

**Dispute Settlement Body
19 March 2010**

MINUTES OF MEETING

Held in the Centre William Rappard
on 19 March 2010

Chairmen: Mr. John Gero (Canada)/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. Election of Chairperson

1. The outgoing Chairman said that, before he would proceed with this Agenda item, he wished to thank Members for their cooperation over the past year. He also thanked the Secretariat for its support and assistance provided to him in the course the year. He then recalled that, at its meeting on 22 February 2010, the General Council had taken note of the consensus on a slate of names for Chairpersons to a number of WTO bodies including the DSB. On the basis of the understanding reached by the General Council, he proposed that the DSB elect by acclamation H.E. Mr. Yonov Frederick Agah of Nigeria as its Chairperson.

2. The DSB so agreed.

3. The incoming Chairman thanked Members for the confidence that they reposed in him and Amb. Gero for his support. He said that he counted on the assistance of the Secretariat, and hoped to enjoy the same support that the Secretariat had provided to Amb. Gero. He said that everything was in the hands of Members and that he could only be the pilot, and a good one, if Members made him a good pilot. He then invited delegations to make statements, if they so wished.

4. The representative of the European Union said that her delegation thanked Amb. Gero for his most able Chairmanship during the past year. The EU wished him all the best in his new role as the Chairman of the General Council and welcomed warmly the new Chairman of the DSB.

5. The representative of the United States said that his delegation wished to take this opportunity to congratulate Amb. Agah on his election, and to extend its welcome to him as he assumed the Chairmanship of the DSB. The United States looked forward to working with him over what would undoubtedly be a very full and interesting year. The United States also thanked Amb. Gero for his many contributions to the work of the DSB during the past year and looked forward to continuing to work with him in his new capacity as Chairman of the General Council.

6. The representative of Canada said that her country thanked the outgoing Chairman and welcomed the new Chairman to the DSB. Canada looked forward to working with him and hoped to have a productive and successful year.

7. The representative of Australia said that, like others, her country welcomed the new Chairman and looked forward to working with him in the coming year. Australia also thanked Amb. Gero for the way in which he had conducted all the DSB meetings in the past year, particularly with such good and unfailing humour. Australia also appreciated Amb. Gero's patience and flexibility with those delegations who, on some occasions, had sought to propose additional items to the DSB Agenda.

8. The representative of China said that his country welcomed the new Chairman of the DSB and looked forward to working with him. China also wished to extend its sincere appreciation to

Amb. Gero for his contribution to the dispute settlement system and looked forward to working with him in other forums.

9. The representative of Mexico said that his country welcomed the new Chairman of the DSB and wished him all the best in his work. Mexico thanked Amb. Gero for his work during the past year and wished him all the best in his work as Chairman of the General Council.

10. The representative of Brazil said that, like previous speakers, his country welcomed and congratulated the new Chairman of the DSB. Brazil also wished to express its appreciation for Amb. Gero's firm guidance in the DSB over the past year.

11. The representative of the Bolivarian Republic of Venezuela said that her country wished to join previous speakers who had thanked Amb. Gero for his valuable leadership and welcomed Amb. Agah as the new Chairman of the DSB.

12. The representative of India said that, like previous speakers, her country congratulated and welcomed the new Chairman of the DSB. India looked forward to working with him. India also thanked Amb. Gero for his excellent guidance and lively atmosphere in which the DSB had worked over the past year.

13. The representative of Argentina said that her country thanked Amb. Gero for his contribution over the past year. Argentina welcomed the new Chairman of the DSB and assured him of its support in the best possible way.

14. The DSB took note of the statements.²

2. 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.88)
- (b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.88)
- (c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.63)
- (d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.26 – WT/DS293/31/Add.26)
- (e) United States – Measures relating to zeroing and sunset reviews: Status report by the United States (WT/DS322/36/Add.6)
- (f) United States – Continued existence and application of zeroing methodology: Status report by the United States (WT/DS350/18/Add.3)
- (g) China – Measures affecting the protection and enforcement of intellectual property rights: Status report by China (WT/DS362/14/Add.2)

² Subsequently, in the course of the meeting (under various Agenda items) the following delegations welcomed the new Chairman of the DSB and thanked the outgoing Chairman for his work in the DSB over the past year: Cuba, Ecuador, Viet Nam, Costa Rica, Paraguay, Japan and Thailand.

