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on 20 April 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.89)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.89)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.64)

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.27)

(e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.7)

(f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.4)

(g) Colombia – Indicative prices and restrictions on ports of entry: Status report by Colombia (WT/DS366/15)

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.89)

2. The Chairman drew attention to document WT/DS176/11/Add.89, 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 April 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 US administration was working with the US Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Union said that, at the present meeting, the United States was presenting its ninetieth status report in this dispute. The EU hoped that the new US authorities would now take steps to finally implement the DSB's ruling and resolve this matter.

5. The representative of Cuba said that his country had repeatedly asked the United States to provide information on the steps it was taking to comply with the DSB's rulings, which had been made more than eight years ago, and yet the United States continued to submit empty status reports. The United States should be reminded that status reports must refer to the progress made in the implementation of the DSB's recommendations or rulings, as stipulated in Article 21.6 of the DSU. Cuba was very much aware of the lack of progress in this dispute. At the March 2010 DSB meeting, the United States had vaguely referred to a hearing held on 3 March 2010. At the present meeting, Cuba wished to comment on that hearing, where an intensive discussion had taken place between those in favour of fully repealing Section 211 and those who believed that only minor amendments were required to bring it into line with WTO rules. Thus, the discussion on the position favouring the mere amendment of Section 211 had taken up most of the time at the hearing. Nonetheless, those in favour of fully repealing Section 211 had raised a number of points that the US administration should consider very seriously. For instance, the need for the United States to respect international rules, the US crucial role towards the enforcement of intellectual property rights at the global level, and the fact that in Cuba the registration of US trademarks had, to date, been respected.

6. Cuba wished to reiterate that the only acceptable solution was to repeal Section 211, and that Section 211 could not be amended. In Cuba's view, the US administration should fully assess the consequences of maintaining Section 211 in effect. At the same time, Cuba reminded the United States that each Member was responsible for ensuring the conformity of its laws, regulations and administrative procedures with its WTO obligations, as stipulated in Article XVI:4 of the Marrakesh Agreement. The United States could no longer continue to delay this decision. The US conduct would seem entirely consistent with the trade policy of the United States, a powerful country that placed so much importance to its intangible assets. The respondent and the complainant in this dispute were, through their inertia and lack of political will, favouring disrespect and anarchy in the area of intellectual property rights and were sending the world a very dangerous signal. In Cuba's view, no Member should feel bound by the TRIPS Agreement until the EU and the United States took steps to ensure the definitive repeal of Section 211. Both Members had taken the wrong direction. Cuba was aware of the substantial trade interests involved, which had been very clear ever since this legislation was enacted. While Cuba had been immersed in costly and unsuccessful proceedings to defend legitimately registered trademarks, the Bacardi company was selling products under the HAVANA CLUB trademark in the very country where private rights were supposedly respected and where such respect was enforced under the Constitution. This conduct was undoubtedly very serious, and the time had come to make a decision. Cuba, once again, called on the parties to take immediate action and to put every effort into ensuring the full repeal of Section 211.

7. The representative of China said that her country thanked the United States for its status report and its statement. However, since the report confirmed the continuation of non-compliance, after more than eight years since the adoption by the DSB of the Reports pertaining to this dispute, China, once again, wished to express concerns because such a situation was not in line with the principle of prompt implementation set out in the DSU, and undermined the authority and creditability of WTO dispute settlement system. China fully supported Cuba and urged the United States to implement the DSB's decision as soon as possible.

8. The representative of Ecuador said that his country thanked the United States for its status report. Ecuador supported Cuba's statement and, once again, emphasized that Article 21 of the DSU referred expressly to prompt compliance with the DSB's recommendations and rulings, in particular with respect to matters affecting the interests of developing country Members. The United States closely monitored Members' compliance with their WTO obligations and had, in various WTO Councils and Committees, expressed its trade and systemic concerns about certain commitments undertaken by other Members. The United States also drew up internal reports on countries' alleged non-compliance with their obligations regarding intellectual property rights. Ecuador, therefore, hoped that the United States would set a good example and, once again, urged the US administration and Congress to continue their efforts to ensure prompt compliance with the DSB's recommendations and rulings by repealing Section 211. Finally, Ecuador wished to receive more detailed information from the EU on the steps taken to resolve this dispute.

9. The representative of Bolivia said that her country wished, once again, to reiterate its concern at the US failure to comply, the lack of progress and the consequences thereof for the operation of the DSB. The United States should comply with the DSB's recommendations and rulings and remove Section 211, which was contrary to the rules of international law and undermined the effectiveness of the WTO system. Bolivia supported the statement made by Cuba.

