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MINUTES OF MEETING

Held in the Centre William Rappard
on 20 July 2010

Chairman: Mr. Yonov Frederick Agah (Nigeria)

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[1] On 1 December 2009, the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (done at Lisbon, 13 December 2007) entered into force. On 29 November 2009, the WTO received a verbal note (WT/L/779) from the Council of the European Union and the Commission of the European Communities stating that, by virtue of the Treaty of Lisbon, as of 1 December 2009, the European Union replaces and succeeds the European Community.

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1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.92)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.92)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.67)

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.30)

(e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.10)

(f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.7)

(g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/38/Add.1)

1. The Chairman recalled that Article 21.6 of the DSU required that unless the DSB decided 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 was resolved.

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.92)

2. The Chairman drew attention to document WT/DS176/11/Add.92, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

3. The representative of the United States said that his country had provided a status report in this dispute on 8 July 2010, in accordance with Article 21.6 of the DSU. As had been noted, a number of legislative proposals that would implement the DSB's recommendations and rulings in this dispute had been introduced in the First Session of the current 111th Congress. The Second Session of the 111th Congress had begun in January 2010. The Committee on the Judiciary of the House of Representatives had held a hearing on certain of those proposals on 3 March 2010. In addition, the US administration was working with Congress to implement the DSB's recommendations and rulings in this dispute.

4. The representative of the European Union said that, at the present meeting, the United States was presenting yet another status report in this dispute. The EU hoped that the US authorities would very soon take steps towards implementing the DSB's ruling and resolve this matter.

5. The representative of Cuba recalled that, in July 2005, the EU and the United States had notified the DSB of their understanding with regard to the Section 211 dispute. The basis for that understanding was that the United States had informed the DSB that it would continue to work towards meeting its WTO obligations, pursuant to the Appellate Body's decision. However, nothing had happened over the past five years regarding this matter. Section 211 was still in force and the "agreement" between the parties was in place with no change. Every month, under this Agenda item, Members had to listen to brief statements made by the EU, which merely referred to the number of status reports being submitted by the United States on this matter. In Cuba's view, the parties concerned should explain why the resolution of this dispute was blocked. Since many Members had expressed concerns over the lack of progress in implementation and its negative trade effects for one developing country, the parties concerned should report something new on this matter. The available figures demonstrated what one year meant in terms of intellectual property assets: i.e. in 2007, 1.85 million patent applications and 3.3 million trademark applications had been filed worldwide. The countries of origin of many of those applications and the main offices receiving them were well known. The parties to this dispute were aware of the value of those assets, and in case of trademarks – the only asset that could be renewed indefinitely – they registered them even in those countries with which they had no trade relations. In some cases, they challenged registrations of valuable trademarks that belonged to other countries.

6. Apart from violating the basic principles of the TRIPS Agreement, Section 211 enabled the Bacardi company to sell rum under the HAVANA CLUB mark in the United States. Such measures encouraged trademark counterfeiting. Cuba recalled that, at the June 2010 TRIPS Council meeting, the parties to this dispute had stated that the negotiation of a plurilateral agreement outside the WTO was warranted because trade in counterfeit products was a serious matter, which was sometimes linked to organized crime. In light of those recent statements, Cuba asked the parties to this dispute to explain how they could make their arguments credible while remaining indifferent to the resolution of a case that allowed trademark counterfeiting and unfair competition. Cuba questioned how the EU and the United States would react if their valuable trademarks and patents were to be deliberately used. Would they claim to be making every effort with parliament or would they apply retaliatory measures as a matter of urgency? Would the EU and the United States allow other countries to benefit from the use of their trademarks or patents for eight years? In a statement made on the occasion of World Intellectual Property Day, US Secretary of State Hilary Clinton had noted that the theft of intellectual property was a crime that eroded the incentive to create and posed a serious barrier to making legitimate products and services available to the public. The Section 211 dispute was relevant in this regard, being a clear example of theft of one of the most renowned Cuban trademarks and the product it represented, which was registered in the United States. Cuba, once again, urged the parties to this dispute to take action to repeal Section 211, and to do so with the same dynamism with which they had promoted and were promoting international rules in defence of their interests in the area of intellectual property rights.