15. The Chairman recalled that Article 21.6 of the DSU required that unless the DSB decided otherwise, the issue of implementation of the DSB's 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.88)

16. The Chairman drew attention to document WT/DS176/11/Add.88, 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.

17. The representative of the United States said that his country had provided a status report in this dispute on 8 March 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) US Congress. The Second Session of the 111th Congress had begun in January 2010. The Committee on the Judiciary of the US 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.

18. The representative of the European Union noted that the United States was presenting its eighty-ninth status report in this dispute. The EU hoped that the new US authorities would take steps to finally implement the DSB's ruling and resolve this matter.

19. The representative of Cuba said that, for his country and the international community, it was important that the United States complied with its obligations and promptly brought itself into conformity with the Appellate Body's rulings, which had been made more than eight years ago. Section 211, which was inconsistent with the principles of national and most-favoured-nation treatment, had negative impact not only for the responding party in this dispute. When disputes remained unresolved and countries continued to take actions that ran counter to what had been agreed, the system would begin to crack, its legitimacy and credibility would be called into question and its rules would be undermined. In other words, power would become the sole arbiter. Due to the US irresponsibility and disregard for the system, as well as the EU's passive attitude, the United States and the EU undermined the basic principles of the dispute settlement system. That system was one of the main outcomes of the Uruguay Round and was supposed to guarantee security and predictability of the multilateral trading system, which benefited the United States and the EU more than any other Member.

20. Cuba noted that under the DSU provisions, Members who considered that their rights were infringed could bring their complaints to the WTO. However, Cuba was not sure whether this would be the best way to resolve pending disputes, since some Members refused to comply with their obligations. Thus, Cuba wondered if unnecessary duplication of procedures could help to resolve a dispute in the absence of political will. Bringing a fresh case on the same matter would only favour the US interests by giving it more time to make a mockery of the system and to continue to refuse to comply with the DSB's decisions. Cuba did not consider that this was an appropriate way forward, since it would set a precedent that would affect not only the interests of Members, but also the effectiveness of the system. Cuba would not take any action that violated the principle of compliance with the DSB's decisions. Cuba was monitoring the impact of the so-called Special 301 Report, where the United States listed the countries that did not provide adequate and effective protection for intellectual property rights. The United States had, once again, unilaterally asserted the questionable right to selectively condemn some 30 countries for allegedly failing to respect such rights. The self-proclaimed "judge" and "defender" of intellectual property rights that had been questioned about

its policy of restricting access to medical products on the grounds of non-compliance with WTO rules, continued to apply Section 211, thus violating the principles of the TRIPS Agreement. Cuba questioned if it was not hypocritical to condemn others for violations that the alleged "judge" was the first to commit. Should the international community adopt the maxim: "do as I say, not as I do"? Historically, humanity had fought successfully against attempts to impose imperial policies to the detriment of justice. Section 211, which dated back to 1998, was an extension of the failed US embargo policy against Cuba. The aim was to usurp trademarks from Cuba, which enjoyed proper protection in North America. Cuba respected the registrations of legal and natural persons from the United States. It honoured its international commitments, the same commitments that the United States continued to violate vis-à-vis Cuba. On 23 February 2010, at the Unity Summit held on the Mayan Riviera in Mexico, the Heads of State and Government of the Latin American and Caribbean countries had approved a declaration on the need to end the economic, commercial and financial blockade that had been imposed on Cuba by the United States. Once again, the rejection of the US policy, which had done so much damage to Cuba, had been made clear. Cuba, once again, requested that the United States and the EU do everything necessary to repeal, once and for all, the unlawful Section 211 and to comply with the DSB's ruling.

21. The representative of Mexico said that, under the DSU provisions, any Member could file a complaint if it considered that another Member did not bring its measures into conformity with the WTO rules. Mexico recalled that Articles 3.3 and 21.1 of the DSU respectively provided that for the effective functioning of WTO it was essential to guarantee prompt resolution of disputes. Mexico urged the parties to this dispute to bear in mind this principle and to take the necessary measures to comply with the DSB's recommendations.