10. The representative of India said that her country thanked the United States for its status report and its statement. However, India noted that there was no substantive change in the situation and that, unfortunately, the US status report only confirmed the continuation of non-compliance. India felt compelled, yet again, to stress that the principle of prompt compliance was missing in this dispute. India was concerned that non-compliance undermined the credibility and confidence that Members reposed in the WTO dispute settlement system. India, therefore, urged the United States to fully implement the DSB's recommendations in this dispute.

11. The representative of Viet Nam said that his country thanked the United States for its status report. Like previous speakers, Viet Nam supported the statement made by Cuba and urged the United States to comply with the DSB's recommendations and rulings.

12. The representative of the Bolivarian Republic of Venezuela said that her country considered its participation in the discussion under the Agenda item on surveillance of implementation of recommendations adopted by the DSB to be of utmost importance since it helped to safeguard the strength of the DSB, which was one of the greatest achievements of the Uruguay Round. Under this Agenda item, Venezuela was particularly interested in the Section 211 dispute. This was due to the fact that in spite of the recommendations pertaining to this dispute, which had been adopted by the DSB more than eight years ago, the United States continued to apply legislation that was contrary to the TRIPS Agreement. This had undermined, and continued to undermine, the government and people of Cuba. Venezuela, once again, noted the US status report submitted on 9 April 2010, was merely a copy of the previous ones with a change of date. As Venezuela had pointed out on many occasions, this constituted "action without results" and thus showed a lack of commitment towards the DSB and WTO Members. Venezuela supported Cuba and called upon the United States to comply with the DSB's recommendations and to end the economic, commercial and financial embargo policy, which Venezuela condemned.

13. The representative of Paraguay said that her country thanked the United States for its status report. Paraguay called on the United States to ensure prompt compliance with the DSB's recommendations and to repeal Section 211.

14. The representative of Brazil said that his country thanked the United States for its status report. Brazil reiterated its serious concerns about the lack of progress repeatedly reported by the United States with regard to the implementation of the DSB's recommendations and ruling in this dispute. Brazil joined previous speakers in urging the United States to bring its measures into conformity with its multilateral obligations in the nearest future.

15. The representative of Costa Rica said that his country thanked the United States for its status report. Costa Rica wished to reiterate, once again, the importance of complying with the provisions of Article 21.1 of the DSU, which called for prompt compliance with the DSB's recommendations and rulings. Costa Rica called on the US administration to work with the US Congress to comply with the DSB's recommendations, as provided for in the DSU provisions.

16. The representative of Argentina said that his country thanked the United States for its status report. Argentina, once again, reiterated its concern over the lack of progress in the implementation of the recommendations in this case, which had negative effects for the whole system, and not only for the parties to this dispute. Therefore, Argentina, once again, called on the parties to the dispute, in particular the United States, to take measures so as to fully implement the findings in this case. In that regard, Argentina supported Ecuador's request for more information and said that it would be useful to know at least what specific progress had been made in terms of implementation by the parties.

17. The representative of Mexico said that his country supported Members who sought a solution to this dispute, either through compliance or via some other legal remedies provided for in the DSU. Mexico noted that, if a Member considered that an outcome in a particular dispute was not satisfactory, it could initiate a fresh dispute on the same matter.

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 the United States had noted on several occasions, it did not believe that those concerns were well-founded. In addition, as the United States had noted at the previous DSB 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 the Section 211 dispute was a special case. Although there had been other long-standing disputes under the WTO, this one stood out for other additional reasons. It constituted a serious breach by one of the leading Members of the multilateral trading system. That Member obliged other Members to comply with intellectual property rights. The situation seemed to make a mockery of all the Members that had regularly expressed concern over the lack of implementation. This case undermined not merely the TRIPS Agreement, but also the WTO system and in particular the credibility of the DSB, the cornerstone of the WTO. The concerns which a significant number of Members had raised for eight years did not seem to matter to the United States. The US attitude was prejudicial to both the multilateral trading system and the system of international relations.

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.89)

21. The Chairman drew attention to document WT/DS184/15/Add.89, 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 April 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 were not already addressed by the US authorities, the US administration would work with the US Congress with respect to 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 latest status report. Japan took note of the US report that it had taken certain measures to implement part of the DSB's recommendations in November 2002. Japan hoped that the United States would soon be in a position to report to the DSB tangible progress for the remaining part of the DSB's recommendations and rulings. 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.64)

25. The Chairman drew attention to document WT/DS160/24/Add.64, 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 April 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 to this matter.

