

**Dispute Settlement Body**  
**26 February 2003**

**MINUTES OF MEETING**

Held in the Centre William Rappard  
on 26 February 2003

*Chairman: Mr. Shotaro Oshima (Japan)*

**1. United States – Continued Dumping and Subsidy Offset Act of 2000**

- (a) Statements of intentions pursuant to Article 21.3 of the DSU in respect of implementation of the recommendations and rulings of the DSB

1. The Chairman said that this item was on the agenda of the present meeting at the request of Australia, Brazil, Canada, Chile, the European Communities, India, Indonesia, Japan, Korea, Mexico and Thailand. He recalled that an exchange of views concerning this agenda item had already taken place at the 19 February 2003 DSB meeting under "Other Business". He then invited the representatives of the respective countries to speak.

2. The representative of Australia said that under Article 21.3 of the DSU, a Member was required to inform the DSB – within 30 days of the adoption of panel and Appellate Body reports – of its intentions concerning implementation of the recommendations and rulings of those reports. Australia, together with the other co-complainants had requested this DSB meeting to give the United States the opportunity to comply with the requirement of Article 21.3 in this dispute. Australia noted that public comments and actions of the United States indicated that the United States required a reasonable period of time in which to implement the DSB's recommendations and rulings. These comments and actions included: (i) the US statement at the 27 January DSB meeting, before the Reports were adopted, that it intended to implement the DSB's recommendations and rulings; and (ii) the US administration's plan to repeal the Byrd Amendment in the US budget proposal for fiscal year 2004. Australia was willing to negotiate such a reasonable period of time with the United States jointly with the other co-complainants. Australia reserved its rights under the DSU accruing from the adoption by the DSB of the Panel and Appellate Body Reports in this dispute.

3. The representative of Brazil said that his country, together with the other co-complainants, had requested the present meeting because it considered that the United States was not properly complying with Article 21.3 of the DSU. First, the United States had not formally and clearly informed the DSB of its intentions in respect of implementation of the recommendations and rulings in this dispute. Second, the United States remained silent about a reasonable period of time for implementation. Brazil considered that the present meeting could give the United States the opportunity to clarify these two issues.

4. The representative of Canada recalled that at the 19 February DSB meeting, his country had stated its views on the obligations of the United States under Article 21.3 of the DSU. Canada stood fully by those statements, although it did not intend to repeat them at the present meeting. Turning to the issue of US implementation, Canada noted the US statements that: "the United States respects its WTO obligations" and that it "the United States intends to implement the DSB recommendations and

rulings in a manner that respects the United States' WTO obligations". Canada welcomed these statements. The US administration's budget proposal for fiscal year 2004, which had been released on 4 February 2003, urged the US Congress to repeal the Byrd Amendment. The Administration pointed out that – he noted that he was quoting from the budget proposal – "these corporate subsidies effectively provide a significant 'double-dip' benefit to industries that already gain protection from the increased import prices provided by countervailing tariffs." Canada welcomed the US administration's efforts to secure the repeal of the Byrd Amendment, as suggested by the Panel Report. The next step would be the establishment of the reasonable period of time for the United States to repeal the Act. Canada and the other co-complainants would work together in negotiating with the United States in order to establish the compliance period.

5. The representative of the European Communities said that this was an unprecedented event that the complainants had to call for a DSB meeting to be informed of the intentions of the Member concerned in respect of implementation of the DSB's ruling. He recalled that at the 19 February DSB meeting, the EC had explained in length its reasons for joining the other co-complainants in their request for this special DSB meeting and, therefore, it would not repeat its arguments at the present meeting. The EC only hoped that the US failure to call for the DSB meeting to inform of its intentions on implementation would remain an unfortunate isolated event. Now turning to the substance of this meeting, he said that the Panel had found "it difficult to conceive of any method which would be more appropriate and/or effective than the repeal [to bring the CDSOA into conformity]". The EC shared this opinion: this legislation was condemned *per se* and should now be removed. For more than two years, dumped or subsidized imports had been hit by a double penalty. In addition to being subject to often very heavy anti-dumping and anti-subsidy duties, they had subsidized the domestic products they competed with. The amounts that had been distributed were substantial and increasing fast: from US\$231 million in the first distribution to US\$330 million in the second distribution. Furthermore, three companies obtained half of the offset payments distributed thus far, which only worsened the distorting effects on competition of the CDSOA measure. The EC shared the other complainants' understanding that the repeal of the measure could be secured immediately and that the United States would need a reasonable period of time to do so. The EC reserved its rights under Article 21.3 of the DSU and joined the other co-complainants in their readiness to negotiate jointly with the United States a reasonable period of time. This period of time should be as short as possible. He noted that Members had agreed that prompt settlement of disputes was essential to the effective functioning of the WTO. The CDSOA measure raised immediate and widespread concerns among WTO partners. These concerns proved to be right and it was now time to respond to them.