22. The representative of the Bolivarian Republic of Venezuela said that, once again, her delegation participated in the DSB meeting to discuss this Agenda item and to express its views on the US status report. The most recent report, dated 8 March 2010, stated, yet again, that "[a] number of legislative proposals [...] that would implement the DSB's recommendations and rulings in this dispute were introduced [...] in both the US House of Representatives and the US Senate". On several occasions, Venezuela had questioned that statement since it was well-known that there was no real progress or results. Members should reflect on the US use of the so-called "reasonable period of time" stipulated in the DSU, a period of time which, in this dispute, had now exceeded eight years. The matter had been under discussion in the DSB since 2002, with no positive sign from either the United States or the EU. Any positive sign would be appreciated and valued by WTO Members and would help to alleviate the disturbing effect that this dispute had on the credibility of the dispute settlement mechanism, which had been created to enable Members to settle their disputes. Venezuela also insisted on rejecting the US policy of economic, commercial and financial blockade against Cuba. Venezuela had had enough of actions that were inconsistent with the principles of the multilateral trading system, in particular with those principles that were favourable to developing countries. Venezuela urged the United States to change its practice of acting without producing any results and to comply with the DSB's rulings and recommendations so as to strengthen the multilateral trading system.

23. The representative of Ecuador said that his country thanked the United States for its status report. Ecuador regretted that there was no new information and supported Cuba's statement. Ecuador, once again, recalled 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 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 accelerate their compliance

with the DSB's recommendations and rulings by repealing Section 211. Finally, he said that Ecuador wished to receive more detailed information from the EU on the steps taken to resolve this dispute.

24. The representative of India said that her country thanked the United States for its status report and its statement. India continued to be concerned about the US non-compliance with the DSB's recommendations and rulings in this dispute. Unfortunately, the status report repeated the pattern of the previous reports showing complete lack of progress. As reiterated at previous DSB meetings, non-compliance undermined the credibility and confidence that Members reposed in the WTO dispute settlement system. India expected the United States to bring its measures into conformity with the multilateral trade disciplines in the nearest future.

25. The representative of Brazil said that his country thanked the United States for its status report in this dispute. Brazil wished to join previous speakers in expressing its serious concerns about the prolonged situation of non-compliance. Brazil urged the United States to bring its measures into conformity with the multilateral trade disciplines in the nearest future.

26. The representative of Viet Nam said that his country thanked the United States for its status report and supported the statement made by Cuba. Viet Nam expressed its systemic concern about the lack of implementation in this dispute, and urged the United States to comply with the DSB's recommendations and rulings.

27. The representative of Costa Rica said that his country noted the US status report and recalled that Article 21.1 of the DSU provided that prompt compliance with the DSB's recommendations and rulings was essential to ensure effective resolution of disputes. Costa Rica urged the US administration to find soon a solution with the US Congress so as to ensure full compliance with the DSB's recommendations and rulings.

28. The representative of Paraguay said that her country urged the United States to comply with the DSB's recommendations and rulings by repealing Section 211.

29. The representative of China said that his country thanked the United States for its status report and its statement. However, the status report simply confirmed the continuation of non-compliance after more than eight years following the adoption by the DSB of the Reports pertaining to this dispute. Such a situation was not in line with the principle of prompt implementation contained in the DSU provisions, and undermined the authority and credibility of the WTO dispute settlement system. China supported Cuba and urged the United States to implement the DSB's decision as soon as possible.

30. The representative of Argentina said that her country wished to reiterate its concern over the systemic impact of non-compliance with the DSB's rulings. Argentina urged the parties to take all necessary measures in order to fully implement the DSB's recommendations.

31. 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 Members well knew, the United States did not believe that those concerns were well-founded. In the interest of time, the United States referred Members to past US statements on this matter, including in document WT/DSB/M/273 at paragraph 15.

32. The representative of Cuba said that his delegation wished to respond to the statement just made by the United States. He said that the lack of time referred to by the United States was only a pretext and that the US position based on non-respect for multilateralism and flouting of the decisions of the DSB could not be sustainable. As a matter of respect for Members, the United States should explain why it had not complied with the DSB's recommendations in this dispute. He noted that all

Members were aware that for over eight years there had been no political will to comply with the DSB's rulings in this dispute.