27. The representative of the European Union said that the United States had again reported non-compliance and her delegation was again disappointed, especially in light of the importance that the United States attached to intellectual property protection. The EU was aware that the United States was in favour of strong intellectual property protection throughout the world, and thus hoped that it would lead by example. The EU remained ready to work with the US authorities towards the complete resolution of this case, and hoped that the financial loss suffered by the EU industry could be soon brought to an end.

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.27)

29. The Chairman drew attention to document WT/DS291/37/Add.27, 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 her delegation was pleased to have reached mutually agreed solutions on this matter with two out of the three complainants. Through those agreements, the EU, Argentina and Canada had engaged in a continued dialogue on issues related to biotechnology of mutual interest, which was the best approach to this complex issue. The EU thanked Argentina and Canada for their cooperative and constructive approach and invited the United States to re-engage on this path. The EU regulatory procedures on biotech products continued to work as foreseen in the legislation. The most recent examples were the five authorizations decisions on GMOs issued on 2 March 2010, including one for cultivation. With those authorizations, the number of GMOs authorized since the date of establishment of the Panel had risen to twenty-nine.

31. The representative of the United States said that his country thanked the EU for its status report and its statement. As the United States had noted at the March DSB meeting, the new Commission had recently approved five long-pending biotech applications, including an application that had first been filed in 1996. Although those five approvals represented less than 10 per cent of the total backlog of pending applications, the United States was hopeful that they indicated a new commitment on the part of the EU to address the long-standing problems in the operation of its approval system for biotech products. The United States looked forward to progress in the coming months.

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.7)

33. The Chairman drew attention to document WT/DS322/36/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 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 April 2010, in accordance with Article 21.6 of the DSU. As noted in the 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 latest status report. The United States had stated in its status reports that it "will 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. Japan called on the United States to fulfil its commitment by taking immediate and concrete action to this end 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 on compliance, with adverse

rulings on zeroing in this dispute, and recalled that immediate compliance with the DSB's recommendations and rulings was not an option, but an obligation, under the DSU.

37. 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.4)

38. The Chairman drew attention to document WT/DS350/18/Add.4, 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.

39. The representative of the United States said that his country had provided a status report in this dispute on 8 April 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.

40. The representative of the European Union said that her delegation welcomed recent public statements by US officials that the United States was now trying to find a way to comply with the DSB's recommendations and rulings on zeroing. The EU regretted that it had taken so many years of litigation, but hoped that the United States would now take the necessary steps to bring itself into full compliance without any further delay. This dispute, and other ongoing zeroing disputes, should provide the United States with an opportunity to put words into actions. The EU concerns about the lack of implementation on the part of the United States in this dispute were well known and recorded in the minutes of past DSB meetings. Despite the aforementioned encouraging political statements, the recently published final determination in its Section 129 proceeding (12 March 2010) left the EU perplexed as to the US intentions on compliance with the ruling in this dispute. The EU commended the fact that the United States would "continue to consult with interested parties in order to address the other recommendations and rulings of the DSB", as it had stated in its status reports, but what did that mean? All the measures in question could be implemented immediately, just by eliminating the line of computer code which led to zeroing. The EU, therefore, urged the United States to reconsider its Section 129 determination immediately and to implement. The EU also noted that, once again, the United States had not presented a status report on the progress in the implementation of the DSB's recommendations and rulings in the dispute: "US – Laws, Regulation and Methodology for Calculating Dumping Margins" (DS294). The EU wondered if the lack of status reports meant that the United States considered to have brought itself into full compliance with the DSB's recommendations and rulings in this dispute.

41. The representative of the United States recalled that, with respect to the EU's comment regarding the lack of a status report in DS294, this was the approach that the EU itself had taken in the original "EC - Hormones" dispute. When the EU had objected to the US and Canadian requests for authorization to suspend concessions, the EU had ceased providing status reports. Here, too, the United States had objected to the EU's request for authorization, referring the matter to arbitration. The United States noted that that dispute was now pending before an arbitrator under Article 22.6 of the DSU, and that the hearing in that proceeding would be open to observation by all Members and the public.

42. The representative of Japan said that the United States had stated that since the matter in DS294 was currently before Article 22.6 arbitration, there was no need for filing the status report. The reason for that was that the EU in the original "EC - Hormones" dispute had taken the same approach. However, Japan had not taken such an approach in the disputes it was involved in and,

therefore, expected that the United States would continue to file its status report in the dispute "US – Measures Relating to Zeroing and Sunset Reviews" (DS322) until it fully complied.

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

(g) Colombia – Indicative prices and restrictions on ports of entry: Status report by Colombia (WT/DS366/15)

44. The Chairman drew attention to document WT/DS366/15, which contained the status report by Colombia on progress in the implementation of the DSB's recommendations in the case concerning Colombia's indicative prices and restrictions on ports of entry.

