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Dispute Settlement Body
28 May 2019

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 28 MAY 2019

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

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1.1. The Chairman noted that there were eight 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 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, 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.195)

1.2. The Chairman drew attention to document WT/DS184/15/Add.195, 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 16 May 2019, 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 the 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.170)

1.6. The Chairman drew attention to document WT/DS160/24/Add.170, 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 16 May 2019, 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 said that his delegation wished to thank the United States for its status report and 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 said that it wished to resolve this case as soon as possible.

1.9. The representative of China said that his country noted that the United States had submitted its 171st status report in this dispute. Once again, this most recent report, as was the case for the status reports submitted by the United States ahead of previous DSB meetings, was not different from the very first report submitted in this dispute. Nearly two decades after the DSB had adopted the Panel Report in DS160, this dispute remained unresolved. Section 110(5) of the US Copyright Act, which had been found to be inconsistent with the requirements of the Berne Convention and the WTO TRIPS Agreement, was still in effect. Without further implementation, the United States had continuously failed to provide the minimum standard of protection as required by the WTO 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 stated that: "[p]rompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members". China, therefore, 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 representative of the United States said that as the United States had noted at prior DSB meetings, by intervening under this Agenda item, China attempted to give the appearance of concern for intellectual property rights. Yet, China had been engaging in industrial policy which had resulted in the transfer and theft of intellectual property and technology to the detriment of the United States and its workers and businesses. In contrast, the intellectual property protection that the United States provided within its own territory equalled or surpassed that of any other Member. Indeed, none of the damaging technology transfer practices of China that had been discussed at

recent DSB meetings were practices that Chinese companies or innovators faced in the United States.

1.11. The representative of China said that, once again, the United States had tried to derail the discussion toward other irrelevant issues. Under this Agenda item, the relevant issue was whether the United States had fully implemented the DSB's recommendations and rulings in this dispute. Obviously, the answer was negative. In its statement under this Agenda item, the United States appeared to suggest the supremacy of its protection of intellectual property rights. Aside from the relevance of that assertion to the issue at hand, that assertion contradicted the simply fact. It was clear that the United States had deliberately delayed the compliance in this dispute for more than 14 years. The United States was the only WTO Member who failed to implement the DSB's rulings and recommendations under the TRIPS Agreement. Regarding the vague US allegations about China's intellectual property protection and so-called forced technology transfer, China wished to refer to its statements made at prior DSB meetings, including its statement made at the 28 May 2018 DSB meeting. His country took its commitments under the TRIPS Agreement seriously and always stood ready to engage in good faith discussions concerning any specific intellectual property issues. China welcomed and always stood ready to engage in good faith discussions with other Members regarding any intellectual property issue. It was fair to say that the long overdue US implementation in this dispute was of great concern to the Membership and to the multilateral trading system, since it severely undermined the effectiveness and credibility of the dispute settlement mechanism. China, therefore, urged the United States to faithfully honour its duty to implement the DSB's recommendations and rulings in this dispute. In addition, China invited the United States to include in its next status report the specific reasons as to why implementation of the DSB's recommendations and rulings in this dispute could not take place for so long in this dispute.

1.12. 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.133)

1.13. The Chairman drew attention to document WT/DS291/37/Add.133, 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.

1.14. The representative of the European Union said that the EU continued to progress with the authorisations where the European Food Safety Authority had finalized its scientific opinion and had concluded that there were no safety concerns. In general, efforts to reduce delays at all stages of authorization procedures were constantly maintained at a high level. This had already resulted in a clear improvement of the situation. It should be noted that delays in risk assessment on some applications were mainly due to the amounts of time that applicants needed to respond to justified scientific questions. The EU wished to note that on 30 April 2019, three draft authorizations – one for new genetically-modified (GM) maize[1] and two for renewing the authorizations of a GM soybean[2] and of a GM cotton[3] – had been presented for a vote in a member States Committee, with a "no opinion" result. These measures would now be submitted for a vote in the Appeal Committee on 5 June 2019. The EU continued to be committed to acting in line with its WTO obligations. More generally, and as the EU had stated many times at previous DSB meetings, the EU wished to recall that the EU approval system was not covered by the DSB's recommendations and rulings in this dispute.

1.15. The representative of the United States thanked the European Union (EU) for its status report and its statement at the present meeting, and looked forward to the upcoming discussions with the EU in June. The United States continued to be concerned with the EU's measures affecting the approval of biotech products. On-going and persistent delays affected dozens of applications that had been awaiting approval for months or years, or that had already received approval. As the United States had highlighted at prior DSB meetings, even when the EU finally approved a biotech product, EU member States continued to impose bans on the supposedly approved product. The

[1] Maize MZHG0JG.
[2] Renewal of soybean MON 89788.
[3] Renewal of LLCotton25.

amendment of EU Directive 2001/18, through EU Directive 2015/413, permitted EU member States to, in effect, restrict or prohibit cultivation of genetically-modified organisms (GMOs), even where the European Food Safety Authority (EFSA) had concluded that the product was safe. This legislation permitted EU member States to restrict for non-scientific reasons certain uses of EU-authorized biotech products in their territories by demanding that EU cultivation authorizations be adjusted to exclude portions of an EU member State's territory from cultivation. At least 17 EU member States, as well as certain regions within EU member States, had submitted such requests with respect to MON-810 maize. This fact could not be squared with the EU's representation at previous DSB meetings that no member State had taken action to ban the cultivation of such a product. The EU had not shown how the withholding of products for cultivation did not amount to a ban on those products. Moreover, the EU had provided nothing to support its suggestion at the most recent DSB meeting that cultivation bans did not affect the free movement of seeds within the EU. The United States once again emphasized the public statement issued by the EU's Group of Chief Scientific Advisors on 13 November 2018, in response to the 25 July 2018, European Court of Justice (ECJ) ruling that addressed the forms of mutagenesis that qualified for the exemption contained in EU Directive 2001/18/EC. The Directive had been a central issue in dispute in these WTO proceedings, and concerned the deliberate release into the environment of genetically modified organisms, or GMOs. Contrary to the EU's statement at prior DSB meetings, this ECJ ruling related to previously authorized GMOs. The EU Group of Chief Scientific Advisors' statement spoke to the lack of scientific support for the regulatory framework under EU Directive 2001/18. The EU had repeatedly maintained at previous DSB meetings that these scientific advisors were just another group of stakeholders. The statement clearly did not reflect a mere reaction from a group of stakeholders. Rather, the statement reflected scientific advice provided to the European Commission in response to its request for such information. The Chief Scientific Advisors' message provided in the statement was clear: "in view of the Court's ruling, it becomes evident that new scientific knowledge and recent technical developments *have made the GMO Directive no longer fit for purpose*". The statement further advised that current scientific knowledge called into question the definition of "GMOs" under the Directive and noted that mutagenesis, as well as transgenesis, occurred naturally. The United States urged the EU to act in a manner that would bring into compliance the measures at issue in this dispute. The United States further 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.

1.16. The representative of the European Union said that his delegation wished to remind Members that the opt-out Directive was not covered by the DSB's recommendations and rulings in this dispute. The WTO Agreements 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. No EU country had imposed any "ban". Under the terms of the Directive, a member State could adopt measures restricting or prohibiting cultivation only when such measures were in line with EU law and when such measures were reasoned, proportional, non-discriminatory and based on compelling grounds. The EU also noted that the provisions of the opt-out Directive did not affect the free trade or movement of seeds in the EU. With regards to MON-810, there was no "ban". In accordance with the provisions of the Directive, the applicants had reduced the geographical scope of their cultivation applications for specific EU countries. The applicants, which were the only directly affected party, had not raised any complaints in this respect. This confirmed that they were not interested in commercializing their products in all EU member States. In relation to the statement of the Group of Chief Scientific Advisors, the EU wished to recall that the Group of Chief Scientific Advisors was an independent group of scientific experts providing scientific advice to the European Commission. First, the EU wished to reiterate that this statement focused on future challenges for products obtained by new mutagenesis techniques and not on the "conventional GMOs". The statement did not state or imply that Directive 2001/18 was not fit for purpose as regards conventional GMOs. Second, there had been many reactions to the ECJ judgment, bringing forward a wide range of different views. The statement, to which the United States had referred, fed into on-going discussions on new mutagenesis techniques with all stakeholders. Some stakeholders agreed with that statement. However, many others considered that the current legislation was adequate to address the risks from new biotechnology developments. The European Commission had a strong interest in this debate, which should go beyond the regulatory status of new technologies and focus on the way new products could help address societal challenges, such as climate change or reducing the use of pesticides, without negative consequences on health and environment protection.

1.17. 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.17)

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

1.19. The representative of the United States said that the United States provided a status report in this dispute on 16 May 2019, in accordance with Article 21.6 of the DSU. On 6 May 2019, the US Department of Commerce had published a notice in the US Federal Register announcing the revocation of the anti-dumping and countervailing duty orders on imports of large residential washers from Korea (84 Fed. Reg. 19,763 (6 May 2019)). With this action, the United States had completed implementation of the DSB's recommendations concerning those anti-dumping and countervailing duty orders. The United States continued to consult with interested parties on options to address the recommendations of the DSB relating to other measures challenged in this dispute.

