WTO Members that had not yet sponsored the proposal contained in document WT/DSB/W/609/Rev.16 to consider joining the 120 Members calling for the launch of the AB selection processes. The critical mass of WTO Members behind this proposal was a clear testimony to the importance that Members collectively accorded to a fully functioning Appellate Body as an integral part of the dispute settlement system. Canada, therefore, called on the United States to act in accordance with Article 17.2 of the DSU and unblock the AB selection processes. The fact that the Appellate Body could not hear new appeals was of great concern. However, Members' reliance on WTO panels continued to be high, which demonstrated the value that Members accorded to independent third-party adjudication through the WTO dispute settlement system. WTO rules remained in force and binding. The Membership's commitment to their observance in good faith was at the core of the multilateral rules-based trading system that benefited all Members. Canada reiterated that it was fully committed to discussions on matters related to the functioning of the Appellate Body. Canada's priority remained to find a lasting multilateral resolution to the impasse that covered all Members, including the United States. To that effect, Canada called on the United States to engage, constructively, in solution-focused discussions. In the meantime, Canada would continue its work on interim approaches to safeguard its rights to binding adjudication and access to appellate review. In the previous week, Canada and 16 other WTO Members had issued a Ministerial statement supporting the prompt finalization of a multi-party interim appeal-arbitration arrangement as a contingency measure. Canada invited Members that valued the binding two-stage dispute settlement system to consider joining this arrangement as a way to contribute to the security and predictability of the multilateral trading system.

5.5. The representative of Brazil said that his country wished to thank Mexico for its statement made on behalf of the co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.16. Brazil referred to its statements made on this matter at previous DSB meetings. Brazil looked forward to engaging with all Members and the Director-General in order to find a long-term, multilateral solution to this impasse.

5.6. The representative of Nepal said that his delegation wished to be associated with the statement made by Mexico on behalf of the co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.16. As a strong supporter of a fair, inclusive and rules-based multilateral trading system, Nepal underscored the need of preserving the fundamental principles and objectives of the Marrakesh Agreement in order to safeguard multilateralism in the interest of all WTO Members. Nepal recognized the role of Mexico and other Members as well as the efforts of Ambassador Walker aimed at launching the AB selection processes. The dispute settlement system was a key pillar of the WTO that aimed at ensuring the existence of a rules-based order in the international trading system. Keeping this in mind, Nepal had decided to co-sponsor the proposal and wished to extend its full support and commitment to this initiative with a view to finding a solution as early as possible. There were various areas to improve in the multilateral trading system, which was facilitated through the WTO, so as to ensure that all WTO Members could meet their obligations, exercise their rights and benefit from this system. Not only were there systemic issues within the WTO: there was also a need to incorporate various new subjects in a timely and just manner in order to adopt to the ever-changing global trading system. However, before making much needed reforms, before incorporating new areas and overcoming existing problems, Members first had to maintain the current system in place and let it function the way it used to do so. Nepal wished to express its full commitment to working towards a reform of the WTO and its readiness to engage towards an inclusive, sustainable, just, predictable and transparent multilateral trading system. Nepal believed that such a reform would be comprehensive with regard to these evolving global challenges, including increased inequality, the incorporation of emerging issues and opportunities of global trade in support of weaker economies to integrate meaningfully into the global trading system.

5.7. The representative of Australia said that her country wished to refer to its statements made at previous DSB meetings on this issue and reiterated its strong commitment to continue work in 2020 to advance reform and find a way forward. Ensuring an effective dispute settlement system in the WTO remained a core priority for Australia. Once more, Australia asked Members to work collaboratively and to demonstrate the necessary flexibility to agree pragmatic solutions in the interest of all Members.

5.8. The representative of Korea said that Korea wished to welcome Nepal as a new co-sponsor of the proposal contained in document WT/DSB/W/609/Rev.16 and expressed support for the statement made by Mexico based on the joint proposal. Korea urged all Members to engage constructively in the relevant discussions to resolve this issue as soon as possible.

