WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/281
28 May 2010

(10-2966)

Dispute Settlement Body
8 April 2010

MINUTES OF MEETING

Held in the Centre William Rappard
on 8 April 2010

Chairman: Mr. Yonov Frederick Agah (Nigeria)

1. Philippines – Taxes on distilled spirits

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

1. The Chairman 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.

2. The representative of the United States said that his country had been concerned with the 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 had been described in more detail in the US panel request, the Philippine taxes on distilled spirits did not appear to tax imported distilled spirits and directly competitive or substitutable domestic distilled spirits similarly. The taxes appeared to be applied in a way that afforded protection to domestic production. In addition, the taxes appeared to subject imported distilled spirits to internal taxes in excess of those applied to like domestic products. The taxes thus appeared inconsistent with the first and second sentences of Article III:2 of the GATT 1994. The United States had raised its concerns with the excise tax and its effect on market access with the Philippines many times but, regrettably, without resolving them. Accordingly, the United States requested that the DSB establish a panel to examine the matter set out in its panel request, with standard terms of reference. The United States urged the Philippines to address the concerns that had been raised, and hoped that the Philippines would take action soon to level the playing field for imported and domestic spirits in the Philippine market.

3. The representative of the Philippines said that his country regretted that the United States had chosen to request the DSB to establish a panel in this matter, given the Philippines' constructive engagement towards clarifying its excise tax regime on distilled spirits. The Philippines was fully committed to a rules-based multilateral trading system and, being fully conscious of its obligations under the WTO Agreements, was confident that its excise tax regime would be determined to be fully consistent with its WTO obligations. The Philippines wished to reiterate that, as fellow Members of the WTO, it shared with the United States the common vision of economic development, growth and trade liberalization that was rooted in a fair, non-discriminatory, transparent and predictable regulatory environment in which economic operators from both countries could prosper. The Philippines hoped that this matter could still be 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. Therefore, the Philippines believed that establishing a panel at the present meeting would be premature, and was thus not able to agree to the establishment of a panel at that time.

4. The representative of the European Union said that her delegation regretted that the consultations between the Philippines and the United States had not provided any indication that this long-standing discrimination could be remedied any time soon. The EU could only support the US request for the establishment of a panel, which followed a similar request by the EU that had resulted in the establishment of a Panel on 19 January 2010. The EU noted that this was a case of a long-standing tax discrimination that had only worsened over the years. Currently, imported spirits were subject to an excise tax ten to 50 times higher than the tax imposed on domestic spirits. This had prevented EU spirits producers from benefiting from the growing demand for spirits in the Philippine market. Furthermore, as estimated, the EU exports to the Philippines more than halved between 2004 and 2007, as a result of the increasing discrimination. The EU believed that the Philippines excise tax regime was in clear violation of Article III:2 of the GATT 1994 and was confident that the panel would confirm that.

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