45. The representative of Colombia said that, in line with Article 21.6 of the DSU, his country wished to inform the DSB that it had fully implemented the DSB's rulings and recommendations with respect of the dispute: "Colombia - Indicative Prices and Restrictions on Ports of Entry" within the reasonable period of time, as set by the Arbitrator in its Award of 2 October 2009. In order to implement the DSB's recommendations and rulings, Colombia had made a number of substantive changes to its customs control and customs valuation system. It had terminated the use of indicative prices, had introduced a system of customs control based on risk assessment and risk management, and had established a clear distinction between the payment of guarantees and the payment of duties. Furthermore, Colombia had abolished the challenged ports of entry measure in its entirety and had terminated the "advance imports declaration" requirement imposed on Panama. Colombia's written status report, submitted before the DSB at the present meeting, contained more detailed information regarding the above-mentioned measures. Colombia believed that, with those actions, it was now in full conformity with its WTO obligations.

46. The representative of Panama said that his country thanked Colombia for its status report in this dispute. Panama had taken due note of the modifications referred to in the status report and was carefully assessing the new customs control system introduced by Colombia in order to verify that the problems at the origin of this dispute had been resolved. The WTO-inconsistent measures imposed by Colombia had a serious impact on commercial activities that were very important to Panama's economy. For Panama, it was still unclear how the new Colombian risk management-based system would work in practice. It was, therefore, necessary to receive further information on this new system and to monitor it closely so as to determine whether Colombia was meeting its WTO obligations. Panama would not wish to see any measures with similar effect like the previous ones, which would again affect trade relations between the two countries that Panama valued and hoped to further in the future. Over the period of this and next year, Panama would follow up and monitor the new Colombian system in order to understand how it worked in practice, so as to determine whether the regulatory measures implemented by Colombia were in conformity with its obligations under the WTO Agreements and the Panel's ruling. Furthermore, on 24 February 2010 Colombia and Panama had signed a sequencing agreement, which, together with Panama's continuous monitoring, would ensure that the prejudice caused to Panama was not repeated. Once Panama finished assessing the new system, within a relevant time-frame, it would be able to decide whether or not it was necessary to take any further action in relation to this dispute.

47. The DSB took note of the statements.

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, according to the CDSOA 2009 Annual Reports issued on 10 December 2009, some US$248 million had been distributed for FY2009.[3] Those latest annual distributions showed that the CDSOA remained operational. In fact, 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 in this dispute.

50. The representative of the European Union said that, on 14 April 2010, the EU had adopted the Regulation that, for the fifth year, adjusted the level of retaliatory measures applied in this dispute and brought it up to US$95.38 million as from 1 May 2010. The level of retaliatory measures reflected the proportionate increase of the amount disbursed to US companies from anti-dumping and countervailing duties collected on EU products, as had been published in the latest distribution of October 2009. That amount proved that duties continued to be distributed to the US industry. Once again, the EU wished to ask the United States when it would effectively stop the transfer of those duties to the US industry and, hence, put an en end to the condemned measure. The EU 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 on implementation in this dispute.

51. The representative of India said that her country thanked the EU and Japan for bringing this issue, once again, before the DSB and shared their concerns. India remained disappointed at the US maintenance of those WTO-inconsistent disbursements. As mentioned by previous speakers, the CDSOA remained fully operational and allowed for disbursements by the US administration to its domestic industry. This fact continued to raise concerns to WTO Members. As reiterated earlier, India was concerned that non-compliance by Members led to a growing lack of credibility of the WTO dispute settlement system. India agreed with EU and Japan that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

52. The representative of Brazil said that his country thanked Japan and the EU for keeping this item on the DSB's Agenda. Brazil urged the United States to stop making disbursements pursuant to the CDSOA, and to implement the DSB's recommendations and rulings in this dispute. As long as full compliance was not achieved, the United States was required to provide status reports in this dispute, pursuant to Article 21.6 of the DSU, the purpose of which was to keep under surveillance the implementation of the DSB's recommendations and rulings.