5.9. The representative of China said that his country wished to echo the statement made by Mexico at the present meeting on behalf of 120 WTO Members. China also wished to welcome Nepal as a new co-sponsor of the joint proposal contained in document WT/DSB/W/609/Rev.16. China encouraged Members who had not joined this proposal to do so in order to demonstrate their firm support and strong commitment to having a two-tier dispute settlement system within a rules-based multilateral trading system. Once again, China expressed deep regret at the current paralysis of the Appellate Body due to the illegal blockage by the United States. Article 17.2 of the DSU could not be clearer about the Members' obligation to fill the vacancies in the Appellate Body. Yet, the persistent blockage by the United States continued to frustrate the collective willingness of 163 Members to fulfil such a legal obligation. Over the past two years, Members had made significant efforts to address the concerns raised by the United States. Twelve proposals and a draft General Council decision had been tabled and vigorously discussed in various configurations. However, the lack of constructive engagement from the United States had stifled any potential breakthrough in the impasse regarding the AB selection processes and any improvement of the functioning of the Appellate Body. Ironically, the United States had not yet tabled even a single concrete proposal in order to address the concerns that it had raised. The vital importance of the Appellate Body could not be overstated. Indeed, the current AB crisis was also a crisis of the rules-based multilateral trading system. When the rule of law was replaced by the law of the jungle in the international trade regime, every Member would suffer negative consequences in the long term. Members had begun experiencing the devastating consequences of the Appellate Body's paralysis. Ten pending appeals had been suspended and would remain suspended until the Appellate Body could resume its work. If the paralysis continued, another 33 pending panel disputes would similarly face a potential legal limbo. China renewed its commitment to the informal process on the functioning of the Appellate Body. China also expressed support for the efforts of Ambassador Walker as Facilitator in the informal process and for the efforts of the Director-General in addressing the deadlock affecting the AB selection processes. China believed that it was equally important to find a timely interim solution while the Appellate Body was paralyzed. In that regard, China and other like-minded Members were currently structuring a multi-party appeal arbitration mechanism which could serve as a stopgap. The Davos Ministerial Statement was the latest testimony of several Members' strong commitment to upholding an independent and impartial two-tier dispute settlement system which ensured that disputes could be resolved based on rules rather than power. China welcomed and encouraged other Members to seriously consider supporting this interim option. Last but not the least, institutional memory was extremely important to ensuring the integrity of the rules-based multilateral trading system. China asked that, during the current paralysis of the Appellate Body, the AB Secretariat should remain stable and that its structure be maintained according to the Decision on the Establishment of the Appellate Body (WT/DSB/1). The Appellate Body staff should also remain available at any time and be prepared to work on new cases in a timely manner.

5.10. The representative of India said that his country wished to refer to its statements made at previous DSB meetings on this matter and reiterated its serious concerns regarding the DSB's inability to launch the AB selection processes. Since 11 December 2019, the Appellate Body was no longer available to review panel reports. At present, either appeals were not being filed as a compromise even if parties had wished for panel reports to be reviewed, or appeals being filed were going into the void because of a dysfunctional Appellate Body. Therefore, India called on all Members to engage constructively pursuant to Article 17.2 of the DSU to immediately launch the AB selection processes as a matter of priority.

5.11. The representative of Thailand said that the eyes of the world were upon WTO Members. As Members were aware, the multilateral trading system was imperilled. The proper functioning of the two-stage dispute settlement system, a cornerstone of WTO, had come to a halt since

11 December 2019. This impasse was jeopardizing the multilateral trading system as a whole. However, the growing of number of co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.16 reflected the efforts of WTO Members to resolve this impasse as soon as possible. Thailand strongly encouraged all Members involved to increase their efforts towards finding a permanent solution.

5.12. The representative of Singapore said that Singapore reiterated its strong systemic interest in the maintenance of the two-tier and binding WTO dispute settlement mechanism underpinned by negative consensus. Although Singapore was currently working with several other Members on contingency measures in the form of a multi-party interim appeal arbitration arrangement, the unblocking of the AB selection processes had to remain the paramount priority for all Members. Singapore urged all Members, including the United States, to constructively engage in finding concrete solutions. Singapore also wished to take this opportunity to welcome Nepal as a new co-sponsor of the joint proposal contained in document WT/DSB/W/609/Rev.16.

5.13. The representative of Norway said that Norway had to speak up in defence of the rule of law under this Agenda item. Members had entered a new era in which the Appellate Body would not be able to function fully. Members had foreseen this possibility for a long time. It was nevertheless disappointing to experience the willingness of one Member to go through with such methods when the 10 December 2019 deadline arrived. Norway's response continued to be for Members to focus on cooperation and solutions. Therefore, Norway urged, once again, the United States to unblock the AB selection processes and to work with other Members. Norway also urged the United States to be open about what it wanted so as to enable Members to find a way together.

5.14. The representative of Switzerland said that her country wished to refer to its statement made on this matter at previous DSB meetings. Switzerland remained ready to engage constructively with all Members with a view to finding concrete solutions and hoped that this situation could be resolved soon.

5.15. The representative of New Zealand said that his country wished to reiterate its support for the co-sponsored proposal contained in document WT/DSB/W/609/Rev.16 and wished to refer to its statements made at previous DSB meetings. New Zealand was deeply disappointed that the Appellate Body was no longer able to perform its full functions and would work constructively with Members to urgently address the situation towards a permanent solution, while also engaging with several Members on stopgap interim arrangements.