1.20. The representative of Korea said that his country wished to thank the United States for its status report. Korea welcomed the revocation of the orders which were part of the measures at issue in this dispute. Korea was currently evaluating if the revocation, in its effect, would achieve full compliance with the DSB's rulings and recommendations in terms of the "as applied" measures at issue. At the same time, Korea, again, urged the United States to take prompt and appropriate steps to implement the DSB's recommendations for the "as such" measure at issue in this dispute.

1.21. The representative of Canada said that his country was concerned that the United States had not implemented the DSB's recommendations and rulings in this dispute. In particular, Canada was deeply disappointed that, despite the expiry of the reasonable period of time, the United States continued to collect cash deposits from Canadian exporters based on a methodology that had been found to be "as such" inconsistent with WTO obligations in this dispute.

1.22. 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.9)

1.23. The Chairman drew attention to document WT/DS471/17/Add.9, 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.

1.24. The representative of the United States said that the United States had provided a status report in this dispute on 16 May 2019, 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.

1.25. The representative of China said that the Appellate Body report pertaining to this dispute had been circulated on 11 May 2017. Subsequently, on 22 May 2017, the DSB had adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report. The Arbitration pursuant to Article 21.3(c) of the DSU had determined the reasonable period of time (RPT) for implementation to be 15 months. The RPT had expired on 22 August 2018. On 9 September 2018, China had requested authorization from the DSB to suspend concessions or other obligations and the matter had been referred to arbitration, in accordance with Article 22.6 of the DSU. Thus far, the United States had submitted ten status reports with nearly identical contents. None of these status reports indicated any substantive progress in implementation by the United States to address the DSB's recommendations in this dispute other than "consulting with the interested parties". Due to its persistent non-compliance, nearly two years after the DSB had adopted the Appellate Body report and the Panel report in this dispute, and nine months after the expiry of the RPT, this dispute remained unresolved. Unfortunately, China was not the only victim of US disrespect of WTO dispute

settlement. Under Item 1 of the Agenda of the present meeting, five out of eight disputes under the DSB's surveillance related to US non-compliance with the DSB's recommendations and rulings. Such behaviour seriously undermined the effectiveness and credibility of the WTO dispute settlement system, which ran against the interests of the entire Membership. With regard to the dispute at hand, China was very disappointed and deeply concerned with the progress of the United States in implementing the recommendations and rulings adopted by the DSB. The WTO-inconsistent measures taken by the United States had seriously infringed China's legitimate economic and trade interests, distorted the relevant international market as well as seriously damaged the rules-based multilateral trading system. The non-compliance of the United States in dispute settlement cases also undermined the credibility of the United States in urging other WTO Members to implement rulings in other cases. Once again, China urged the United States to take concrete actions, fully respect the WTO rules, and faithfully implement the DSB's recommendations and rulings in this dispute.

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

F. Indonesia – Measures concerning the importation of chicken meat and chicken products: Status report by Indonesia (WT/DS484/18/Add.8)

1.27. The Chairman drew attention to document WT/DS484/18/Add.8, which contained the status report by Indonesia on progress in the implementation of the DSB's recommendations in the case on measures concerning the importation of chicken meat and chicken products.

1.28. The representative of Indonesia said that his country had submitted its status report in accordance with Article 21.6 of the DSU. Indonesia wished to refer to its status reports and statements made at previous DSB meetings. Indonesia would continue its work with relevant stakeholders as well as Brazil with respect to the measures that would resolve this dispute.

1.29. The representative of Brazil said that his country wished to thank Indonesia for its status report. Brazil's concerns about Indonesia's implementation of the DSB's recommendations and rulings in this dispute remained the same, as there had not been any change identified in Indonesia's status report in this dispute. These concerns related to the "positive list requirement" which was still in force. Indonesia had chosen to maintain the list and include some of the HS codes of chicken meat and chicken products that had been the subject of Brazil's complaint. One HS code, however, still had yet to be included in Indonesia's positive list. Brazil noted that Indonesia had eliminated the requirement of distribution reports with information regarding use or place of sale of imported chicken meat and chicken products. The requirement of distribution plans nonetheless still existed by force of Article 22(1)(l) of Ministry of Agriculture Regulation 34/2016. Regarding the possibility of making amendments to the terms of import licenses, to Brazil's knowledge, the amendments still subjected importers to several sanctions in case some requirements were not strictly observed. Finally, Brazil highlighted the unsatisfactory status of the analysis of Brazil's veterinary health certificate for the importation of chicken meat and chicken products. Brazil believed that undue delay continued with Indonesia's approval of the certificate. Brazil recalled that the reasonable period of time for Indonesia to comply with the DSB's recommendations and rulings in this dispute had expired on 22 July 2018: full implementation remained to be seen. Brazil thus urged Indonesia to fully comply with the DSB's recommendations and rulings in this dispute.

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

G. United States – Anti-dumping measures on certain oil country tubular goods from Korea: Status report by the United States (WT/DS488/12/Add.8)

1.31. The Chairman drew attention to document WT/DS488/12/Add.8, 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 measures on certain oil country tubular goods from Korea.

1.32. The representative of the United States said that the United States had provided a status report in this dispute on 16 May 2019, in accordance with Article 21.6 of the DSU. On 23 November 2018, the US Department of Commerce had provided notice in the US Federal Register

that it had commenced a proceeding to gather information, analyse record evidence, and consider the determinations which would be necessary to bring the anti-dumping investigation at issue in this dispute into conformity with the DSB's recommendations and rulings. The notice was available at 83 F.R. 59359. The United States would continue to consult with interested parties on options to address the DSB's recommendations.

1.33. The representative of the Republic of Korea said that his country wished to thank the United States for its status reports and its statement made at the present meeting. Korea expected that the United States would faithfully complete the implementation of the DSB's recommendations within the extended reasonable period of time which would expire on 12 July 2019.

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

H. Indonesia – Importation of horticultural products, animals and animal products: Status report by Indonesia (WT/DS477/21/Add.4 – WT/DS478/22/Add.4)

1.35. The Chairman drew attention to document WT/DS477/21/Add.4 – WT/DS478/22/Add.4, 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.

1.36. The representative of Indonesia said that his delegation had submitted its status report in accordance with Article 21.6 of the DSU. In order to comply with the DSB's recommendations and rulings, Indonesia was continuing its efforts to improve its importation system as well as to adjust the relevant laws and regulations. These efforts included intensive discussions and meetings with relevant stakeholders aimed at gathering inputs that contributed to achieving full compliance in these disputes. Indonesia wished to thank New Zealand and the United States for their bilateral engagement. Indonesia would continue its effort and engagement towards resolving these disputes.

1.37. The representative of New Zealand said that his country wished to thank Indonesia for its status report. New Zealand acknowledged the steps that had been taken by Indonesia to bring its regulations into compliance with the DSB's recommendations and rulings in this dispute. His country also welcomed Indonesia's commitment to comply fully with these recommendations and rulings. New Zealand did not consider, however, that full compliance had been reached in respect of a number of measures addressed in this dispute. Of particular concern was the continued enforcement by Indonesia of limited application windows and validity periods, harvest period import bans, import realization requirements, and restrictions placed on import volumes based on storage capacity. These were issues that continued to adversely affect New Zealand exporters. New Zealand welcomed Indonesia's commitment to engage intensively with New Zealand and the United States, which New Zealand intended to continue. New Zealand remained very interested in progress on the further legislative change that was due to come into effect by June 2019 given that, as Indonesia had noted in its status report, the agreed date for this measure, which was Measure 18, to be brought into compliance with the DSB's recommendations and rulings was 22 June 2019. New Zealand would continue to work with Indonesia to achieve long-term, commercially meaningful compliance with the DSB's recommendations and rulings in this dispute.

1.38. 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 was still waiting to hear from Indonesia the concrete actions it would take to bring its measures into full compliance, including regarding the statutory changes Indonesia intended to make with respect to Measure 18. The United States remained willing to work with Indonesia to fully and meaningfully resolve this dispute but, was very concerned with Indonesia's continued failure to come into full compliance with the DSB's recommendations.

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

2 IMPLEMENTATION OF THE RECOMMENDATIONS OF THE DSB

A. Korea – Import bans, and testing and certification requirements for radionuclides

B. China – Domestic support for agricultural producers

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

A. Korea – Import bans, and testing and certification requirements for radionuclides

2.2. The Chairman recalled that at its meeting on 26 April 2019, the DSB had adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report pertaining to the dispute: "Korea – Import Bans, and Testing and Certification Requirements for Radionuclides" (DS495). As Members were aware, the 30-day time-period in this dispute had expired on 26 May 2019. On 14 May 2019, Korea had informed the DSB in writing of its intentions with respect to implementation of the DSB's recommendations and rulings. The relevant communication was contained in document WT/DS495/14. He then invited the representative of Korea to make a statement.

2.3. The representative of Korea said that on 26 April 2019, the DSB had adopted the Panel and Appellate Body reports in "Korea – Radionuclides" (Japan) (DS495). Since the present meeting was being held, as the Chairman had mentioned, slightly beyond the 30-day time-period from the date of adoption of the Panel and Appellate Body reports, Korea, in its written communication of 14 May 2019 contained in document WT/DS495/14, had notified its intention to implement the DSB's recommendations and rulings in this dispute in a manner consistent with its WTO obligations pursuant to Article 21.3 of the DSU. He said that Japan had agreed with this approach. At the present meeting, Korea wished to reiterate its intention to implement the DSB's recommendations and rulings in this dispute in a manner consistent with its WTO obligations. Korea estimated that it would need one week to complete implementation by re-publishing the relevant measures. Korea would promptly notify the DSB and Japan in due course after completion of its implementation.