7. The representative of Mexico said that his country wished to reiterate that Articles 3.3 and 21.1 of the DSU respectively stated that prompt settlement of disputes was essential to the effective functioning of the WTO, and that prompt compliance with the DSB's recommendations and rulings was essential in order to ensure the effective resolution of disputes to the benefit of all Members. Thus, Mexico urged the parties to this dispute to keep those principles in mind, and to take the necessary steps to comply with the DSB's recommendations. This would benefit the functioning of the WTO as well as its Members.

8. The representative of Brazil said that his country thanked the United States for its status report concerning the surveillance of implementation in this dispute. Once again, the United States had reported a lack of progress. Brazil continued to be concerned about this situation, and urged the United States to bring its measures into conformity with the multilateral trade disciplines in the nearest future.

9. The representative of Ecuador said that his country had noted the US status report, but regretted that this report did not contain any information as to when the United States would comply with the DSB's recommendations and rulings in this dispute. Thus, Ecuador supported Cuba's statement on this matter. Ecuador recalled that Article 21 of the DSU stipulated that prompt compliance with the DSB's recommendations or rulings was essential, and that particular attention should be paid to matters affecting the interests of developing-country Members. Ecuador noted that the United States closely monitored compliance by other Members with their WTO obligations and, at various WTO Councils and Committees, it had expressed its trade and systemic concerns with respect to certain commitments undertaken by them. However, the United States failed to practice what it preached. Therefore, Ecuador, once again, urged the US administration and Congress to fully repeal Section 211. He said that Ecuador wished to receive more detailed information from the EU on the steps being taken to resolve this dispute.

10. The representative of the Bolivarian Republic of Venezuela said that her country supported Cuba's statement regarding Section 211, which was a political measure linked to the economic, trade and financial blockade imposed on Cuba. It was regrettable that, for more than eight years, the United States had failed to comply with the Appellate Body's ruling in this dispute. In its July 2010 status report, the United States noted, in the last paragraph, that "the US Administration will continue to work with the US Congress with respect to appropriate statutory measures that would resolve this matter". This was a repetition of previous status reports which, in Venezuela's view, constituted "action without results". Venezuela noted how, on many occasions in the same context, the United States had claimed to take some action that would resolve the matter without providing any explanation of the work that this would entail. Therefore, Venezuela requested that the United States provide further details on the work supposedly under way. Her country urged the United States to comply with the Appellate Body's recommendations and reminded the United States of its commitment to the DSB. Venezuela hoped that the United States would repeal Section 211, which was inconsistent with the TRIPS Agreement and the MFN and national treatment principles. By repealing Section 211, the United States would meet it WTO obligation and restore Cuba's rights.

11. The representative of Bolivia said that, as no progress had been made in this dispute, her country wished to register its concern about the negative consequences of non-compliance with the DSB's recommendations. If the United States wished to preserve the integrity of the system, it must comply with the DSB's recommendations and rulings, by lifting the restrictions imposed under Section 211. Given the importance of the dispute settlement system for the WTO, and the credibility of the multilateral trading system, Bolivia hoped that the United States would show the necessary political will to resolve this dispute. Finally, she said that Bolivia supported Cuba's statement.

12. The representative of India said that his country thanked the United States for its status report and its statement. India noted that there was no substantive change in the situation and felt compelled, yet again, to stress that the principle of prompt compliance was missing in this dispute. India, therefore, wished to renew its systemic concerns about this situation, as the continuous non-compliance by WTO Members could only undermine the credibility and confidence that Members reposed in the system. India urged the United States to fully implement the DSB's recommendations in this dispute.