53. The representative of Canada said that his 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.

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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/cdsoa_09/report/fy09_annual_report.xml

[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.xml

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

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

56. The representative of the United States said that as his country had 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 those disputes. Furthermore, the United States recalled that Members had acknowledged 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 comments regarding further status reports in this matter, as it had already been explained at previous DSB meetings, the United States failed to see what purpose would be served by the further submission of status reports repeating the progress the United States had made in the implementation of the DSB's recommendations and rulings. The United States regretted that the EU had decided to increase the level of its suspension of concessions and was perplexed at this decision. In the course of this dispute, the EU had made clear that its purpose in suspending concessions was to "induce compliance". Now that the United States had taken all steps necessary to comply with the DSB's rulings and recommendations, it failed to see how the continued suspension of concessions would further that purpose. In any event, the United States would be reviewing carefully the new measures taken by the EU and had not concluded that it was able to share the EU's characterization at this time. As the United States had observed previously, the DSB only authorized the suspension of concessions or other obligations as provided in the Award of the Arbitrator.

57. The DSB took note of the statements.

3. European Communities – Export subsidies on sugar

(a) Statements by Australia, Brazil and Thailand

58. The Chairman said that the item was on the Agenda of the present meeting at the request of Australia, Brazil and Thailand.

59. The representative of Australia, speaking also on behalf of Brazil and Thailand, said that Australia, Brazil and Thailand wished to make a joint statement and to recall their statements made at the DSB meetings on 18 February 2010 and 19 March 2010, as well as at the Committee on Agriculture on 10 March 2010, expressing their concern at the recent decision of the European Union to export out-of-quota sugar in excess of its annual scheduled quantity commitment level of 1.2735 million tonnes. The EU had justified its decision on the basis of the high sugar prices at that time. However, those additional exports negatively affected market sentiment and had driven world prices down. In fact, world sugar prices had fallen almost 25 per cent between February and March. By signalling to EU sugar producers that excess out-of-quota sugar could be exported, the EU risked a continuous cycle of overproduction and artificially depressed global prices, unwinding the important reforms undertaken by the EU following the "EC - Sugar" dispute findings. As Members would recall, at the 18 February 2010 DSB meeting, the EU had offered to provide the necessary technical information underpinning its decision to export additional sugar. The EU had also offered to provide

such information at the 10 March 2010 meeting of the Committee on Agriculture. However, it appeared that the EU had now withdrawn that offer. Australia, Brazil and Thailand urged the EU to provide the necessary technical information, and to justify the WTO-consistency of its decision to export additional sugar.

60. The representative of the European Union said that her delegation had already highlighted, at the two previous DSB meetings, that its decision to export 0.5 million tonnes of sugar was a temporary measure, adopted in view of the exceptional market conditions at both the EU and world level. World prices had been at a record high level creating a shortage of sugar which affected importing developing countries. The EU did not expect those market conditions to last beyond the season 2009-2010. The export of 0.5 million tonnes was now exhausted and the EU had not renewed that temporary decision. The decision fully respected the EU's international obligations, as the quantities on sale were not subsidized and happened at a time when world sugar prices were higher than EU production costs and EU producers had become much more competitive following the drastic overhaul of the EU Common Market Organisation for sugar. The EU continued to respect its WTO commitments and reiterated its insistence on its right to engage in international trade – even if competing exporters of other WTO Members would, for rather obvious reasons of commercial interest, have preferred otherwise. The EU continued to offer readiness to continue a dialogue regarding the background underpinning its temporary decision to export sugar.

61. The DSB took note of the statements.

4. Philippines – Taxes on distilled spirits

(a) Request for the establishment of a panel by the United States (WT/DS403/4)

62. The Chairman recalled that the DSB had considered this matter at its meeting on 8 April 2010 and had agreed to revert to it. He drew attention to the communication from the United States contained in document WT/DS403/4 and invited the representative of the United States to speak.

63. The representative of the United States said that as his country had mentioned at the previous DSB meeting, the United States had been concerned with Philippine excise taxes on distilled spirits for many years. The Philippines taxed distilled spirits at different rates depending on the product from which the spirit was distilled. Spirits distilled from products typically produced in the Philippines were taxed at a low rate, while other distilled spirits were taxed at rates from approximately ten to 40 times higher. As explained in the US panel request, those taxes appeared to be inconsistent with the first and second sentences of Article III:2 of the GATT 1994. The United States continued to urge the Philippines to address the concerns that had been raised, and hoped that the Philippines would soon take action to level the playing field for imported and domestic spirits in the Philippine market. However, given that the US concerns had not been addressed to date, the United States requested that the DSB, pursuant to Article 9.1 of the DSU, refer the matter to the Panel that had been established at the 19 January 2010 DSB meeting to examine the EU's complaint on the same matter (WT/DS396).