2.4. The representative of Japan said that his country took note of Korea's communication contained in WT/DS495/14 and its statement made at the present meeting. At this point, Japan wished to make two specific points. First, at the 26 April 2019 DSB meeting, Korea had claimed that the Appellate Body, by reversing the Panel's legal findings, had also reversed the Panel's underlying factual findings on the safety of Japanese food products. Japan saw no basis for Korea's claim. As Article 17.6 of the DSU stipulated, the Appellate Body's mandate was limited to "issues of law covered in the panel report and legal interpretations developed by the panel". The only instance in which the Appellate Body could review panels' factual findings was when a party challenged such findings under Article 11 of the DSU. Given that Korea had not invoked Article 11 of the DSU on its appeal regarding the Panel's factual findings, except for a claim on limited technical grounds, the Appellate Body was simply not in a position to reverse those factual findings. Thus, as a matter of law, the Appellate Body's reversal of the Panel's legal findings did not have any implications for the Panel's factual findings, and the Panel's alleged errors in applying the law had no bearing on the underlying factual findings. In fact, the Panel's factual findings on the safety of Japanese food products had been adopted by the DSB, without modification. Given this, Japan urged all WTO Members, which still maintained restrictive measures on Japanese food products, to remove such measures immediately. Second, Japan believed that this case provided another example of Appellate Body "overreach". As Japan would explain later in detail, the Panel had thoroughly and carefully analysed the issues based on the facts, evidence and parties' arguments, as well as the authoritative views of scientific experts. The Appellate Body "interfered lightly with" the Panel's findings and criticized the Panel simply because it had not analysed or determined the issues exactly the way the Appellate Body had wanted the Panel to analyse or determine these issues. WTO disputes were often complex and extremely technical and scientific, as in this case which involved the SPS Agreement. The Appellate Body's reversal of the Panel's findings on technical grounds would serve no purpose other than to show the Appellate Body's misconceived institutional power. In a way, the Appellate

Body had put itself in the shoes of the Panel and had substituted its preferred approach to the Panel's approach. The consequence was that the Appellate Body had left the dispute unresolved without ruling on the WTO-consistency of the challenged measures, thus, failing to fulfil its function to secure a positive solution to a dispute. For this reason, Japan saw this case as another example of "overreach" by the Appellate Body. This should be corrected.

2.5. Japan said that, in its communication to the DSB dated 14 May 2019 and contained in document WT/DS495/14, Korea had stated that it "will need a reasonable period of time" and that it "stands ready to discuss this matter with Japan in due course". The relevant DSB's recommendations in this dispute concerned Korea's transparency obligations under Annex B(1) and Article 7 of the SPS Agreement. As the Appellate Body had explained, under Article 21.3 of the DSU, "the reasonable period of time is a limited exemption only available when it is 'impracticable' to comply "immediately".[4] Korea's notification of 14 May 2019 highlighted how non-transparent Korea had been throughout the dispute settlement proceedings and continued to be so to date. To further illustrate this, Japan recalled its claim under Article 5.6 of the SPS Agreement and the discussion on an Appropriate Level of Protection (ALOP). Before the Panel's proceedings had been initiated, Korea had represented to Japan that its ALOP consisted of a quantitative element, namely, an exposure limit of 1 mSv/year.[5] Korea had then added two qualitative elements, i.e., the so-called "As Low as Reasonably Achievable" (ALARA) principle and the level in the "ordinary environment", during the Panel proceedings without supporting evidence. Indeed, during the Panel's proceedings, Korea had been unable to explain how the notions of ALARA and "the level in the ordinary environment" could serve as its ALOP or to provide to the Panel the basis of its assertion under its own domestic law. This had all been well noted by the Panel.[6] Despite Korea's lack of transparency and inability to provide explanations, the Panel had accepted that "Korea has determined its ALOP for itself and that for Korea these concepts are important and inform how it formulates its SPS measures".[7] The Panel had done so "in light of the prerogative for Members to determine their own ALOP".[8] However, the Panel had not accepted Korea's description of its ALOP without qualification. With the support of its own scientific experts, the Panel had thoroughly examined these unexplained notions, how they could or could not meaningfully serve as the ALOP, and the relationship and interactions between the one quantitative element and the other two qualitative elements asserted by Korea.[9] Following these analyses, the Panel had found that: "[a]lthough the SPS Agreement does not oblige Members to put forth a quantitative ALOP, their ALOPs must also not be so vague and equivocal as to evade their obligations".[10] The Panel had concluded that: "if a Member is applying a particular measure with an express quantitative limit for contaminations, that is an indicator that products containing levels of contaminants below that limit will satisfy its ALOP. Japan noted that not only for the challenged measures, but for food products in general, Korea has established maximum levels for radionuclides with a maximum upper limit of 1 mSV/year for total consumption of man-made radionuclides from all sources".[11]

2.6. The Appellate Body itself had recognized that the Panel's analyses indicated that ALARA and exposure in the ordinary environment would not "serve as a meaningful ALOP or as parts thereof".[12] However, the Appellate Body had faulted the Panel because it had not *explicitly*[13] examined or explained the issue exactly the way in which the Appellate Body had wanted the Panel to follow. This did not constitute the proper standard to review panels' legal analyses and conclusions, let alone a proper ground for the reversal of otherwise sound panel legal findings and conclusions. A panel's duty was to "make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements", and to "make such other findings as will assist the DSB in making the recommendations or in giving the rulings".[14] In performing this duty, a panel was obliged to provide "the basic rationale" for its findings.[15] The Appellate Body's role was, in turn, to "uphold, modify or

[4] Appellate Body Report, "US – Zeroing" (Japan), para.157.
[5] Panel Report, "Korea – Radionuclides", para. 7.161.
[6] Panel Report, "Korea – Radionuclides", footnote 716 to para.7.171.
[7] Panel Report, "Korea – Radionuclides", para.7.171.
[8] Panel Report, "Korea – Radionuclides", footnote 716 to para.7.717.
[9] Panel Report, "Korea – Radionuclides", paras.7.165 – 7.171.
[10] Panel Report, "Korea – Radionuclides", para.7.171.
[11] Panel Report, "Korea – Radionuclides", para.7.172.
[12] Appellate Body Report, "Korea – Radionuclides", para.5.35.
[13] Appellate Body Report, "Korea – Radionuclides", para.5.35.
[14] Article 11 of the DSU.
[15] Article 12.7 of the DSU.

reverse the legal findings and conclusions of the panel" pursuant to Article 17.13 of the DSU. Indeed, nothing in the DSU required that a panel examine or analyse the matter and explain its reasoning exactly in the way the Appellate Body preferred or wanted panels to follow. Furthermore, pursuant to Articles 3.3, 3.4 and 3.7 of the DSU, securing the "prompt", "satisfactory" and "positive" resolution of a trade dispute brought under the DSU was the objective of, and the function that WTO Members had entrusted to, the WTO dispute settlement system, including the Appellate Body. The Appellate Body's role to "uphold, *modify* or reverse" legal findings and conclusions of a panel under Article 17.13 of the DSU was informed by this very objective and had to be exercised such that the dispute settlement system fulfilled this function. The DSB had established the Appellate Body not to condemn a panel by reversing its findings on technical or non-substantive grounds, but to verify or correct legal findings and conclusions of a panel so as to secure a "prompt",[16] "satisfactory",[17] and "positive"[18] solution to a dispute. As Japan had explained to the Appellate Body during the appellate proceedings in this dispute, there were perfectly plausible ways to uphold or modify, if necessary, the Panel's findings and conclusions on ALOP. Thus, the Appellate Body could have concluded, with certain modifications if necessary, that: (i) the Panel had actually examined the significance of the two qualitative elements asserted by Korea as part of its ALOP; (ii) it had actually analysed their interactions with the quantitative element; and (iii) it had actually determined that, based on the Panel's analysis, these two qualitative elements were too vague and equivocal to serve as a meaningful ALOP. However, rather than appreciating the Panel's thorough and careful analyses and findings based on the facts, evidence and parties' arguments in pursuing the resolution of this dispute, and made with the support of its own scientific experts, the Appellate Body "interfered lightly with" the Panel's findings and disturbed them simply because the Appellate Body might have wanted to analyse the issues or explain its reasoning differently. Japan believed this was wrong. The right approach would have been to give proper deference to sound judgements of a panel especially in disputes such as this one, which were heavily "involving scientific or technical issues"[19] in which the Appellate Body had no expertise. In the end, the Appellate Body had condemned the Panel for showing respect to the prerogative of Korea in determining its ALOP and had reversed the Panel's otherwise sound findings on non-reversible grounds. In doing so, the Appellate Body had effectively praised Korea's lack of transparency and failure to engage in dispute settlement proceedings in good faith by withholding information from the Panel and keeping its ALOP as ambiguous as possible without any substantiation. As a result, the Appellate Body had denied Japan findings which it deserved under the dispute settlement system and had instead penalized Japan for no reason. Japan wished to ask each and every WTO Member whether this was the outcome that the system was designed for when WTO Member had established it back in 1995.