13. The representative of Viet Nam said that, once again, his country called on the United States to take the necessary and urgent steps to meet its WTO obligations in relation to this dispute.

14. The representative of Paraguay said that her country thanked the United States for its status report and urged the United States to respect its WTO obligations with regard to the Section 211 dispute.

15. The representative of China said that his country thanked the United States for its status report but, once again, regretted that the report simply confirmed the continuation of non-compliance after more than eight years since the adoption of the relevant Reports by the DSB. China believed that this situation was not in line with the principle of prompt implementation contained in the DSU, and that it was highly inappropriate for a developed-country Member to maintain such a prolonged non-compliance in a dispute that involved the interests of a developing-country Member. China strongly supported Cuba and urged the United States to implement the DSB's decision as soon as possible.

16. The representative of Argentina said that his country thanked the United States for its status report. He recalled that Argentina had repeatedly expressed its views regarding the systemic implications of this dispute, in which the implementation process was being prolonged for so long. This lack of compliance would undermine the credibility of the DSB to effectively resolve disputes brought by Members. Argentina supported Cuba's request for more detailed and substantive information regarding the progress made thus far, and urged the parties to this dispute, in particular the United States, to ensure full compliance with the DSB's rulings and recommendations.

17. The representative of the Dominican Republic said that his country thanked the United States for its status report and, like previous speakers, urged the United States to comply with the DSB's rulings.

18. The representative of the United States said that, in response to the statements made by some Members that this dispute raised concerns for the dispute settlement system, as had been noted at several previous DSB meetings, the United States did not believe that those concerns were well-founded. The United States would not repeat those points at the present meeting. With respect to efforts to comply fully in this dispute, as the United States had already noted in its statement at the present meeting, in March 2010, the Committee on the Judiciary of the US House of Representatives had held a hearing on certain proposals to implement the DSB's recommendations and rulings in this dispute.

19. The representative of Cuba said that her country welcomed the fact that the United States had, once again, referred to the discussion that had taken place in the Judiciary Committee on 3 March 2010. Cuba had closely followed developments in this regard and believed that it would have been useful to have more information on the discussion that had taken place at the Committee's hearing. She recalled that Cuba respected all US registrations with regard to trademarks and other intellectual property assets, while the United States failed to do so. In its statement, the United States had referred to compliance with other rulings, as if that exempted it from complying with the ruling in the Section 211 dispute. The DSB's rulings must be complied with in absolutely every dispute. Cuba reiterated that the United States must urgently provide the DSB with concrete information on the legislative proposals that would enable it to comply with the rulings and recommendations made by the Appellate Body in 2002. Cuba hoped that, after the Summer break, at the next DSB meeting to be held in August, the United States would provide Members with new information on the steps being taken to repeal Section 211 so as to comply with the DSB's rulings.

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

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.92)

21. The Chairman drew attention to document WT/DS184/15/Add.92, 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.

22. The representative of the United States said that his country had provided a status report in this dispute on 8 July 2010, in accordance with Article 21.6 of the DSU. As of 23 November 2002, the US authorities 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 in this dispute. Details were provided in document WT/DS184/15/Add.3. With respect to the DSB's recommendations and rulings that had not already been addressed by the US authorities, the US administration would work with the US Congress with respect to the appropriate statutory measures that would resolve this matter.

23. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan took note of the US report that the United States had taken certain measures to implement part of the DSB's recommendations in November 2002. With respect to the remaining part of the DSB's recommendations and rulings, Japan was still waiting for statutory action to be taken by the United States. Japan hoped that the United States would soon be in a position to report to the DSB more tangible progress. Full and prompt implementation of the DSB's recommendations and rulings was "essential to the effective functioning of the WTO and the maintenance of a proper balance of the rights and obligations of Members".[2] Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

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

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.67)

25. The Chairman drew attention to document WT/DS160/24/Add.67, 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.

26. The representative of the United States said that his country had provided a status report in this dispute on 8 July 2010, in accordance with Article 21.6 of the DSU. The US administration would continue to confer with the EU, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

27. The representative of the European Union said that the United States had again reported non-compliance and the EU was again disappointed. As it had been from the beginning, the EU remained ready to work with the US authorities towards the complete resolution of this case.