5.16. The representative of Hong Kong, China said that his delegation wished to refer to its statements made at previous DSB meetings. Hong Kong, China wished to reiterate its deep concern about the persistent impasse in the AB selection processes. His delegation took note of the Director-General's decision to launch discussions on resolving the current AB impasse. Hong Kong, China also wished to emphasize that the discussion on improving the DSU should not be a reason to delay the launch of the AB selection processes. Hong Kong, China called on all Members to lift the blockage without further delay in order to preserve a well-functioning WTO.

5.17. The representative of Japan said that his country wished to refer to its statements made at previous DSB meetings. Members collectively recognized the urgent need to restore a properly functioning dispute settlement system, which would serve the ultimate goal of securing a positive solution to disputes. Japan's priority had always been, and continued to be, to find a long-lasting solution to the Appellate Body matter. Members should build upon the groundwork they had achieved thus far in the context of the informal process on AB matters, and they should focus on the serious and ongoing discussions on difficult outstanding issues. Members were entering a realm of uncertainty. However, such uncertainty would also provide Members with a rare opportunity to experiment a variety of means to resolve disputes. This could, in turn, provide Members with a tool to rebuild a viable and sustainable dispute settlement system that would work to the benefit of all WTO Members. In this respect, Japan noted with great interest that a group of Ministers had issued a joint ministerial statement on Friday, 24 January 2020 regarding a so-called "multi-party interim appeal arbitration arrangement". Japan recognized the need for a stopgap measure to secure a positive and prompt solution to pending disputes. Japan stood ready to continue its engagement with these Members' ongoing work as part of its experimentation. However, Japan believed that any attempt to adopt measures of a provisional nature had to serve the ultimate purpose of finding a long-lasting solution to the Appellate Body matter. Simply replicating or duplicating the discredited Appellate Body would hardly be conducive to this ultimate goal. As Japan had stated repeatedly, Members owned the system, not vice versa. Through their continued efforts, Members should

prioritize and make tangible progress on finding a long-lasting solution to this matter and to restore a properly functioning dispute settlement system as soon as possible.

5.18. The representative of Chinese Taipei said that Article 17.2 of the DSU provided that: "[v]acancies shall be filled as they arise". Therefore, each WTO Member had the obligation to launch the AB selection processes. It was also vital to stress the importance of having a fully operational two-tier dispute settlement mechanism in order to maintain the rules-based multilateral trading system. Therefore, his delegation believed that each Member should endeavour to further engage in constructive dialogues in order to overcome the current impasse.

5.19. The representative of Turkey said that his country was very concerned that the Appellate Body had become dysfunctional. As a co-sponsor of the proposal presented by Mexico and contained in document WT/DSB/W/609/Rev.16, Turkey, once again, underlined that Members had to launch the AB selection processes. It was a responsibility of all Members, as required by Article 17.2 of the DSU. Like other Members, Turkey also recognized the importance of maintaining a two-tier dispute settlement system. Members needed a system which would continue to provide binding adjudication and Members should craft ways to maintain such a system. Turkey believed that the draft GC decision of Ambassador Walker was a good basis for resolving the impasse. As for ongoing initiatives on establishing an interim appeal process, like many other Members, Turkey was following the discussions to overcome the "lack of appeal" closely. Turkey remained confident that a properly functioning Appellate Body would be restored and that Members would be willing to continue their involvement in discussions such as those refer to by the Director General at the December 2019 General Council meeting. Turkey stood ready to engage constructively to help overcome this impasse and invited all parties to engage in discussions with the Membership.

5.20. The representative of the United States thanked the Chair for the continued work on these issues. As the United States had explained at prior DSB meetings, the United States was not in a position to support the proposed decision. The systemic concerns that the United States had identified remained unaddressed. The US view across multiple US Administrations had been clear and consistent: when the Appellate Body overreached and abused the authority it had been given within the dispute settlement system, it undermined the legitimacy of the system and damaged the interests of all WTO Members who cared about having the agreements respected as they had been negotiated and agreed. As the United States had explained, the fundamental problem was that the Appellate Body had not respected the current, clear language of the DSU. Members could not find meaningful solutions to this problem without understanding how they had arrived at this point. Without an accurate diagnosis, the Members could not assess the likely effectiveness of any potential solution. The United States was determined to bring about real WTO reform, including to ensure that the WTO dispute settlement system reinforced the WTO's critical negotiating and monitoring functions, and did not undermine those functions by overreaching and gap-filling. As discussions among Members continued, the dispute settlement system continued to function. The central objective of that system remained unchanged: to assist the parties to find a solution to their dispute. As before, Members had many methods to resolve a dispute, including through bilateral engagement, alternative dispute procedures, and third-party adjudication. Consistent with the aim of the WTO dispute settlement system, parties should make efforts to find a positive solution to their dispute, and this remained the US preference. And the United States would continue to insist that WTO rules be followed by the WTO dispute settlement system. The United States would continue its efforts and its discussions with Members and with the Chair to seek a solution on these important issues.