2.7. The representative of Korea said that his delegation did not wish to make a second statement on this Agenda item but because Japan had made such a long statement, his country had no choice but to respond to it. Korea wished to express its concerns about Japan's statements on the Report of the Appellate Body in "Korea – Radionuclides" (Japan) (DS495). As Members were aware, this Agenda item related to Korea's implementation in this dispute, not to the Appellate Body Report itself. Korea recalled that Japan had fully expressed its views on the Appellate Body Report at the 26 April 2019 DSB meeting when that Report had been adopted. Yet, Japan had decided to take issue with the same Appellate Body Report again at the present meeting. Japan's continued protests certainly harmed Members and the system as a whole. Korea wished to make a few remarks regarding Japan's repeated statements made under this Agenda item. First, contrary to Japan's continued assertion that the Appellate Body in this case had unduly failed to complete its analysis, the Appellate Body had made the proper findings within its mandate under Article 17.6 of the DSU. Furthermore, in its appeal in DS495, Japan had limited itself to arguing that the Panel's approach had been correct and that the Appellate Body should uphold the Panel's findings. There had been no request by Japan for the Appellate Body to conduct further work in the event that the Appellate Body would disagree with the Panel's approach. While Korea believed that the ultimate outcome would have been the same, Japan had simply opted not to exercise that right. As the famous maxim provided: "the law did not help those who slept on their rights". It was regrettable that Japan would seek to blame the Appellate Body for its own decision. Second, Japan argued that the Appellate Body Report had failed to resolve the dispute by failing to determine whether or not Korea's measures were WTO-consistent. Japan's position ran counter to both well-established WTO jurisprudence and a long-standing international principle. According to this general principle of the public international

[16] Article 3.3 of the DSU.
[17] Article 3.4 of the DSU.
[18] Article 3.7 of the DSU.
[19] Article 11.2 of the SPS Agreement.

law, a State's measure was presumed to be consistent with international law unless otherwise established. This fundamental principle also echoed practical concerns. Indeed, Members did not, and in fact could not, adopt measures only after these measures' conformity with WTO obligations was confirmed by the DSB. Thus, the presumption of compliance had to be attached to all Members' measures unless and until established otherwise. In this particular dispute, the burden of establishing that Korea's measures were inconsistent with the SPS Agreement rested on Japan as the complaining party, and Japan had failed to meet its burden of proof. Lastly and more importantly, Japan's continued attempts at undermining the dignity and integrity of a specific Appellate Body report adopted by the DSB inevitably undermined an important and long-espoused order under the auspices of the WTO. Such an international order, although intangible, was an indispensable element of the harmonious co-existence of States. Japan's unilateral assertion, aimed only at furthering its own specific interests to the detriment of the international order, did nothing but harm the collective interests of the international community. Members were free to disagree with rulings of panels or the Appellate Body. Members were also entitled to express their disagreement, and Japan in this case had already fully expressed its disagreement repeatedly and in many forums. However, the continued expression of such disagreement, particularly when it was improperly linked to on-going discussions about systemic reform, must not be tolerated by Members because the likely skewed outcome of such an attempt could never be helpful to the future of the system. For other specific issues, Korea wished to refer to its statements made at the 26 April 2019 DSB meeting.

2.8. The representative of the United States said that the United States had listened closely to the interventions made by the parties, including at the 26 April 2019 DSB meeting. These interventions had raised systemic issues on which the United States had liked to offer a few remarks. First, the DSU established that a responding party shall state its intentions in relation to the DSB's recommendations. There was one recommendation set out in the DSU, that in Article 19.1. Under this provision, the recommendation adopted by the DSB was to bring a measure found WTO-inconsistent into conformity with the relevant covered agreement. Where the Appellate Body reversed a panel's legal conclusion that a measure was WTO-inconsistent, the consequence would be no DSB recommendation. That was a serious consequence. Reversal of a finding of inconsistency should occur when the legal conclusion, or interpretation on which the conclusion was based, was clearly erroneous. Second, Japan had raised concerns in relation to the reversal of the panel's findings under Article 5.6 of the SPS Agreement, and the United States shared those concerns. The appellate report stated that the panel's findings in relation to quantitative evaluation of the safety of Japanese imports would not "necessarily" achieve the qualitative levels of protection asserted, that the panel did not "explicitly integrate" its evaluation of the verbal formulations of the level of protection, and the panel ultimately had "failed to account clearly for all elements" of the level of protection. What appeared missing in this assessment was any conclusion that Japan had not made out the elements of its claim, or a conclusion that the quantitative evaluation of the safety of Japanese imports could not satisfy the qualitative levels asserted. There was no statement that the panel's legal conclusion had been, in simple terms, wrong. Third, the reversal here was also concerning because the panel had made factual findings relating to the safety of those products after having consulted with scientific experts. Under the DSU, it was panels that were charged with making factual findings, including in relation to the content and effect of domestic measures. Under Article 17.6 of the DSU, an appeal could not review facts, but was limited to issues of law and legal interpretation. The appellate report here had not expressly overturned the panel's findings on the safety of Japanese imports. Nevertheless, it had overturned the panel's findings that the safety of those imports achieved another Member's level of protection, but without having demonstrated how the panel's findings could not satisfy that level of protection. The appellate review performed in this dispute appeared concerned less with substance and legal error, and more with form and wording. The United States, therefore, shared Japan's view that this appellate report raised concerns of Appellate Body overreaching, and invited Members' reflection on this important systemic issue.

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

B. China – Domestic support for agricultural producers

2.10. The Chairman recalled that at its meeting on 26 April 2019, the DSB had adopted the Panel Report in the dispute on "China – Domestic Support for Agricultural Producers" (DS511). As Members were aware, the 30-day time-period in this dispute had expired on 26 May 2019. On 16 May 2019, China had informed the DSB in writing of its intentions with respect to implementation of the of

the DSB's recommendations and rulings. The relevant communication was contained in document WT/DS511/13. He then invited the representative of China to make a statement.

2.11. The representative of China said that at its meeting on 26 April, the DSB had adopted the recommendations and rulings in the dispute "China – Domestic Support for Agricultural Producers" (DS511). On 16 May 2019, pursuant to Article 21.3 of the DSU, his country had informed the DSB of its intention to implement the DSB's recommendations and rulings in this dispute through a written communication contained in document WT/DS511/13. At the present meeting, China wished to reiterate its intention to implement the DSB's recommendations and rulings in this dispute in a manner consistent with its WTO obligations. China said that it would need a reasonable period of time to implement the DSB's recommendations and rulings. His delegation stood ready to discuss this matter with the United States in due course, in accordance with Article 21.3(b) of the DSU.

2.12. The representative of the United States said that the United States thanked China for its communication of 16 May 2019, and its statement made at the present meeting, indicating that it intended to implement the DSB's recommendations and rulings in this dispute, and that it would need a reasonable period of time for implementation. China's WTO-inconsistent domestic support measures were a source of significant concern to the United States and other WTO Members. The United States therefore looked forward to China moving promptly to bring its measures into compliance with its obligations. The United States stood ready to agree with China, under Article 21.3(b) of the DSU, on the reasonable period of time to implement the DSB's recommendations.

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

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

A. Statement by the European Union

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

3.2. The representative of the European Union said that the EU requested, once again, that the United States stop transferring anti-dumping and countervailing duties to the US industry. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations and rulings in this dispute. 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 as long as the United States had not implemented the DSB's recommendations and rulings in this dispute.

3.3. The representative of Brazil said that as an original party to this dispute, his country wished to thank the EU, once again, for placing this item on the DSB Agenda. Beyond the discussion about whether or not the Member concerned had an obligation to continue submitting status reports in this dispute, the reason that Members had to return to this Agenda item at every DSB meeting was that millions of dollars in anti-dumping and countervailing duties were still being illegally disbursed to US domestic petitioners. After more than 16 years since the adoption of the DSB's recommendations and rulings in this dispute, and more than 13 years after the date on which the Deficit Reduction Act that had repealed the Amendment, Brazil called on the United States to comply fully with the DSB's recommendations and rulings in this dispute.

3.4. The representative of Canada said that his country wished to thank the European Union for placing this item on the Agenda of the present meeting. Canada shared the EU's view that this dispute shall remain under surveillance of the DSB until the United States ceased to apply the measures at issue in this dispute.

3.5. The representative of the United States said that as the United States had noted at previous DSB meetings, the Deficit Reduction Act – which included a provision repealing the "Continued Dumping and Subsidy Offset Act of 2000" – had been enacted into law in February 2006. Accordingly,

the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that the EU had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, more than eleven years ago. This month, the EU had notified the DSB that the current level of countermeasures under the Arbitrator's formula in relation to goods entered before 2007 was US$3,355.82. Accordingly, effective 1 May 2019, the EU had announced it would be applying an additional duty of 0.001% on certain imports of the United States. The United States thought these numbers spoke volumes about the utility and wisdom behind this Agenda item. With respect to the EU's request for status reports in this matter, as the United States had already explained at previous DSB meetings, there was no obligation under the DSU to provide further status reports once a Member announced that it had implemented the DSB's recommendations, regardless of whether the complaining party disagreed about compliance. The practice of Members confirmed this widespread understanding of Article 21.6 of the DSU. Responding party Members did *not* continue submitting status reports where the responding Member had claimed compliance and the complaining Member disagreed, as Members would see under the next Agenda item concerning the "EC – Large Civil Aircraft" dispute (DS316). Accordingly, since the United States had informed the DSB that it had taken all steps necessary for compliance, there was nothing more for the United States to provide in a status report.