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

[2] Article 3.3 of the DSU.

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.30)

29. The Chairman drew attention to document WT/DS291/37/Add.30, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning its measures affecting the approval and marketing of biotech products.

30. The representative of the European Union said that, once again, her delegation noted that the EU regulatory procedures on biotech products continued to work as foreseen in the legislation. The five authorizations decisions on GMOs issued on 2 March 2010, including one for cultivation, had raised the number of GMOs authorized since the date of establishment of the Panel to twenty-nine. Progress had also been made on other applications for authorization. The Agriculture Council had voted on 29 June 2010 on five new authorizations: GM maize MON89034xNK603, Bt11xGA21, MON88017xMON810, 59122x1507xNK603 and 1507x59122 and on the renewal of the authorization for Bt11 maize. The Commission would proceed soon to the adoption of the corresponding decisions. In addition, the European Food Safety Agency had delivered favourable opinions on four new GM events (GM maize MIR604xGA21, GM maize Bt11xMIR604 and GM maize Bt11xMIR604xGA21 and GM cotton 281-24-236 x 3006-210-23). In an effort to further streamline EU authorization procedures, while taking into consideration legitimate concerns raised by EU member States, the European Commission had adopted, on 13 July 2010, a package proposal regarding cultivation of GM crops. This proposal allowed member States to decide on the cultivation of GM crops authorized at EU level in their territory, taking into consideration their specific conditions. The proposal made clear that any member State measure should be limited to cultivation itself and not be concerned with marketing or trade in GM seeds, and that it should be consistent with obligations both under the EU Treaties and the WTO Agreements. The EU welcomed the US decision to re-engage in a technical dialogue on biotechnology with the EU. A meeting between relevant services from the European Commission and the US authorities was currently being held. The EU hoped that this was the first step towards a constructive approach based on a dialogue, which would allow the parties to leave litigation aside.

31. The representative of the United States said that his country thanked the EU for its status report and its statement, including information on the Commission's proposal to further streamline the EU authorization procedures. As the United States had explained at previous DSB meetings, and despite the EU's assertions at the present meeting, the EU's regulatory system governing biotech product approvals was not working as intended. In its status report, the EU noted that US and EU officials had agreed to meet to discuss those matters and related issues. The United States looked forward to holding constructive discussions.

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

(e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.10)

33. The Chairman drew attention to document WT/DS322/36/Add.10, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US measures relating to zeroing and sunset reviews.

34. The representative of the United States said that his country had provided a status report in this dispute on 8 July 2010, in accordance with Article 21.6 of the DSU. As noted in that status report, the United States had taken steps to implement the DSB's recommendations and rulings in this dispute. With respect to the outstanding issues, the United States would continue to consult with interested parties in order to address those issues.

35. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. The United States had stated in its status reports that it would continue to consult with interested parties in order to address the findings contained in the Appellate Body and the Panel Reports adopted by the DSB on 31 August 2009. Japan took this statement as an expression of commitment by the United States to fully implement the DSB's recommendations and rulings. Once again, Japan called on the United States to fulfil its commitment by taking immediate and concrete action so as to resolve this dispute.

36. The representative of the European Union said that her delegation wished to reiterate its disappointment over the lack of any real progress by the United States regarding its compliance with adverse rulings on zeroing in this dispute. The EU recalled that immediate compliance with the DSB's recommendations and rulings was not an option, but an obligation under the DSU provisions.

37. The representative of Turkey said that his country thanked the United States for its status report and its statement. Turkey shared the concerns raised by Japan and the EU, and wished to join them in urging the United States to comply with the DSB's rulings.