33. 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.88)

34. The Chairman drew attention to document WT/DS184/15/Add.88, 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.

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

36. The representative of Japan said that his country thanked the United States for its statement and its latest status report. Japan hoped that the United States would soon be in a position to report on more concrete steps being taken towards its implementation in this dispute. A 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 between the rights and obligations of Members".³ Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

37. 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.63)

38. The Chairman drew attention to document WT/DS160/24/Add.63, 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.

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

40. The representative of the European Union said that the United States had again reported non-compliance. The EU was again disappointed, especially in light of the importance 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

³ Article 3.3 of the DSU.

this case, and hoped that the financial loss suffered by the EU industry could be brought to an end soon.

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

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.26 – WT/DS293/31/Add.26)

42. The Chairman drew attention to document WT/DS291/37/Add.26 – WT/DS293/31/Add.26, 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.

43. The representative of the European Union said that her delegation was pleased to confirm that it had reached a mutually agreed solution with Argentina in this case. The mutually agreed solution had been signed on 18 March 2010 and notified to the DSB on 19 March 2010.⁴ Similarly to the agreement reached with Canada the previous year, the mutually agreed solution had put an end to this dispute and had formalized a dialogue on issues related to biotech of mutual interest. This confirmed, once more, that dialogue was the best approach to this complex issue. EU regulatory procedures on biotech products continued to work as foreseen in the legislation. The most recent example 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 thirty. The EU remained open to dialogue on issues related to trade in biotech products with the remaining complainant in this dispute.

44. The representative of Argentina said that her country thanked the EU for its status report. As mentioned by the EU, Argentina and the EU had reached a mutually agreed solution in the biotech dispute. That solution did not prejudice either the implementation of recommendations adopted by the DSB nor any claims pertaining to this dispute. However, the mutually agreed solution did open up positive channels for dialogue in this very complex dispute. The dialogue to date had been very satisfactory and positive and Argentina was pleased to announce that the parties had reached a mutually agreed solution in this dispute. Argentina hoped that the text of the mutually agreed solution would be circulated to Members as soon as possible.

45. The representative of the United States said that his country thanked the EU for its status report and its statement. The United States recalled its concerns with delays in the operation of the EU approval system for biotech products. Those delays had resulted in a backlog of dozens of pending applications. As a consequence of the delays and the resulting backlog, products of agricultural biotechnology widely consumed and grown in the United States and other countries may not be imported or used in the EU. The United States recalled its concern that individual EU member States maintained and continued to adopt bans on some of the biotech products that had been approved at the EU level. At the February 2010 DSB meeting, the United States had expressed the hope that the new European Commission, which had just taken office, would take steps toward addressing the EU's ongoing problems with biotech approvals. As mentioned by the EU at the present meeting, earlier in the month, the new Commission had approved five long-pending biotech applications that had previously received positive EU safety assessments, including an application that had first been filed in 1996. Although a substantial backlog of pending applications remained, the United States was encouraged by those developments and looked forward to continuing progress in the coming months. The United States had also taken note of the announcement by the EU and Argentina that they had reached an agreement under which the two parties would continue with a

⁴ WT/DS293/41.

dialogue on outstanding issues related to biotech approvals as well as a mutually agreed solution to their dispute. The United States recalled that there were important differences between the DSB's recommendations and rulings in the dispute between the EU and the United States (DS291) and the recommendations and rulings in Argentina's dispute (DS293). In particular, the recommendations and rulings in the US dispute addressed the EU's general moratorium on biotech approvals, while those in Argentina's dispute did not. In addition, as compared to Argentina's dispute, the recommendations and rulings in the US dispute covered a wider range of biotech products that had been subject to undue delay, as well as a wider range of products subject to EU member State bans despite EU-wide approvals. Unfortunately, there was yet to be a resolution of the broader range of biotech approval issues covered by the dispute between the United States and the EU. To the contrary, as the United States had noted in the past, US producers continued to be shut out of what historically had been major US export markets for agricultural products.

46. 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.6)

47. The Chairman drew attention to document WT/DS322/36/Add.6, 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.

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

49. 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 report 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.