3.6. The representative of the European Union said that the United States had referred to the value of the countermeasures that had been applied by the EU as of May 2019. There were two points that his delegation wished to make. First, the value of this countermeasure showed how precise the EU was in making sure that it did not apply more than the actual trade distortion that was created by the US measure. Second, the EU recalled that the Continued Dumping and Subsidy Offset Act had been found in breach of WTO rules for transferring anti-dumping and countervailing duties to the US industry. As long as the redistribution of collected duties continued, the United States would be in breach of Articles 18.1 of the Anti-Dumping Agreement and 32.1 of the SCM Agreement and full implementation would still have to be delivered. Once the transfers of anti-dumping and countervailing duties ceased, so would the EU measures.

3.7. The representative of the United States said that the United States noted the EU's recent announcement that it would maintain its suspension of concessions on US goods at a very low level. This was regrettable, especially given their close collaboration generally. The United States continued to review the action by the EU and would not accept any characterization of such continued countermeasures – no matter how small – as consistent with the DSB's authorization.

3.8. The DSB took note of the statements.

4 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

4.1. 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.

4.2. The representative of the United States said that the United States noted that, once again, the European Union (EU) had not provided Members with a status report concerning the "EC – Large Civil Aircraft" dispute (DS316). The United States had raised this same issue at recent past DSB meetings, where the EU had similarly chosen not to provide a status report. As the United States had noted at several recent DSB meetings, the EU had argued that Article 21.6 of the DSU required that "the issue of implementation shall remain on the DSB's agenda until the issue is resolved". And the EU had argued 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". The EU did not contest that the issue remained unresolved for purposes of Article 21.6 of the DSU. The EU's only attempt to reconcile its stated position with its lack of a status report in this dispute was to argue that there was some exception to providing a status report if there were on-going proceedings. The only problem with this EU effort was that there was no such exception anywhere in the DSU. It was simply an invention by the EU to try to justify its acting in this dispute in a manner that was inconsistent with the legal position it had taken for

other disputes. Under the EU's own view, the EU should be providing a status report. Yet it had failed to do so. The only difference that the United States could see was that, now that the EU was a *responding* party, the EU was choosing to contradict the reading of Article 21.6 of the DSU it had long erroneously promoted. Under Article 21.6 of the DSU, once a responding Member provided the DSB with a status report that announced compliance, there was no further "progress" on which it could report, and therefore no further obligation to provide a report. But as the EU allegedly disagreed with this position, it should for future meetings provide status reports in this DS316 dispute.

4.3. The representative of the European Union said that the United States had again implied that the EU was taking inconsistent positions under Article 21.6 of the DSU, depending on whether the EU was a complaining party or a defending party in a dispute. The US assertions remained without merit. As his delegation had repeatedly explained in past DSB meetings, the crucial point for the defending party's obligation to provide status reports to the DSB was the stage of the dispute. In the "EC – Large Civil Aircraft" dispute (DS316), the dispute was at a stage where the defending party did not have an obligation to submit status reports to the DSB. The EU wished to recall that in the "EC – Large Civil Aircraft" dispute (DS316), the EU had notified to the WTO a new set of measures in a compliance communication, submitted at the 28 May 2018 DSB meeting. The United States had responded that the measures included in that communication did not bring the EU in full compliance with the DSB's recommendations and rulings in that dispute. In light of the US position, on 29 May 2018, the EU had requested consultations with the United States pursuant to Articles 4 and 21.5 of the DSU. These consultations had failed to resolve the dispute. Consequently, the EU had then asked for the establishment of a compliance panel. The compliance panel had been established by the DSB on 27 August 2018. That compliance panel was currently reviewing "the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB. As part of that review, the compliance panel had held a meeting with the parties and third parties and was assessing the parties' replies to its questions on compliance of the EU. He stressed that there was a compliance proceeding still on-going in this dispute. Whether or not the matter was "resolved" in the sense of Article 21.6 of the DSU was the very subject matter of this on-going litigation. He asked how it could be said that the defending party should submit "status reports" to the DSB under these circumstances. The EU would be very concerned with a reading of Article 21.6 of the DSU that would require the responding 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 on-going. The view of the EU 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.

4.4. The DSB took note of the statements.

5 QATAR – CERTAIN MEASURES CONCERNING GOODS FROM THE UNITED ARAB EMIRATES

A. Request for the establishment of a panel by the United Arab Emirates (WT/DS576/2)

5.1. The Chairman recalled that the DSB had considered this matter at its 26 April 2019 meeting and had agreed to revert to it. He drew attention to the communication from the United Arab Emirates contained in document WT/DS576/2 and invited the representative of the United Arab Emirates to speak.

5.2. The representative of the United Arab Emirates said that his delegation had explained at the 26 April 2019 DSB meeting that Qatar's retaliatory actions against UAE products and suppliers were in clear contravention of the prohibition on unilateral measures in Article 23 of the DSU and also violated core WTO obligations on non-discrimination and transparency. Qatar had no right to take unilateral retaliatory action before the panel in the "United Arab Emirates – Goods, Services and IP rights" dispute (DS526) had even issued a decision and without having first obtained the DSB's authorization. These were fundamental precepts underlying the DSU. By taking unilateral retaliatory action, Qatar had shown a blatant disregard for the rules-based multilateral trading system and for its dispute settlement mechanism. For these reasons, the UAE must reiterate its request that the DSB establish a panel to examine this matter with standard terms of reference.

5.3. The representative of Qatar said that his delegation regretted the United Arab Emirates' (UAE) decision to make a second request for the establishment of a panel in this dispute. As Qatar had explained at the 26 April 2019 DSB meeting, the alleged measures mentioned by the UAE in its panel request *either had never existed or had ceased to exist.* Over a month ago, Qatar had informed the UAE that certain temporary instruments listed in the UAE's panel request no longer existed. Qatar regretted that the UAE had subsequently chosen, in aggressive media statements, to characterize Qatar's rescission of the instruments as a "confession" that these instruments were WTO-inconsistent. Qatar made no such concession. The relevant instruments were WTO-consistent, but were no longer necessary. Furthermore, Qatar was confused by the UAE's second request for the establishment of a panel. Immediately after the 26 April 2019 DSB meeting, the UAE had recognized that the measures no longer existed in a press note entitled "Qatar withdraws measures established against the UAE". It was contradictory for the UAE to ask at the present meeting that the WTO adjudicate on these very same measures. Qatar did not welcome such an impetuous approach to bringing disputes to the DSB. Qatar was also perplexed that the UAE continued to maintain its scheme of coercive economic measures against Qatar, and, at the same time, complained of an alleged lack of market access to Qatar. To the extent the UAE wished to facilitate the access of its goods to the Qatari market, it should lift its own restrictions, and stop complaining about non-existent Qatari measures. Qatar appreciated that the UAE exporters were suffering without Qatari customers. But the UAE exporters needed to look closer to home to find the cause. Indeed, it was bewildering that the UAE complained about an alleged lack of market access to Qatar while maintaining a two-year boycott on the basis of alleged national security interests. With its renewed request for the establishment of a panel at the present meeting, Qatar understood that the UAE no longer considered restrictions on the export of goods to Qatar necessary for protecting those interests. The UAE should, therefore, withdraw its export restrictions without delay. Qatar remained committed to following WTO rules, and it was confident that it would prevail in defending itself against the false allegations made by the UAE. Qatar did not restrict economic engagement with the UAE. In stark contrast to the UAE's discriminatory trade policies towards Qatar, Qatar continued to export more than US$750 million worth of Qatari gas each year to the UAE. Following a gas pipeline outage in April, the Qatari exporter had worked to ensure that the UAE's supply would not be interrupted by sending shipments of LNG to the UAE. Through such exports, Qatar had continued to ensure a stable provision of over 30% of the UAE's energy needs. Article 3.7 of the DSU admonished Members to bring complaints only when they were likely to be fruitful. By insisting on litigation that could not possibly be fruitful, the UAE abused its privileges as a WTO Member. The UAE should adopt a more constructive approach to resolving its differences with Qatar.

5.4. The representative of Turkey said that on a number of different occasions, his country had underlined that Members would all be better off to ensure there was less pressure on the dispute settlement system, especially at this time. Turkey had also pointed out that resolving issues through dialogue would be preferable and ideal as stipulated in Article 3.7 of the DSU. This had become all the more important in the context of ongoing discussions on the functioning of the rules-based multilateral trading system. With this thought, Turkey wished to draw attention to Article 3.10 of the DSU, which set out good faith efforts and asked Members to exercise judgment when considering whether a panel request would be fruitful. This would also ensure avoiding "contentious acts", as this Article specifically referred to. Turkey believed that this issue merited exactly such exercise of judgment. Turkey expressed its hope that the parties to this dispute, being partners in the Gulf Cooperation Council, would resolve this matter amicably without pursuing the panel's proceedings.