6. The representative of Japan said that since her country had expressed its position regarding this case at the 27 January DSB meeting, and its views concerning the present meeting at the 19 February DSB meeting, she would refrain from repeating them. The Panel and the Appellate Body had confirmed that the distribution of the collected anti-dumping duties and countervailing duties to the related domestic industry was not justifiable under the WTO Agreement. Therefore, Japan once again strongly urged the United States to repeal the Byrd Amendment at the earliest possible time. In this regard, Japan noted the statement made by the United States at the 19 February DSB that in fact it intended to implement the DSB's recommendations and rulings. Furthermore, as the United States had not immediately complied with them, Japan, like all the other co-complainants, understood that the United States needed a reasonable period of time in which to comply. Japan stood ready to engage in negotiations on a reasonable period of time between 11 co-complainants jointly and the United States. She reiterated that Japan reserved all its rights under the DSU.

7. The representative of India said that his country was also one of the co-complainants which had requested the meeting to enable the United States to express its intentions in regard of implementation of the DSB's rulings and recommendations. India endorsed the views expressed by previous speakers. India was also ready to work with the other co-complainants to discuss with the United States a reasonable period of time. India had already expressed its views on the Byrd

Amendment at the 27 January DSB meeting and, at that time, it had stated that there was no other way for the United States to implement the DSB's rulings except by repealing the Byrd Amendment. India continued to maintain this position and was ready to discuss a reasonable period of time. Like Japan, India also wished to reserve all its rights under Article 21.3 of the DSU.

8. The representative of Korea said that it was unfortunate that the co-complainants had been left with no other choice, but to call for this meeting to be informed by the Member concerned of its intentions with respect to the implementation of the DSB's recommendations and rulings. At the same time, Korea noted that, at the 19 February DSB meeting, the United States had confirmed its intention to implement the DSB's recommendations and rulings concerning the CDSOA. Given the Panel's finding on the ways in which the United States could implement the recommendations, as well as the fact that the US administration had released earlier this month a budget proposal for the fiscal year 2004 in an effort to repeal the CDSOA, it was obvious that the United States needed a reasonable period of time for implementation. Korea, together with the other co-complainants, looked forward to having fruitful discussions with the United States under Article 21.3(b) of the DSU in the next 15 days.

9. The representative of Indonesia said that his country had requested a DSB meeting in order to ensure that the procedures under Article 21.3 of the DSU were followed. This Article provided that the Member concerned had to inform the DSB within 30 days after adoption of the report of its intentions in respect of implementation of the DSB's recommendations and rulings. Indonesia hoped that the United States would implement immediately the DSB's recommendations and rulings by repealing the CDSOA. Indonesia was aware of the effort of the US administration to repeal the CDSOA, as suggested by the Panel Report. However, if the immediate repeal was found to be impracticable, Indonesia, jointly with the other complainants, was ready to negotiate with the United States a reasonable period of time.

10. The representative of Thailand said that his delegation wished to thank the Chairman for convening the present meeting in order to consider this agenda item. In Thailand's reading of Article 21.3 of the DSU it was mandatory that a DSB meeting would have to be held within 30 days after the panel report was adopted with a view to hearing how promptly the party to the dispute to which the panel's recommendations were directed intended to implement the DSB's recommendations and rulings. Given the fact that the United States had already confirmed its intention to implement the DSB's recommendations and rulings at the 27 January DSB meeting, Thailand was quite content that the United States remained committed to do so since this intention had been once again reconfirmed at the 19 February DSB meeting. To that end, Thailand wished to re-emphasize, once again, as indicated in its statement made on the date when the Reports had been adopted, that it was prepared to work with the United States in order to arrive at a mutually agreed reasonable period of time required by Article 21.3 of the DSU. During such time until the required reasonable period of time was fixed, Thailand hoped that the United States would do everything in its power, including exercising administrative action, to prevent further implementation of the CDSOA and, in that context, no consideration of applications for offset payments under the same legislation would be made.

11. The representative of the United States said that after listening to the interventions of some of the complaining parties, the United States remained as puzzled as ever as to why the complaining parties had requested this meeting. He recalled that the United States had stated its intentions in this dispute pursuant to Article 21.3 of the DSU at the 27 January DSB meeting. It had further confirmed those intentions at the 19 February DSB meeting, as it had offered to the complaining parties to do. The United States assumed that the complaining parties desired that those already stated intentions be in fact the intentions of the United States. In particular, the United States had not heard anything at the present meeting from the complaining parties that would indicate that they wished the United States to change its mind concerning its intentions. Accordingly, there was no reason to comment further on those intentions. With respect to delegations' suggestions at the present meeting that Article 21.3 of the DSU precluded a Member from immediately stating its intentions, and that it was

necessary to call this unscheduled meeting, the United States wished to refer Members to the US statements made at the 19 February DSB meeting. With respect to comments made at the present meeting concerning the reasonable period of time, the United States noted that nothing in Article 21.3 of the DSU required a responding party to state at a DSB meeting that it needed a reasonable period of time. It should be no surprise, however, that in this dispute the United States would need a reasonable period of time. No Member had suggested otherwise. In conclusion, the United States wished to note its disappointment that the complaining parties had gone forward with this meeting despite the US invitation at the last meeting that they reconsider the need for holding such a meeting.

12. The DSB took note of the statements.
-