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

51. 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.3)

52. The Chairman drew attention to document WT/DS350/18/Add.3, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the continued existence and application of zeroing methodology by the United States.

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

54. The representative of the European Union said that her delegation would not repeat all its concerns about the US lack of implementation in this dispute. There had been, much to the EU's regret, no change in this respect since the EU had last commented on the many gaps in the US implementation in this dispute in February 2010. In fact, the situation was now worse, as the United States, in the recent final determination in its Section 129 proceeding of 12 March 2010, had explicitly stated that it had not, and did not intend to, implement the DSB's recommendations with regard to the vast majority of the measures in question. 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 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, once again, reminded the United States that it was required, as a WTO Member, to complete those actions and bring itself into full compliance three months ago, when the reasonable period of time had expired. Consultations, when not accompanied by real progress in implementation, could not go on *ad infinitum* and the Section 129 determination suggested there was no progress at all. The EU, therefore, urged the United States to reconsider its Section 129 determination immediately and to implement. The EU also noted that the United States had not presented a status report on the progress in the implementation of the DSB's recommendations and rulings in the DS294 case. The EU questioned whether the lack of reports meant that the United States considered to have brought itself into full compliance with the DSB's recommendations and rulings in that dispute.

55. The representative of the United States said that it wished to comment on two issues raised by the EU. First, with respect to the Section 129 determination, on 12 March 2010, the US Department of Commerce had issued the final results under Section 129(b) of the Uruguay Round Agreements Act with respect to the four determinations in the original investigations. The United States was consulting within the government on next steps under Section 129(b). There was no statement in the Section 129 determination that the United States would not comply with the DSB's recommendations and rulings. To the contrary, the United States had stated repeatedly to the DSB that it intended to comply with the DSB's recommendations and rulings. The Section 129 determination concerned implementation of one part of the DSB's recommendations and rulings, on investigations. Second, with regard to the EU comment on status reports in DS294, that issue was not relevant to this Agenda item, which dealt with a different dispute; i.e. DS350. If the EU wished to take up that issue bilaterally, the United States would be willing to do so. As part of any such bilateral discussion, the United States would be interested in hearing the EU's reflections on its own approach in the original EC - Hormones dispute where, when the EU had objected to the US and Canadian requests for authorization to suspend concessions, the EU had ceased providing status reports.

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

(g) China – Measures affecting the protection and enforcement of intellectual property rights: Status report by China (WT/DS362/14/Add.2)

57. The Chairman drew attention to document WT/DS362/14/Add.2, which contained the status report by China on progress in the implementation of the DSB's recommendations in the case concerning China's measures affecting the protection and enforcement of intellectual property rights.

58. The representative of China said that his country had provided a status report in this dispute on 8 March 2010, in accordance with Article 21.6 of the DSU. On 20 March 2009, the DSB had adopted the Panel Report in this dispute. On 29 June 2009, China and the United States had agreed and notified the DSB that the reasonable period of time for implementation shall be 12 months and would expire on 20 March 2010. China wished to inform the DSB of the latest progress in its implementation. First, on 26 February 2010, the thirteenth session of the Standing Committee of the 11th National People's Congress (NPC) had approved the amendments of Chinese Copyright Law. One of the amendments was to change Article 4 of that Law. The new Article 4 stipulated that: Copyright owners' exercise of their copyright shall not violate the Constitution, laws or prejudice the public interests. The state shall perform supervision over publication or dissemination of works as prescribed by laws (courtesy translation). Second, on 17 March 2010, the State Council adopted the decision to revise the Regulations for Customs Protection of Intellectual Property Rights. One of the revisions was to improve the disposal procedures of seized products that infringed intellectual property rights. By doing that, China had completed all necessary domestic legislative procedures in implementing the DSB's recommendations and rulings in this dispute. China pointed out that it had taken actions to implement the DSB's ruling and recommendations with a view to upholding the multilateral trading system and hoped that other Members could also take concrete actions to respect their international obligations.