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

(f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.7)

39. The Chairman drew attention to document WT/DS350/18/Add.7, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the existence and application of zeroing methodology by the United States.

40. The representative of the United States said that his country had provided a status report in this dispute on 8 July 2010, in accordance with Article 21.6 of the DSU. As noted in that status report, the United States had taken steps to implement the DSB's recommendations and rulings in this dispute. With regard to the remaining issues, the United States would continue to consult with interested parties.

41. The representative of the European Union said that her delegation's concerns about the lack of implementation in this case were well known and were recorded in the minutes of past DSB meetings. Despite encouraging political statements, the final determination in Section 129 proceedings of 12 March 2010 left the EU perplexed as to the US intentions on compliance with the ruling in this dispute. The EU, therefore, urged the United States to reconsider its Section 129 determination immediately and to implement the DSB's ruling.

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

(g) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"): Status report by the United States (WT/DS294/38/Add.1)

43. The Chairman drew attention to document WT/DS294/38/Add.1, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US laws, regulations and methodology for calculating dumping margins.

44. The representative of the United States said that his country had provided a status report in this dispute on 8 July 2010, in accordance with Article 21.6 of the DSU. As noted in that status report, the United States had already taken a number of steps to implement the DSB's

recommendations and rulings in this dispute. The United States would continue to consult with interested parties with regard to the remaining issues. Finally, as Members were aware, and as the United States had noted in previous meetings, the EU had requested authorization from the DSB to suspend concessions or other obligations in this dispute, and the United States had objected to the EU's request. Therefore, pursuant to Article 22.6 of the DSU, the matter had been referred to arbitration pursuant to that objection.

45. The representative of the European Union said that her delegation thanked the United States for its status report. At the same time, the EU wished to reiterate its disappointment over the lack of any real progress by the United States on compliance with adverse rulings on zeroing in this dispute. The EU recalled that immediate compliance with the DSB's recommendations and rulings was not an option, but an obligation under the DSU.

46. The representative of Turkey said that his country wished to join the EU in urging the United States to comply with the DSB's rulings and to take the necessary steps to resolve this outstanding issue.

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

2. United States – Continued Dumping and Subsidy Offset Act of 2000: Implementation of the recommendations adopted by the DSB

(a) Statements by the European Union and Japan

48. The Chairman said that this item was on the Agenda of the present meeting at the request of the European Union and Japan. He then invited the respective representatives to speak.

49. The representative of Japan said that, on 2 June 2010, US Customs and Border Protection published "FY2010 Preliminary CDSOA Amount Available"[3] and that a new round of distributions under the CDSOA appeared to be underway. That latest action showed that the CDSOA remained operational. As US Customs and Border Protection explained, "the distribution process will continue for an undetermined period".[4] Japan urged the United States to stop illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute once and for all. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report pertaining to this dispute.

50. The representative of the European Union said that, as had previously been done on many occasions, the EU wished to ask the United States when it would effectively stop the transfer of anti-dumping and countervailing duties to the US industry and, hence, put an end to the condemned measure. The EU, once again, renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit status reports in this dispute.

51. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the DSB's Agenda. Brazil reiterated its view that non-compliance in this dispute would continue until the United States ceased all disbursements made pursuant to the Byrd Amendment. Only then this issue would be "resolved" within the meaning of Article 21.6 of the DSU and the United States would be released from its obligation to provide status reports in this dispute.

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[3] See US Customs and Border Protection's website at: http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/

[4] See US Customs and Border Protection's website at: http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cont_dump_faq.xm1

52. The representative of Canada said that her country agreed with the EU and Japan that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

53. The representative of China said that her country thanked the EU and Japan for, once again, raising this matter before the DSB. China shared the concerns expressed by previous speakers and wished to join them in urging the United States to fully comply with the DSB's rulings.