5.21. The representative of Mexico, speaking on behalf of the 120 co-sponsors of the joint proposal contained in document WT/DSB/W/609/Rev.16, regretted that for the thirty-first occasion, Members had still not been able to launch the AB selection processes and had thus continuously failed to fulfil their duty as Members of this Organization. The fact that a Member might have concerns about certain aspects of the functioning of the Appellate Body should not serve as a pretext to impair and disrupt its work. There was no legal justification for the current blockage of the AB selection processes, which was causing concrete nullification and impairment for many Members. As Article 17.2 of the DSU clearly stated: "[v]acancies shall be filled as they arise". No discussion should prevent the Appellate Body from continuing to operate fully and Members had to comply with their obligation under the DSU to fill the AB vacancies. They noted with deep concern that due to the continued failure to act at the present meeting, the Appellate Body would continue to be unable to perform its functions, against the best interest of all Members.

5.22. The representative of Mexico said that the joint proposal contained in document WT/DSB/W/609/Rev.16 now totalled 120 co-sponsoring Members and reflected a cross-section of the WTO Membership. This underlined Members' interest in fulfilling their obligation to fill vacancies in the Appellate Body as they arose, in accordance with Article 17.2 of the DSU, and in resolving the deadlock that had existed for over two years. The number of co-sponsors also highlighted the Members' interest in the WTO dispute settlement system. Mexico expressed deep regret at the fact that Members were in an unprecedented situation whereby the Appellate Body was incomplete and non-operational. All ongoing disputes were being affected by the lack of a fully functioning dispute settlement system. This undermined the right of all Members to engage in appeal proceedings. Mexico urged Members to join the list of co-sponsors of this proposal. Mexico reiterated its readiness to work toward a solution and called for an end to the current impasse, which affected the functioning of one of the central pillars of the multilateral trading system.

5.23. 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 present meeting. He recalled that, under the auspices of the General Council, he had agreed to assist the Chair of the General Council, as Facilitator, in an informal process of focused discussions on Appellate Body matters. Based on his consultations, on 9 December 2019, he had provided his fifth progress report to the General Council and, as part of that report, he had put forward, in his capacity as Facilitator, a draft General Council Decision on the functioning of the Appellate Body for Members' consideration. The text of this draft decision contained in document WT/GC/W/791 had been based on the proposals submitted by Members and the extensive discussions in the informal process as well as the feedback that he had received from delegations. Unfortunately, no consensus had been reached on the draft Decision at the General Council meeting. It remained up to Members to decide what action they wished to take. He indicated that both the Chair of the General Council and himself would be looking to assist Members in these efforts going forward in order to find a workable and agreeable solution to improve the functioning of the Appellate Body, and that he would continue to do that. Finally, as Members knew, at the 9 December 2019 General Council meeting, the WTO Director-General had informed Members that he would be undertaking intensive high-level consultations on how to resolve the AB situation. The Chairman had been advised that these consultations had already begun.

5.24. The DSB took note of the statements.

6 MOROCCO – ANTI-DUMPING MEASURES ON CERTAIN HOT-ROLLED STEEL FROM TURKEY: STATEMENT BY MOROCCO

6.1. The representative of Morocco, speaking under "Other Business", said that his country wished to make a brief statement concerning the conformity of the measure at issue in this dispute with WTO rules. Morocco recalled that the DSB had adopted the Panel Report and the Appellate Body Report on 8 January 2020. In accordance with Article 21.3 of the DSU, the Member concerned had to inform the DSB of its intentions in respect of the implementation of the DSB's recommendations and rulings at a DSB meeting to be held within 30 days after the date of adoption of a panel or Appellate Body report. As Morocco had previously indicated, the anti-dumping measure at issue in this dispute had expired on 26 September 2019. Therefore, Morocco believed that it was already in conformity with the DSB's rulings and recommendations and considered, as such, that no further action was required.

6.2. The representative of Turkey said that his country wished to thank Morocco for its statement made at the present meeting in relation to this dispute. As Morocco had indicated, the anti-dumping measure at issue in this dispute had expired on 26 September 2019. As such, Turkey agreed that Morocco did not need to take any further action at this time to withdraw the WTO-inconsistent measure. Nevertheless, Turkey trusted that Morocco would take the findings of the panel in this dispute fully into account in future anti-dumping determinations. Turkey would continue to monitor its exports of hot-rolled steel to Morocco to ensure that they were treated in a WTO-consistent manner. In this regard, Turkey regretted that the anti-dumping measure of Morocco had now been replaced by a safeguard measure.

6.3. The DSB took note of the statements.