59. The representative of the United States said that his country thanked China for its status report and its statement. He recalled that, on 20 March 2010, the reasonable period of time for China to comply in this dispute would expire. While China had stated that it had implemented the DSB's recommendations and rulings with respect to the Copyright Law, the United States was not in a position to share China's assessment at this time. The United States looked forward to further discussions with China to understand the basis for its claim. With respect to China's efforts to implement the DSB's recommendations and rulings regarding its customs regime, the United States did not understand China to have claimed that it had implemented those recommendations and rulings, including in its statement at the present meeting. The United States would welcome receiving further information from China, including bilaterally, on its timeline for implementation, given that the reasonable period of time would expire the following day. Further, the United States would appreciate China either providing official copies of the amendments to the Copyright Law and Customs regulations, or directing Members to the appropriate Chinese government website where they were or would be posted. The United States further recalled China's commitment in its Accession Protocol to make available to WTO Members translations into one or more of the official languages of the WTO, all laws, regulations and other measures pertaining to or affecting TRIPS, and to the maximum extent possible to make such laws, regulations and other measures available before they were implemented or enforced. The United States would, therefore, also appreciate receiving translations of the amendments to the Copyright Law and Customs regulations into English, if possible.

60. The representative of the European Union said that her delegation had taken note of China's changes to its Copyright Law. With regard to the legislative proposals on customs measures on which China was working, and given the expiry of the reasonable period of time on 20 March 2010, the EU would be interested in any further information that China may be able to provide regarding the timing for adoption.

61. The representative of China said that his country had taken note of the statement by the United States and would engage with the United States through bilateral channels.

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

3. United States – Anti-dumping measures on polyethylene retail carrier bags from Thailand

(a) Implementation of the recommendations of the DSB

63. The Chairman recalled that, in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 18 February 2010, the DSB had adopted the Panel Report pertaining to the dispute on: "US – Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand".

64. The representative of the United States said that his country intended to implement the DSB's recommendations and rulings in this dispute in a manner that respected its WTO obligations, and would need a reasonable period of time in which to implement. In their procedural agreement, which had been circulated to Members in document WT/DS383/4, the United States and Thailand had provisionally agreed that the reasonable period of time in this dispute would be six months from the date of adoption of the Panel Report. The United States hoped to notify the DSB of the reasonable period of time agreement very soon. The United States appreciated Thailand's cooperation during this dispute and looked forward to continuing to work with Thailand in that constructive spirit.

65. The representative of Thailand said that his country thanked the United States for the statement on its intentions regarding the implementation of the DSB's recommendations and rulings in this matter within the six-month period, mentioned in the procedural agreement concluded between Thailand and the United States, which had been circulated in document WT/DS383/4. Thailand also looked forward to the continuation of the good cooperation it had enjoyed with the United States throughout this proceeding.

66. The DSB took note of the statements, and of the information provided by the United States regarding its intentions in respect of implementation of the DSB's recommendations.

4. 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

67. 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.

68. The representative of Japan said that the latest annual distributions for FY2009⁵ showed that the Continued Dumping and Subsidy Offset Act (CDSOA) still remained operational.⁶ 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. Japan recalled that Article 21.6 of the DSU stated that: "unless the DSB decides otherwise, the issue of implementation of the

⁵ CDSOA 2009 Annual Reports dated 10 December 2009. According to the reports, some US\$248 million have been distributed for FY2009. 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

⁶ In the words of the US Customs, "the distribution process will continue for an undetermined period". 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

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. At least ten days prior to each such DSB meeting, the Member concerned shall provide the DSB with a status report in writing of its progress in implementation of recommendations and rulings".

69. The representative of the European Union said that, once again, the EU wished to ask the United States when it would effectively stop the transfer of anti-dumping and countervailing duties to its industry and finally put an end to the condemned measure. The EU also 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.

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

71. The representative of Brazil said that his country thanked the EU and Japan for keeping this item on the Agenda of the DSB. As had been stated at previous meetings, Brazil was of the view that while the United States continued to make disbursements pursuant to the Byrd Amendment, the situation of non-compliance in this dispute would persist, and the issue would not be "resolved" within the meaning of Article 21.6 of the DSU. Thus, pursuant to Article 21.6 of the DSU, unless the DSB decided otherwise, the issue of implementation should be placed on the Agenda of the DSB and remain there until the issue was resolved.

72. 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.