54. The representative of India said that his country appreciated that the EU and Japan had brought this issue before the DSB once again. India shared their concerns and supported their views. As mentioned by previous speakers, the CDSOA remained fully operational, allowing for disbursements by the US administration to its domestic industry. This fact continued to raise concerns and affected the rights of WTO Members. India, therefore, urged the United States to cease its WTO-inconsistent disbursements, and to fully implement the DSB's recommendations and rulings.

55. The representative of Thailand said that his country thanked Japan and the EU for continuing to bring this matter before the DSB. Thailand remained disappointed at the US maintenance of the WTO-inconsistent disbursements. Therefore, Thailand urged the United States to cease the disbursements, repeal the Byrd Amendment with immediate effect, and resume submission of status reports until such actions had been taken and this matter was fully resolved.

56. The representative of the United States said that, as his country had already explained at previous DSB meetings, the US President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Furthermore, the United States recalled that Members, including the EU and Japan, had acknowledged during previous DSB meetings that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007. The United States, therefore, did not understand the purpose for which the EU and Japan had inscribed this item on the Agenda of the present meeting. With respect to the comments regarding further status reports in this matter, the United States failed to see what purpose would be served by further submission of status reports repeating, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes.

57. The DSB took note of the statements.

3. United States – Measures affecting the production and sale of clove cigarettes

(a) Request for the establishment of a panel by Indonesia (WT/DS406/2)

58. The Chairman recalled that the DSB had considered this matter at its meeting on 22 June 2010 and had agreed to revert to it. He drew attention to the communication from Indonesia contained in document WT/DS406/2, and invited the representative of Indonesia to speak.

59. The representative of Indonesia recalled that, at the 22 June 2010 DSB meeting, Indonesia had requested that the DSB establish a panel to examine Tobacco Control Acts imposed by the United States. However, at that meeting, the United States had blocked the establishment of the panel. Indonesia reiterated that, at the 22 June 2010 DSB meeting, it had stated that the consultations between Indonesia and the United States on this matter, which had been held on 13 May 2010, had not resolved this dispute. During those consultations, Indonesia had asked some questions, pursuant to Articles 1 and 4 of the DSU; Article XXII of the GATT 1994; Article 11 of the SPS Agreement; and Article 14 of the TBT Agreement, with respect to the measure adopted by the United States banning flavoured cigarettes, including clove cigarettes. The subject of the consultations and the

subsequent panel request was the prohibition on the production or sale of so-called "clove cigarettes" in the United States, pursuant to Section 907(a)(1) of the Family Smoking Prevention and Tobacco Control Act of 2009. That law had taken effect on 22 September 2009. Pursuant to that Act, clove cigarettes produced in Indonesia may no longer be imported into the United States.

60. She recalled that Indonesia had made its first request for a panel to review this matter at the 22 June 2010 DSB meeting. At that time, the United States, as was its right, had blocked the establishment of that panel. During the discussion of this matter on 22 June, Indonesia had presented a lengthy statement outlining its justification for bringing this dispute to the WTO. Thus, at the present meeting, it would not repeat those points, which were all relevant and reflected the views of the Indonesian government. Furthermore, during the 22 June discussion of this issue, the United States had indicated that it believed that Indonesia's request for a panel to review the US ban on clove cigarettes was "premature". Indonesia did not wish to respond to this particular point. Indonesia strongly disagreed with the US view on this matter. Indonesia had been extremely patient and had worked with the United States at every opportunity to avoid this dispute, but could not wait any longer. In its statement at the 22 June meeting, the United States had referred to an ongoing review of menthol cigarettes by US officials that may result in additional regulations or restrictions being placed on menthol cigarettes. Indonesia did not believe that this review should delay the establishment of a panel to examine this dispute.