64. The representative of the Philippines said that his country was disappointed that the United States had chosen to renew its request to the DSB for the establishment of a panel in this matter. The Philippines reiterated, for the record, its firm commitment to a rules-based multilateral trading system, and that it was its fundamental policy to be fully consistent with the international obligations, including those undertaken under the WTO. It was in this spirit that the Philippines had consulted with the United States in February, with the participation of the EU, and had clarified the non-discriminatory and impartial nature of its excise tax regime on distilled spirits. With the renewed request from the United States, the Philippines recognized that a panel would be established at the present meeting. The Philippines did not object to the request, under Article 9.1 of the DSU, that a

single panel be established to examine the complaints in this dispute and in DS396. The Philippines remained firmly of the view that this matter could have been resolved to the mutual satisfaction of all the parties if the respective interests, legitimate sensitivities, and policy objectives of all sides were taken into account to balance their respective interests. Thus, this second request for a panel at the present meeting was deeply regrettable.

65. The representative of the European Union said that her delegation supported the US request for a single panel under Article 9.1 of the DSU.

66. The DSB took note of the statements and agreed that the request by the United States for the establishment of a panel with standard terms of reference was accepted, and that as provided for in Article 9.1 of the DSU in respect of multiple complainants, the Panel established at the 19 January 2010 DSB meeting to examine the complaint by the EU would also examine the US complaint contained in document WT/DS403/4.

67. The Chairman said that since a single Panel was established, those delegations who had reserved their third-party rights to participate in the Panel established at the request of the EU shall be considered as third parties in the single Panel. He recalled that Australia, China, India, Mexico, Thailand, Chinese Taipei and the United States had reserved third-party rights to participate in the Panel established at the request of the EU on 19 January 2010. Furthermore, he also invited other delegations who would wish to reserve third-party rights to participate in the proceedings of the single Panel. The representative of the European Union reserved third-party rights.

68. The DSB took note of the statement.

5. United States – Use of zeroing in anti-dumping measures involving products from Korea

(a) Request for the establishment of a panel by Korea (WT/DS402/3)

69. The Chairman drew attention to the communication from Korea contained in document WT/DS402/3, and invited the representative of Korea to speak.

70. The representative of Korea said that, on 24 November 2009, his country had requested consultations regarding the practice called "zeroing" in anti-dumping investigations by the United States on stainless steel plate in coils, stainless steel sheet and strip in coils, and diamond sawblades. Korea and the United States had held consultations for a prompt settlement, however, those consultations had failed to resolve the dispute. "Zeroing" in anti-dumping investigations had repeatedly been found inconsistent with the Anti-Dumping Agreement. The United States had not contested those rulings since the dispute on "US - Softwood Lumber V" (DS264) and had announced that it would no longer utilize zeroing in investigations that were pending as of 22 February 2007. Korea noted that the United States had agreed to expedited proceedings in previous zeroing disputes with Ecuador and Thailand. With the agreements in place, those disputes had achieved prompt settlements and implementation which Korea believed was envisioned in Article 3.3 of the DSU. Korea believed that the dispute at hand could also be settled in a similar time-saving manner. Korea considered the measures by the United States to be inconsistent with Article 2.4.2 of the Anti-Dumping Agreement. Accordingly, Korea requested that the DSB establish a panel pursuant to Article 6 of the DSU, with standard terms of reference, to examine the matter described in Korea's panel request.

71. The representative of the United States said that his country was disappointed that Korea had chosen to move forward with a panel request at the present meeting. As Korea had acknowledged in its request, the US Department of Commerce had discontinued zeroing in the context of average-to-

average comparisons in investigations. The United States was not in a position to agree to the establishment of a panel at the present meeting.

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

6. United States – Anti-dumping measures on certain shrimp from Viet Nam

(a) Request for the establishment of a panel by Viet Nam (WT/DS404/5)

73. The Chairman drew attention to the communication from Viet Nam contained in document WT/DS404/5, and invited the representative of Viet Nam to speak.

74. The representative of Viet Nam said that his country found itself in a very unusual position at the present meeting, as it was requesting the establishment of a panel for the first time since Viet Nam had joined the WTO. Viet Nam had taken this action only after careful deliberation and consultations with the United States. The detailed request for the establishment of a panel to review the dispute had been circulated to Members in document WT/DS404/5, dated 9 April 2010. The central issue involved in Viet Nam's request for a panel was the issue of zeroing and, specifically, zeroing in periodic reviews under US law. In Viet Nam's view, this issue had been decided already by WTO panels and the Appellate Body on various occasions. Yet, the United States had failed to implement the reports of the Appellate Body and continued to apply zeroing in administrative reviews, including those applied to products from Viet Nam. Unfortunately, zeroing was not the only hurdle to termination of the anti-dumping measures. The United States had taken two additional actions which, under its precedent, would also prevent the anti-dumping measures from being sunset. First, it had consistently over the period of the second, third and fourth review declined to specifically review major exporters that had requested such reviews. Despite the fact that the United States had found no margins of dumping in the first, second or third review of the companies specifically investigated, it had continued to assign margins of dumping to companies not investigated, despite their request to be investigated and, in at least one case, the submission of a full response. The United States was clearly abusing the exceptions provided for in Articles 6.10 and 9.4 of the Anti-Dumping Agreement by refusing, throughout this proceeding, to allow companies that were not dumping to demonstrate this through being investigated. In addition to continuing to assign margins to uninvestigated companies that had sought to be investigated over a period of five years, the United States had also found margins of dumping in determining a "Viet Nam wide rate" for companies that had not responded to questionnaires. It was not certain that those companies actually existed, produced or exported shrimp, or should even be subject to the anti-dumping measures. There was no such authority for the so-called Viet Nam wide rate in either the Anti-Dumping Agreement or Viet Nam's Protocol of Accession to the WTO.