73. The representative of India said that her country thanked the EU and Japan for bringing this issue before the DSB once again and shared their concerns. India remained disappointed at the US maintenance of the WTO-inconsistent disbursements. India was of the view that the United States was required to submit status reports in this dispute until such time as no more disbursements were made pursuant to the Byrd Amendment. Only then would the issue be "resolved" within the meaning of Article 21.6 of the DSU. India wished to join other Members in urging the United States to comply fully with the DSB's rulings.

74. The representative of Thailand said that his country thanked Japan and the EU for bringing this item before the DSB once again. Thailand continued to be disappointed at the US maintenance of the WTO-inconsistent disbursements and thus 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.

75. The representative of the United States said that as his country had already explained at numerous 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 previously acknowledged during other DSB meetings that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, some two and a half years ago. 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 explained at previous DSB meetings, 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.

76. The DSB took note of the statements.

5. European Communities – Export subsidies on sugar

(a) Statements by Australia, Brazil and Thailand

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

78. The representative of Australia, speaking also on behalf of Brazil and Thailand, said that the countries in question wished to make a joint statement and to recall their individual statements made at the 18 February 2010 DSB meeting as well as the joint statement made by them in the Committee on Agriculture on 10 March 2010, expressing their concern at the recent decision of the EU to export out-of-quota sugar in excess of its annual scheduled quantity commitment level of 1.2735 million tonnes. The additional EU exports had already negatively affected market sentiment and driven world prices down. 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. Australia, Brazil and Thailand recalled that the EU had offered, at both the previous DSB meeting as well as at the Committee on Agriculture and bilaterally, to provide the necessary technical information underpinning its decision to export additional sugar. However, the EU was yet to provide any such information. Australia, Brazil and Thailand urged the EU to provide the necessary technical information underpinning its decision to export additional sugar in accordance with its undertakings.

79. The representative of the European Union said that, at the previous DSB meeting, the EU had already highlighted 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 being 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 had now been 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 have, for rather obvious reasons of commercial interest, preferred otherwise. The EU also reiterated its readiness to continue a dialogue regarding the background underpinning the EU's temporary decision to export sugar.

80. The DSB took note of the statements.

6. Proposed amendments to the Working Procedures for Appellate Review

(a) Statement by the Chairman

81. The Chairman, speaking under "Other Business", said that as had been announced at the outset of the present meeting, he would now wish to make a statement concerning the amendments proposed by the Appellate Body to the Working Procedures for Appellate Review, which had been circulated in document WT/AB/WP/W/10. He recalled that his predecessor, Amb. Gero, had reported on this matter to Members at both the January and February 2010 meetings of the DSB. In that

regard, Amb. Gero had indicated that, before placing this matter on the DSB's Agenda, it seemed appropriate to allow time for reflection and, if necessary, informal consultations. It was his understanding that Amb. Gero had had informal contacts with a number of Ambassadors on this subject earlier that year and had concluded at that time that the consensus view seemed to be that, given the complexity of the proposed amendments, it would not be beneficial to try to rush the matter. Rather, further informal consultations were still needed. It was also his understanding that, in the meantime, a group of interested delegations had been consulting on the proposed amendments. In light of that, and given past practice and the 19 December 2002 DSB decision regarding "Additional Procedures for Consultations between WTO Members and the Chairperson of the DSB in relation to Amendments to the Working Procedures for Appellate Review", he wished to propose the following process. First, to facilitate an open and transparent exchange of views among all interested Members on the proposed amendments before the matter was placed on the DSB's Agenda, he proposed to convene an informal meeting in the second half of April 2010. He would notify Members in due course by fax of the date and time of this informal meeting. Since this would be an informal meeting, there would be no formal record. Second, he would subsequently request the Secretariat to place this matter on the Agenda of the regular DSB meeting to be held on 18 May 2010, at which time Members could provide their views formally for the record for transmittal to the Appellate Body. Finally, pursuant to the 19 December 2002 DSB decision on this matter, delegations were also free to submit their comments in writing. In that regard, he proposed that any written comments be provided to him in care of the Council and TNC Division by 18 May 2010.⁷

82. The DSB took note of the statement.

⁷ Subsequently, the deadline for submitting written comments on the proposed amendments was extended until 26 May 2010.