61. The fact remained that, as of 22 September 2009, clove cigarettes were prohibited from the US market while menthol cigarettes continued to be sold. The review of menthol cigarettes was not due to be completed until 18 March 2011. Indonesia could not predict what the United States may do in the future with respect to menthol cigarettes. However, in Indonesia's view, the statute, as it currently existed, was inconsistent with the US obligations under the WTO. The claims that Indonesia intended to make went beyond a violation of national treatment, so it was both relevant and essential that a panel be established to hear this case. In conclusion, she noted that, since 2004, Indonesia had been trying to avoid the present situation. It had written letters, spoken to Members of the US Congress and their staff, and had met repeatedly with US administration officials. Indonesia had even held informal, bilateral consultations with the United States in Geneva in August 2009, all in an effort to avoid formal, WTO dispute settlement proceedings. Unfortunately, however, no resolution had proven possible. Therefore, Indonesia respectfully made its second request that, pursuant to Article 6 of the DSU, the DSB establish a panel to examine this matter, with standard terms of reference, as set out in Article 7.1 of the DSU.

62. The representative of the United States said that his country had worked over a long period of time to engage constructively with Indonesia on this issue, during which time it had sought to explain the purpose of the new US tobacco control law. Accordingly, the United States was disappointed that Indonesia had chosen to move forward with its request for a panel in this matter. The United States understood that a panel would likely be established at the present meeting. Nevertheless, the United States continued to strongly believe that the prohibition on sales of flavoured cigarettes in the Family Smoking Prevention and Tobacco Control Act was fully justified. The purpose of the law was to confront a public health emergency. In enacting that law, the US Congress had determined, among other things, that the use of tobacco products by the nation's children was a paediatric disease, and that a scientific and medical consensus existed that tobacco products were inherently dangerous and caused cancer, heart disease, and other serious adverse health effects. This law had been designed to address such threats to public health, particularly to the life and health of adolescents and children. Moreover, the Family Smoking Prevention and Tobacco Control Act banned sales of all clove-flavoured cigarettes, wherever they were produced. The US law did not single out any country. Given the vital interests at stake, particularly the health and lives of US children, if Indonesia persisted in asking for a panel, the United States would certainly defend this important new public health law vigorously.

63. 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.

64. The representatives of Brazil, the European Union, Guatemala, Norway and Turkey reserved their third-party rights to participate in the Panel's proceedings.

4. Proposed nomination for the indicative list of governmental and non-governmental panelists (WT/DSB/W/429)

65. The Chairman drew attention to document WT/DSB/W/429, which contained an additional name proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the name contained in document WT/DSB/W/429.

66. The DSB so agreed.

5. United States – Final anti-dumping measures on stainless steel from Mexico

(a) Statement by Mexico

67. The representative of Mexico, speaking under "Other Business", said that his country wished to inform the DSB that it had requested the United States to submit status reports, pursuant to Article 21.6 of the DSU, pertaining to the dispute: "United States – Final Anti-Dumping Measures on Stainless Steel from Mexico" (DS344). Mexico noted that the Panel Report, as modified by the Appellate Body Report, contained the recommendations with respect to both "as such" and "as applied" violations. Mexico would work with the United States to ensure timely submission of status reports in this dispute.

68. The representative of the United States said that his country thanked Mexico for providing notice to the United States of its intention to make a statement under "Other Business", pursuant to Rule 6 of the Rules of Procedure for DSB meetings. Nevertheless, the United States was somewhat surprised at Mexico's statement and request. The United States understood that the United States and Mexico had an agreement under which the United States and Mexico would engage in a bilateral dialogue regarding this dispute in lieu of status reports. There had been many exchanges of information between the two capitals over the past year, which were useful to both parties. Mexico had recently contacted the United States to request a status report and US authorities were considering that request, but the request came too late for action at the present meeting in any event. As the United States considered that request, it would be interested in hearing from Mexico its thinking on the dispute: "Mexico – Anti-Dumping Investigation of High-Fructose Corn Syrup (HFCS) from the United States" (WT/DS132). It was the US recollection that Mexico had not filed any status report in that dispute, and the United States would be interested in discussing bilaterally with Mexico its perspective on that dispute.

69. The DSB took note of the statements.