75. Viet Nam had requested consultations with the United States regarding certain anti-dumping measures imposed by the United States on imports of certain shrimp from Viet Nam on 1 February 2010, and the request had been circulated on 4 February 2010 as document WT/DS404/1 – G/L/915 – G/ADP/D81/1. Viet Nam and the United States had held consultations on 23 March 2010 in Geneva. Those consultations had been held with the hope of reaching a mutually satisfactory solution. During the consultations, the parties had gained a better understanding of the issues under consideration, but had not reached a resolution of the matter. Consequently, Viet Nam had no choice but to pursue those issues to a panel. Viet Nam considered that the measures at issue in this dispute were inconsistent with the US obligations under the Anti-Dumping Agreement; the GATT 1994; the Marrakesh Agreement; and the Protocol of Accession of the Socialist Republic of Viet Nam, WT/L/662, 15 November 2006 and paragraphs 254 and 255 of the Report of the Working Party on Accession of Viet Nam, WT/ACC/VNM/48, 26 October 2006. Accordingly, Viet Nam respectfully requested that a panel be established, with standard terms of reference, pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the GATT 1994, and Article 17.4 of the Anti-Dumping Agreement.

76. The representative of the United States said that his country was disappointed that Viet Nam had chosen to move forward with a request for panel establishment. The United States wanted to also point out that the panel request before the DSB included several items that raised concerns for the United States. For example, Viet Nam had identified as measures in its panel request, among other things, the original anti-dumping investigation of shrimp from Viet Nam as well as the "initiation" of the five-year sunset review. Those items had not been identified in Viet Nam's request for consultations and thus had not been the subject of consultations. Additionally, the original anti-dumping investigation, as well as the first annual review of the anti-dumping order, had each been initiated pursuant to applications received prior to Viet Nam's accession to the WTO. Thus, pursuant to Article 18.3 of the Anti-Dumping Agreement, those proceedings were not subject to the Anti-Dumping Agreement and were not properly a subject of review by a WTO dispute settlement panel. The fourth administrative review, also identified by Viet Nam as a measure in its panel request, had not yet been completed, and thus there was no measure for a panel to review. Likewise, the sunset review had yet to be completed, and thus did not constitute a measure. Finally, it was unclear from Viet Nam's panel request, which specifically identified the "initiation" of the sunset review as a measure, what WTO obligations Viet Nam alleged the United States had breached with respect to the sunset review. For all of those reasons, the United States strongly urged Viet Nam to reconsider its decision to pursue a panel in this dispute, and the United States was not in a position to agree to the establishment of a panel at this time.

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

7. European Union – Anti-dumping measures on certain footwear from China

(a) Request for the establishment of a panel by China (WT/DS405/2)

78. The Chairman drew attention to the communication from China contained in document WT/DS405/2, and invited the representative of China to speak.

79. The representative of China said that, pursuant to Articles 4 and 6 of the DSU, Article XXIII:2 of the GATT 1994 and Articles 17.4 and 17.5 of the Anti-dumping Agreement, China requested the DSB to establish a panel, with standard terms of reference, to examine the anti-dumping measures of the EU on certain Chinese footwear products. The legal basis for challenging those measures were elaborated in China's panel request contained in WT/DS405/2. China considered that Article 9(5) of the EU's Basic Anti-Dumping Regulation, which formed part of the legal basis for the imposition of anti-dumping measures on certain Chinese footwear products, was inconsistent as such with the provisions of the Anti-Dumping Agreement, the GATT 1994, the WTO Agreement and the Protocol on the Accession of China. Furthermore, the determinations of the EU in the original, and the expiry review investigations and the manner in which they had been reached, were inconsistent with various provisions of the above-mentioned agreements with regard to both procedural and substantive aspects. China, therefore, considered that the benefits accruing from it under the above-mentioned agreements were being nullified and impaired by Article 9(5) and by the EU's anti-dumping measure imposed on Chinese footwear products. China had requested consultations with the EU on 4 February 2010. Consultations had been held via video conference on 31 March 2010, but had failed to resolve China's concerns and no mutually satisfactory solution had been reached. Therefore, China requested the DSB to establish a panel to ensure the protection of China's legitimate rights and benefits under the WTO Agreements. China, once again, urged the EU to bring its legislation into line with the above-mentioned agreements and to terminate the measure on Chinese footwear products on account of their inconsistency with the WTO rules.