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

5.6. The representatives of Afghanistan, the Kingdom of Bahrain, Brazil, Canada, China, Egypt, the European Union, India, Japan, Norway, the Russian Federation, the Kingdom of Saudi Arabia, Singapore, Chinese Taipei, Turkey, Ukraine and the United States reserved their third-party rights to participate in the Panel's proceedings.

6 UNITED STATES – ANTI-DUMPING AND COUNTERVAILING DUTIES ON RIPE OLIVES FROM SPAIN

A. Request for the establishment of a panel by the European Union (WT/DS577/3)

6.1. The Chairman drew attention to the communication from the European Union contained in document WT/DS577/3 and invited the representative of the European Union to speak.

6.2. The representative of the European Union said that the EU had serious concerns about the investigations leading to the imposition by the United States of anti-dumping and countervailing duties on ripe olives from Spain. These related to the targeting of non-specific subsidies, the absence of a pass-through analysis, the failure to show that imports were causing injury to the US industry and the use of incorrect figures for one of the Spanish companies. The EU urged the United States to bring these duties, as well as the underlying US legislation, in line with its WTO obligations. To this end, the EU requested the establishment of a panel to fully assess these measures.

6.3. The representative of the United States said that the United States regretted that the EU had sought the establishment of a panel in this matter. As the United States had explained to the EU, duties had been imposed on ripe olives from Spain following thorough anti-dumping and countervailing duty investigations by the US Department of Commerce, and equally thorough injury investigations by the US International Trade Commission, fully consistent with WTO rules. Furthermore, the EU's request to establish a panel included claims that had not been included in its request for consultations, meaning that the parties had yet to consult on these claims. For these reasons, the United States did not agree to the establishment of a panel at the present meeting.

6.4. The DSB took note of the statements and agreed to revert to this matter.

7 CHINA – TARIFF RATE QUOTAS FOR CERTAIN AGRICULTURAL PRODUCTS

A. Report of the Panel (WT/DS517/R and WT/DS517/R/Add.1)

7.1. The Chairman recall that at its meeting on 22 September 2017, the DSB had established a Panel to examine the complaint by the United States pertaining to this dispute. The Report of the Panel contained in document WT/DS517/R and Add.1 was circulated on 18 April 2019 as an unrestricted document. The Panel Report was before the DSB for adoption at the present meeting at the request of the United States. This adoption procedure was without prejudice to the right of Members to express their views on the Panel Report.

7.2. The representative of the United States thanked the Panel, and the Secretariat staff that assisted the Panel, for their work on this dispute. The United States welcomed the findings of the Panel in this Report, which confirmed that China had failed to administer its tariff-rate quotas for wheat, corn, and rice consistently with its WTO commitments. China had committed to administer its TRQs on a transparent, predictable, and fair basis, using clearly specified administrative procedures and requirements that did not inhibit the filling of each TRQ. The Panel had found that several aspects of China's TRQ administration, including in particular its eligibility criteria, allocation principles, reallocation procedures, public comment process, allocation of state-trading and non-state trading portions of each TRQ, and processing restrictions, were not transparent, predictable, or fair, failed to use clearly specified procedures or requirements, and ultimately inhibited China's TRQs from filling. The United States also noted the Panel's findings that the many disparities between what was set out in China's legal instruments and China's practice further demonstrated that China administered its TRQs inconsistently with its commitments. For example, the Panel had found that whereas China's legal instruments provided that the state-trading and non-state trading portions of TRQs were available for allocation to all applicants, China *in practice* allocated the state trading portions of each TRQ exclusively to state trading enterprises (STE), and without applying its published rules. This meant that, among other things, COFCO, China's state-owned enterprise for grains trading, was not required to return unused TRQ amounts for reallocation to private entities. Therefore, unless COFCO imported its full allocation amount, large portions of China's TRQ would go unused every year. The Panel Report had also confirmed what China's low TRQ fill rates suggested: that China's TRQ administration inhibited the filling of the TRQs inconsistent with its WTO obligations. As a result, WTO Members did not have the access to China's market that China had agreed to when it had joined the WTO. The United States therefore respectfully proposed that the DSB adopt the Report contained in WT/DS517/R and WTDS517/R/Add.1 and looked forward to China's prompt implementation.

7.3. The representative of China said that his country wished to thank the panelists, and the Secretariat staff supporting them, for their hard work on this dispute. Following the dispute "China – Domestic Support for Agricultural Producers" (DS511), this was the second agriculture-related dispute brought by the United States against China. Agriculture was of special significance to China with 1.3 billion people. Since China had fully elaborated on that point at the 26 April 2019 DSB

meeting, China would refrain from repeating that prior statement at the present meeting. China took note that, just 15 days after the Panel had issued its final Report to the parties, the Secretariat had already completed the translation of that Report and had circulated it to the whole Membership. While admiring the extraordinary efficiency of the Secretariat, China would also expect that such efficiency could be maintained in future disputes, including those brought by China. In this dispute, the Panel had recognized that the public notice in connection with the allocation and reallocation of relevant agricultural products had been made in conformity with WTO rules. In practice, China had already published adequate information on the allocation of TRQs, including the total TRQs amounts available for allocation, application time, criteria and principle, as well as the integral allocation process. China regretted that the Panel, nevertheless, had found that flaws existed in its administration of TRQs. China wished to stress that it was a reserved right of China since its accession to the WTO to administer imports of rice, wheat and corn through TRQs. China would continue such administration in line with WTO rules. China always respected WTO rules and earnestly fulfilled its commitments to the WTO. Though disappointed with some of the Panel' s findings, China chose to let the Panel Report to be adopted at the present meeting in order to settle this dispute. Meanwhile, China called on Members to maintain an objective and impartial attitude, safeguard the integrity of WTO rules, respect outcomes of accession negotiations, and work together to maintain the authority and stability of the multilateral trading system.

7.4. The representative of the European Union said that his delegation wished to thank China for its statement made at the present meeting and looked forward to receiving more information concerning the implementation of the DSB's recommendations and rulings regarding the administration of the TRQs and trusted that this would be done in line with WTO rules and in full transparency for the entire Membership.

7.5. The DSB took note of the statements and adopted the Panel Report contained in WT/DS517/R and Add.1.

8 APPELLATE BODY APPOINTMENTS: PROPOSAL BY ARGENTINA; AUSTRALIA; BENIN; THE PLURINATIONAL STATE OF BOLIVIA; BRAZIL; CANADA; CENTRAL AFRICAN REPUBLIC; CHILE; CHINA; COLOMBIA; COSTA RICA; CUBA; DOMINICAN REPUBLIC; ECUADOR; EGYPT; EL SALVADOR; THE EUROPEAN UNION; GUATEMALA; HONDURAS; HONG KONG, CHINA; ICELAND; INDIA; INDONESIA; ISRAEL; KAZAKHSTAN; KOREA; LIECHTENSTEIN; MEXICO; MOROCCO; NEW ZEALAND; NICARAGUA; NORTH MACEDONIA; NORWAY; PAKISTAN; PANAMA; PARAGUAY; PERU; THE RUSSIAN FEDERATION; RWANDA; SINGAPORE; SWITZERLAND; THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU; TURKEY; UKRAINE; URUGUAY; THE BOLIVARIAN REPUBLIC OF VENEZUELA AND VIET NAM (WT/DSB/W/609/REV.10)

8.1. The Chairman said that this item was on the Agenda of the present meeting at the request of Mexico, on behalf of several delegations. He drew attention to the proposal contained in document WT/DSB/W/609/Rev.10 and invited the representative of Mexico to speak.

8.2. The representative of Mexico, speaking on behalf of the co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.10, said that the delegations in question had agreed to submit the joint proposal, dated 15 April 2019, to launch the AB selection processes. At the present meeting, Mexico, speaking on behalf of these 75 Members, wished to make the following statement. The considerable number of Members submitting this joint proposal expressed a common concern with the current situation in the Appellate Body, which was seriously affecting its functioning and the overall functioning of the 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 four selection processes: one process to replace Mr. Ricardo Ramírez-Hernández, whose second term expired on 30 June 2017; a second process to fill the vacancy that resulted from the resignation of Mr. Hyun Chong Kim with effect from 1 August 2017; a third process to replace Mr. Peter Van den Bossche, whose second term expired on 11 December, 2017; and a fourth process to replace Mr. Shree Baboo Chekitan Servansing, whose four-year term of office expired on 30 September 2018; (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 recommendations within 60 days after the deadline for nominations of candidates". The proponents were flexible with regard to the deadlines for the AB

selection processes, but believed that Members should consider the urgency of the situation. Mexico continued to urge all Members to support this proposal in the interest of the multilateral trading system and the dispute settlement system.

8.3. The representative of the United States said that the United States thanked the Chair for the continued work on these issues. As the United States had explained in prior 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. As the United States had explained at recent DSB meetings, for more than 15 years and across multiple US Administrations, the United States had been raising serious concerns with the Appellate Body's overreaching and disregard for the rules set by WTO Members. Through persistent overreaching, the WTO Appellate Body had been adding obligations that had never been agreed by the United States and other WTO Members. The 2018 US Trade Policy Agenda had outlined several long-standing US concerns.[20] The United States had raised repeated concerns that appellate reports had gone far beyond the text setting out WTO rules in varied areas, such as subsidies, anti-dumping duties, anti-subsidy duties, standards and technical barriers to trade, and safeguards, restricting the ability of the United States to regulate in the public interest or protect US workers and businesses against unfair trading practices. And as the United States had explained at recent DSB meetings, the Appellate Body had issued advisory opinions on issues not necessary to resolve a dispute and had reviewed panel fact-finding despite appeals being limited to legal issues. Furthermore, the Appellate Body had asserted that panels must follow its reports although Members had not agreed to a system of precedent in the WTO, and had continuously disregarded the 90-day mandatory deadline for appeals – all contrary to the WTO's agreed dispute settlement rules. And for more than a year, the United States had been calling for WTO Members to correct the situation where the Appellate Body acted as if it had the power to permit ex-Appellate Body members to continue to decide appeals even after their term of office – as set by the WTO Members – had expired. This so-called "Rule 15" was, on its face, another example of the Appellate Body's disregard for the WTO's rules. The concerns of the United States had not been addressed. 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. The United States would continue to insist that WTO rules be followed by the WTO dispute settlement system, and would continue its efforts and its discussions with Members and with the Chairperson to seek a solution on these important issues.

8.4. The representative of the European Union said that his delegation wished to refer to its statements made on this matter at previous DSB meetings, starting in February 2017. The gravity and urgency of the situation was increasing as months went by. WTO Members had a shared responsibility to resolve this issue as soon as possible. The EU wished to thank all Members that had co-sponsored the proposal to launch the AB selection processes. The EU invited all other Members to endorse this proposal so that new AB members could be appointed as soon as possible The EU also wished to recall that concrete proposals had been submitted to the General Council with a view to unblocking the AB selection processes. The EU invited all Members to engage constructively in these discussions so that the vacancies could be filled as soon as possible.

8.5. The representative of Canada said that his country supported the statement made by Mexico. It had now been 25 months since the launch of the AB selection processes had been first proposed. Canada deeply regretted that the DSB had not been able to comply with its legal obligation under Article 17.2 of the DSU to appoint Appellate Body members to fill the vacancies. The text of the DSU was clear: "vacancies shall be filled as they arise". This requirement did not provide for exceptions or justifications not to replenish the Appellate Body. The inability to select and appoint new Appellate Body members could only increase the necessity to rely on Rule 15 of the Working Procedures for Appellate Review, and the challenges to meet the 90-day time-frame to issue AB reports. This situation was at odds with the concerns that the United States had expressed regarding that practice. Canada shared the disappointment expressed by several other Members regarding the US decision not to join the consensus to move forward with the proposal. Canada supported the informal process on Appellate Body matters led by the DSB Chairman, as Facilitator, under the auspices of the General Council to discuss the various proposals aimed at addressing the US concerns. Canada called on the United States to meaningfully engage in constructive discussions that were aimed at fixing the problems it perceived with the system. Canada remained committed to working with other interested Members, including the United States, with a view to addressing those concerns and undertake the

[20] Office of the US Trade Representative, 2018 President's Trade Policy Agenda, at 22-28.

AB selection processes expeditiously. Canada wished to invite those Members that did not yet sponsor this proposal to launch the AB selection processes to give it the attention it deserved and support it.

8.6. The representative of Australia said that her country wished to refer to its statements made at previous DSB meetings on this matter and to reiterate its serious concerns regarding the DSB's inability to commence the AB selection processes. Australia welcomed the leadership provided by the DSB Chairman, as Facilitator of the General Council's informal process on Appellate Body matters. Australia had taken note of the Chairman's recent status report to the General Council, including the frank assessment that "discussion so far has shown that finding a solution that would address the key concerns raised is not going to be easy". Australia strongly supported continued work under this process and expected an acceleration of work ahead of the summer break. Australia wished to acknowledge the valuable contributions of Members to this process, and encouraged further constructive contributions in developing a pragmatic solution in the interests of all Members.

8.7. The representative of China wished to echo the statement made by Mexico on behalf of 75 Members. China regretted that the collective efforts by these Members had been, once again, frustrated by a particular Member's illegitimate blockage which simply exacerbated the current Appellate Body crisis. China recalled that Members had a shared responsibility to promptly fill the vacancies in the Appellate Body, as required by Article 17.2 of the DSU. The clear text of that provision indicated that such responsibility had to be fulfilled without any precondition. Nevertheless, with a view to breaking the deadlock in AB selection processes, Members had made and were continuing to make earnest efforts to address concerns raised by a particular Member. Various concrete proposals, including the joint proposals co-sponsored by the EU, China and other Members, had been tabled and discussed in informal meetings under the auspices of the General Council. Regrettably, Members had yet to see constructive engagement from the Member concerned. If all Members supported the rules-based multilateral trading system, it was time for this Member to show their seriousness and sincerity by meaningfully participating in relevant discussions on Appellate Body reform. China noted that this Member had recently made a statement against improving the DSU and had stated that the current text of the DSU was clear enough and needed no further adjustment. However, these assertions contradicted its own position. For instance, Article 17.12 of the DSU required the Appellate Body to address each of the issues raised in an appeal. Therefore, it seemed that the Appellate Body had done nothing wrong and had simply fulfilled its duty when it examined all issues raised in an appeal. If Members truly wished to limit the appellate review to the extent necessary to solve a dispute, certain clarifications or changes on this Article were needed. The clock was ticking. If the standstill continued, it would inevitably lead to the dismantlement of the Appellate Body, which would cause severe damage to the effectiveness and credibility of the WTO dispute settlement system. To avoid unintended consequences, China called on all Members to constructively participate in informal discussions and to try to solve the deadlock in the AB selection processes as soon as possible.

8.8. The representative of Chile said that his country supported the statement made by Mexico and wished to highlight the need to launch the AB selection processes as soon as possible. Launching the AB processes had been Chile's priority since the beginning of the deadlock that was currently affecting the appointment of Appellate Body members and therefore also having a negative impact on the dispute settlement mechanism. Furthermore, should this situation continue, in December 2019 the Appellate Body would no longer have the minimum number of members to be able to exercise its functions. Given this situation, Chile believed that it was urgent to move forward in seeking a solution. The proposal contained in document WT/DSB/W/609/Rev.10 had been put forward as part of the necessary efforts aimed at supporting the engagement and participation of the Membership in finding a solution to this issue. Furthermore, Chile believed that the informal process on Appellate Body matters under the auspices of the General Council, which was led by the DSB Chairman as Facilitator, provided a forum to find solutions aimed at resolving the AB impasse. As part of this informal process, proposals such as that co-sponsored by Australia, Chile and Japan had been put forward regarding the functioning of the Appellate Body and the questions that had been raised in this regard. Finally, Chile wished to highlight that there was a need for Members to participate and share their views on the proposals aimed at finding potential solutions to the current situation.

8.9. The representative of Japan said that his country expressed its thanks for the proposal contained in document WT/DSB/W/609/Rev.10, which Japan supported. Japan also supported the informal process on Appellate Body matters under the auspices of the General Council. This process

was well underway, and Japan had been actively contributing to the work in this process. The active engagement of WTO Members was essential to the prompt and successful conclusion of the process.

8.10. The representative of Chinese Taipei said that his delegation simply wished to refer to its statements made at previous DSB meetings on the same matter. His delegation would keep supporting the informal process under the auspices of the General Council led by the DSB Chairman as Facilitator, and hoped that all Members would work together to find a solution as soon as possible.

8.11. 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.10 and emphasized the importance of commencing the AB selection processes as soon as possible. New Zealand welcomed discussions on the current impasse through the informal process under the auspices of the General Council. Like other Members, New Zealand was focused on the urgent need to identify solutions to the issues raised.

8.12. The representative of Turkey said that his delegation wished to refer to its statements made at previous DSB meetings. Turkey expressed its deep concern with the current stalemate. As one of 75 co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.10, Turkey also underlined Members' obligation to launch the AB selection processes without further delay as required by Article 17.2 of the DSU. In this respect, Turkey supported and welcomed the intense work being done in the informal process on Appellate Body matters under the auspices of the General Council. As part of this informal process, Members had had constructive discussions and several proposals had been presented by Members in order to unblock the current impasse. Turkey valued these discussions and proposals. However, Turkey believed that these discussions should not be linked to the launching of the AB selection processes and that they should be handled separately. Establishing a link between these discussions and the AB selection processes, Turkey believed, would benefit no one. Turkey was ready to work constructively with all Members to overcome this deadlock and invited all parties to engage in discussions with the Membership in this regard.

8.13. The representative of Brazil said that his country wished to refer to its statements made at previous DSB meetings regarding the urgency of launching the AB selection processes. The AB selection processes had been blocked for more than two years. In December 2019, the dispute settlement system would come to a halt. Members could not fail in their duty to maintain a standing Appellate Body. Members needed to discuss proposals that had been made to overcome this impasse. To this end, Brazil welcomed the progress achieved in the informal process on Appellate Body matters under the auspices of the General Council. Brazil remained ready to engage in pragmatic discussions to resolve these issues.