80. The representative of the European Union said that her delegation took note of China's request for the establishment of a panel. The EU recalled that anti-dumping measures were not about protectionism, but about fighting unfair trade. The EU strictly followed the applicable WTO rules in

all its anti-dumping cases and that was also the case for the measures on which China was seeking a panel. The EU was strongly convinced of the strength of its case and stood ready to defend its measures which it considered to be fully consistent with WTO law. In addition, the EU considered the Chinese panel request premature and was of the view that consultations had not been held on a large number of claims. The EU had offered a second round of consultations in order to obtain a satisfactory adjustment of the matter, as should be the purpose of consultations in line with the text and the spirit of the DSU. The EU regretted the step taken by China to request the establishment of a panel in this dispute, and opposed the establishment of a panel.

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

8. China – Measures affecting the protection and enforcement of intellectual property rights

(a) Statement by China

(b) Statement by the United States

82. The representative of China, speaking under "Other Business", recalled that, at the 19 March 2010 DSB meeting, her country had made a statement on progress in the implementation regarding the dispute: "China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights" (WT/DS362) and had informed the DSB that China had completed all necessary domestic legislative procedures in implementing the DSB's recommendations and rulings in this dispute. For the purpose of transparency, China wished to provide further information related to those domestic legislative procedures in this case. On 26 February 2010, the thirteenth session of the Standing Committee of the 11th National People's Congress (NPC) of China had approved the Decision of the Standing Committee of National People's Congress (NPC) on the Amendments of Copyright Law of the People's Republic of China. The Decision revised Article 4, among others, of the Copyright Law of the People's Republic of China. The Decision had been published on 26 February 2010 and had come into force on 1 April 2010. On 17 March 2010, the State Council had approved the Decision of State Council on the Amendments of Regulations on Customs Protection of Intellectual Property Rights of the People's Republic of China. The Decision revised Article 27, among others, of the Regulations on Customs Protection of Intellectual Property Rights of the People's Republic of China. The Decision had been published on 24 March 2010 and had come into force on 1 April 2010. With the coming-into-force of those two Decisions, China had brought its measures under this dispute into conformity with the DSB's recommendations and rulings.

83. The representative of the United States said that his country was surprised that China had not provided a status report at the present meeting. The United States recalled that 20 March 2010 was the expiration of the reasonable period of time for China to comply in this dispute. At the 19 March 2010 DSB meeting, China had informed Members that it had not yet brought into force all the measures needed to comply with the DSB's recommendations and rulings in this dispute. While the United States thanked China for its statement at the present meeting, in light of the fact that China had not yet completed implementation by the previous month's DSB meeting, the United States would have expected China to submit another status report. For example, the United States noted that Colombia, earlier in the present meeting, had presented a status report in order to announce its claim of compliance to Members. While China had, at the present meeting, stated that it had implemented the DSB's recommendations and rulings with respect to its customs regime, the United States was not in a position to share China's assessment at this time. The United States had begun working with China bilaterally on addressing certain questions the United States had and looked forward to further discussions with China on this issue.

84. The representative of China said that her country wished to briefly respond to the point concerning the status report made by the United States. Article 21.6 of the DSU provided that "unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time, pursuant to paragraph 3, and shall remain on the DSB's Agenda until the issue is resolved". As mentioned by China, the two decisions had come into force on 1 April 2010 and, thus, China believed that the issue had been resolved and there was no reason for China to provide a status report at the present meeting. Nevertheless, China had provided further information and had expressed its positions concerning the implementation in this dispute for the purpose of further clarification and transparency.

85. The representative of the United States said that, in response to China's statement, his country would point out that at the end of the March 2010 DSB meeting, the DSB had agreed to revert to this matter at the present DSB meeting. Furthermore, as of the previous DSB meeting, the measures China said it had taken had not yet entered into force and, thus, as of the present day, there was a lack of transparency for WTO Members regarding the status of those measures.

86. The DSB took note of the statements.