8.14. The representative of Uruguay said that his country supported the statements made by Mexico on behalf of the 75 co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.10, as well as Cuba's statement made on behalf of members of the GRULAC that were also WTO Members. Uruguay highlighted that WTO Members were engaged in constructive and positive discussions under the auspices of the General Council thanks to the leadership of the DSB Chairman as Facilitator. Proposals made by Members were aimed at improving the functioning of the Appellate Body. As a result, it would be appropriate to launch the AB selection processes in order to ensure that this Organization could continue to count on a dispute settlement mechanism.

8.15. The representative of Hong Kong, China said that his delegation wished to refer to its statements made at previous DSB meetings. He reiterated his delegation's disappointment and concern that the impasse in the AB selection processes remained unresolved. His delegation appreciated the efforts made by various Members to address some Members' concerns with the Appellate Body in the informal process under the auspices of the General Council. Hong Kong, China was committed to engaging constructively to find a solution as soon as possible. Hong Kong, China urged all Members, in particular those that had raised systemic concerns, to do the same. Hong Kong, China emphasized that the discussion on the systemic issues should not be a reason to delay the launch of the AB selection processes. It was not justifiable to attach preconditions to the launch of the AB selection process. Hong Kong, China called on Members to lift the blockage of the AB selection processes without further delay.

8.16. The representative of Russia said that her country regretted that the AB selection processes had not been launched. Russia welcomed Members' collective efforts in seeking a solution to this

issue through the informal process on Appellate Body matters under the auspices of the General Council and in particular the numerous proposals currently on the table. Russia remained committed to such efforts and expressed its readiness to work towards the establishment of a well-balanced outcome aimed at preserving the rules-based multilateral trading system, including its dispute settlement mechanism. Engagement of all Members in a constructive dialogue was crucial. In particular, Russia looked forward to hearing the views of the United States who had caused the blockage of the AB selection processes. At this juncture, the Membership was in a critical situation that warranted immediate action. In no case would Russia accept the ability of one single Member to press its interests and decide whether or not the Appellate Body should function. The establishment of the Appellate Body had been the result of the collective will of Members, to which Russia had agreed upon its accession. If the Appellate Body ceased to exist, this change in circumstances could lead to unpredictable consequences. Russia insisted on the immediate launch of the AB selection processes in order to fill the vacancies in the Appellate Body. Russia believed that there was no legal grounds and/or adequate reasons for such a hard-line action.

8.17. The representative of Cuba said that his country, speaking on behalf of the members of the Latin American and Caribbean Group (GRULAC) that were also WTO Members, wished to underline, once again, their serious concern with regard to the impasse in the AB selection processes. There was no constructive and positive outcome to this important matter and the impasse continued to be prolonged due to a political agenda, which undermined the multilateral trading system. The GRULAC welcomed the informal process on Appellate Body matters under the auspices of the General Council that had been established to maintain a dialogue aimed at unblocking the AB selection processes. This showed the urgency and importance of this issue. A number of proposals had been submitted, which were aimed at achieving this objective. Some of these proposals had been submitted by WTO Members from the GRULAC region. Regrettably, no concrete progress had been made. The GRULAC was therefore paying close attention to the concerns raised regarding the functioning of the Appellate Body. These concerns were used to justify the blockage to launch the Appellate Body selection processes. Once again, it was worth noting that under Article 17.2 of the DSU, vacancies shall be filled as they arise. This mandatory provision had been systematically violated. GRULAC WTO Members were willing to consider the proposals put forward, which may address specific concerns raised and look forward to any new proposals. The search for a solution to systemic concerns should not be an obstacle to the functioning of the dispute settlement system. All Members should show good faith in trying to find solutions. Otherwise, in December 2019, the Appellate Body would cease to function. The countries in question wished to continue to contribute to finding a definitive solution to this urgent problem and supported the efforts of the DSB Chairman to this end.

8.18. The representative of Switzerland said that her country wished to refer to its statements made at previous DSB meetings on this matter. Switzerland deeply regretted that the DSB continued to be unable to launch the AB selection processes towards filling the Appellate Body vacancies. Switzerland stood ready to continue the discussions in the context of the informal process on Appellate Body matters under the auspices of the General Council. Switzerland reiterated its call on all Members to engage constructively in the discussions, with a view to finding concrete solutions.

8.19. The representative of Norway said that his country, again, wished to underline its serious concerns on this matter and to refer to Norway's statements made at previous DSB meetings under the same Agenda item. Norway noted that the United States continued to repeat the same speaking points stating that their concerns remained unaddressed when, clearly, the Membership was constantly working hard to address them. Norway called all Members to engage and find a way forward together.

8.20. The representative of Korea said that his country also shared deep concerns and a sense of urgency regarding filling of the vacancies in the Appellate Body. In this regard, Korea supported the statement made by Mexico based on the joint proposal contained in document WT/DSB/W/609/Rev.10. Korea was a co-sponsor of that proposal. Korea looked forward to making good progress in the informal process on Appellate Body matters under the auspices of the General Council carried out by the DSB Chairman as Facilitator.

8.21. The representative of Singapore said that his delegation wished to refer to its statements made at previous DSB meetings and reiterated its serious systemic concerns with the failure to launch the AB selection processes. In just over six months' time, the Appellate Body would be down to one member if vacancies remained unfilled. Given the strain that the Appellate Body was facing, Singapore called on Members to bear this in mind when considering the filing of appeals. More

importantly, systemic issues which had been raised could be discussed in a separate process. In this regard, even as Members continued to engage in the informal process on Appellate Body matters led by the DSB Chairman as Facilitator, Singapore wished to emphasize that the AB selection processes should be allowed to proceed unconditionally. Singapore stood ready to engage constructively and collaboratively to help resolve this impasse.

8.22. The representative of Mexico said that her country regretted that, despite the multiple attempts by different delegations, Members continued to have only three out of the seven members in the Appellate Body. Mexico had serious concerns on this matter, which were becoming increasingly pressing, and, once again, called on Members to address in a responsible manner the current situation in which Members had been unable, for nearly two years, to launch the AB selection processes. In failing to do so, Members were clearly disregarding the obligation under Article 17.2 of the DSU, to fill such vacancies as soon as they arose. This situation was unacceptable and would have a serious systemic impact for the Organization. The Appellate Body had found itself faced with many pending appeals, and this would only escalate since three AB members were left to deal with all AB cases. This undermined the principle of collegiality in the Appellate Body. There were currently over ten proposals before the General Council, which sought to address the concerns that had been raised. This alone should be sufficient reason for the AB selection processes to be agreed by Members in accordance with the DSU. The selection processes must be separated from any systemic concerns so that the vacancies in the Appellate Body could be filled as quickly as possible. In this regard, Mexico strongly urged all Members, including the one that had raised concerns, to take part actively and constructively in the informal process led by the DSB Chairman as Facilitator.

8.23. The representative of Mexico, speaking on behalf of the 75 co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.10, expressed regret that for the twenty-third occasion, Members still had not been able to start the AB selection processes and had thus continuously failed to fulfill their duties as Members of this Organization. The fact that a Member might have concerns about certain aspects of the functioning of the Appellate Body could not serve as pretext to impair and disrupt the work of the Appellate Body. There was no legal justification for the current impasse in the AB selection processes, which resulted in nullification and impairment for many Members. Article 17.2 of the DSU clearly stated: "[v]acancies shall be filled as they arise". No systemic discussions 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. By failing to act at the present meeting, Members would maintain the current situation, which was seriously affecting the work of the Appellate Body against the best interest of all WTO Members.

8.24. The representative of Chile said that his country, speaking on behalf of Argentina, Brazil, Chile, Colombia, Guatemala, Peru and Mexico, wished to point out that exactly two years and 16 days had passed since the first proposal on AB selection processes had been circulated in document WT/DSB/W/596, dated 12 May 2017. The countries in question remained convinced of the importance of the rule of law and the need for a rules-based multilateral trading system under which the bodies provided for in the covered agreements, including the Appellate Body, remained in operation. Although more than two years had passed, the above-mentioned countries were still convinced that it would be highly beneficial to launch the AB selection processes.

8.25. 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 about the current impasse in filling vacancies in the Appellate Body and its effect on the credibility of the WTO. As one of the 75 co-sponsors of the proposal contained in document WT/DSB/W/609/Rev.10, India recognized the centrality of the WTO dispute settlement system in providing security and predictability to the rules-based trading system. By not agreeing to launch the AB selection processes, Members were moving closer to the imminent paralysis of the dispute settlement system. India welcomed reform proposals made by various Members with respect to the functioning of the Appellate Body. India was ready to engage constructively with other WTO Members in addressing the distinct inefficiencies in the dispute settlement system, while strengthening its main features and principles. However, this exercise could not serve as a pretext to impair and disrupt the work of the Appellate Body. India reiterated the importance of filling the vacancies in the Appellate Body as a priority.

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

referenced, under the auspices of the General Council, he said that he had agreed to assist the Chair of the General Council, in his personal capacity as Facilitator, in an informal process of focused discussions on matters related to the functioning of the Appellate Body. He then recalled that on 7 May 2019, he had provided a progress report to the General Council on his informal consultations. This report had been circulated to all Members in document JOB/GC/217. It was his intention to continue the informal process of solution-focused discussions in a range of different formats with a view to reporting to the General Council at its meeting on 23 July 2019.

8.27. The DSB took note of the statements.