

WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/32

3 June 1997

(97-2320)

Dispute Settlement Body
30 April 1997

MINUTES OF MEETING

Held in the Centre William Rappard
on 30 April 1997

Chairman: Mr. Wade Armstrong (New Zealand)

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Prior to the adoption of the agenda, the United States requested that item 2 entitled "European Communities - Duties on Imports of Grains - Request for the Establishment of a Panel by the United States (WT/DS13/6)", be removed from the proposed agenda. Item 4 entitled "Canada - Certain Measures Concerning Periodicals - Request by the United States for the Adoption of the Panel Report (WT/DS31/R and Corr.1)", was also removed from the agenda since Canada notified its decision to appeal this report on 29 April 1997.¹

1. Surveillance of implementation of recommendations adopted by the DSB
- United States - Standards for reformulated and conventional gasoline: Status report by the United States (WT/DS2/10/Add.3)

The Chairman recalled that this item was on the agenda pursuant to Article 21.6 of the DSU which stated 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". He recalled that at the DSB meetings in January, February and

¹The Notice of Appeal was circulated in WT/DS31/5.

March 1997, the United States had submitted status reports on this matter in accordance with the above-mentioned requirement. He drew attention to document WT/DS2/10/Add.3 containing a further status report by the United States.

The representative of the United States said that, as provided for in Article 21.6 of the DSU, his country had submitted its fourth report on the implementation of the DSB's recommendations with regard to this matter. As noted in that report, the expectation of the United States had been that the US Environmental Protection Agency (EPA) would be issuing a proposed revised rule for comments in the near future. He was pleased to report that on 29 April, the EPA's administrator had issued the proposed rule for comment which would be published in the US Federal Register within the next few days. Consistent with normal US regulatory procedures, the EPA had invited all interested parties to comment on the specifics of its proposal. These comments would be required to be received by the EPA within 30 days after the publication of the proposal in the Federal Register or, should a public hearing be requested, 44 days after the date of such publication. All comments would be considered prior to the finalization of the revised rule.

In developing this proposal, the United States had carefully considered and closely analyzed the issues involved in this highly technical area in order to implement the DSB's recommendations. The United States believed that although it was still only a proposal, if implemented it would meet the concerns that Brazil and Venezuela had expressed during the dispute settlement proceedings and, at the same time, permit the United States to meet its environmental objectives. The text of the revised rule would be sent to all gasoline exporting Members. It was hoped that governments would review the proposal during the comment period and submit comments to the United States prior to the close of the required time-period. This would ensure that the United States would take them fully into account in formulating a final rule.

The representative of Venezuela thanked the United States for providing information with regard to the publication of the proposed amendment to the Gasoline Rule. His Government would thoroughly examine and submit its comments to the United States on this proposal. Venezuela expected that this proposed amendment would be in conformity with the DSB's recommendations, and that it would enter into force within the time-period negotiated in good faith by the parties. He hoped that the United States would inform the DSB of its domestic procedures with regard to this matter.

The representative of Brazil thanked the United States for the information with regard to the issuance of the proposed rule by the EPA. He nevertheless wished to comment on the 15-month implementation period. It was Brazil's understanding that 112 days remained for the implementation of the DSB's recommendations within the agreed reasonable period of time. He noted that the 15-month period which had started on 20 May 1996 would expire on 20 August 1997. There might be other procedures required under US law and administrative practices that would require time in addition to the 44 days mentioned by the United States. For example, these additional procedures could include a 90-day review of any proposed rule by the Office of Management and Budget and another 44-day review of the final rule by that Office. Brazil was concerned that without any apparent action by the United States, until 29 April, the US domestic legal requirements would make compliance within the agreed time-period impossible. In order to clarify this, he requested that the United States inform the DSB, in chronological order, of any additional steps that might be required under its domestic law for the implementation of the DSB's recommendations, and the time required for each step. This would help to appreciate the situation between the publication of the proposed rule in the Federal Register and the 20 August deadline.

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

2. Indonesia - Certain measures affecting the automobile industry
- Request for the establishment of a panel by Japan (WT/DS55/6 - WT/DS64/4)

The Chairman drew attention to the communication from Japan in document WT/DS55/6 - WT/DS64/4 which contained its request for a panel.

The representative of Japan said that on 4 October 1996, his country had requested consultations with Indonesia pursuant to Article XXII:1 of GATT 1994, with regard to the so-called "National Car Programme" of Indonesia's Government. On 29 November 1996, Japan had requested additional consultations on the same matter pursuant to the relevant provisions of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). Japan had claimed that the measures in questions were inconsistent with the WTO Agreement, in particular Articles I:1, III:2 and 4, X:1 and X:3(a) of GATT 1994, Article 2 of the Agreement on Trade-Related Investment Measures (TRIMs Agreement) and Articles 3.1(b) and 28.2 of the SCM Agreement. It had strongly requested Indonesia to bring the said measures into conformity with the WTO Agreement.

Since these requests for consultations had been made the two parties had held several consultations, in addition to a number of intensive bilateral contacts aimed at finding a mutually satisfactory solution to this matter. However, to date, Japan had found that these efforts had unfortunately failed to settle this dispute. Consequently, his delegation requested the establishment of a panel with standard terms of reference to examine this matter.

Japan understood perfectly that Indonesia desired to build its own automotive industry. However, such a policy should be carried out in accordance with Indonesia's rights and obligations under the WTO Agreement. It was Japan's understanding that a request for the establishment of a panel did not preclude further consultations on this matter. If Indonesia so wished, Japan was prepared to continue efforts towards a satisfactory solution to the matter.

The representative of Indonesia said that her country did not agree to the establishment of a panel at the present meeting. Indonesia regretted that Japan had decided not to continue the sincere efforts to resolve the matter through consultations. Indonesia was convinced that its "National Car Programme" was consistent with its WTO obligations and, if necessary, it would prove this in the panel proceedings.

The representative of the European Communities said that the Communities also had serious concerns with regard to whether the measures taken by Indonesia were compatible with the WTO Agreement. The Communities, which had held consultations on this matter with Indonesia², supported Japan's request for a panel.

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

3. Brazil - Measures affecting imports of textiles from Hong Kong
- Statement by Hong Kong

The representative of Hong Kong, speaking under "Other Business" said that Article 3.6 of the DSU provided that mutually agreed solutions to matters formally raised under the dispute settlement provisions of the covered agreements be notified to the DSB. At the present meeting, Hong Kong wished to report on the status of its dispute with Brazil which had been taken up by the Textiles Monitoring Body (TMB) under the Agreement on Textiles and Clothing (ATC). To date, no mutually

²WT/DS54/1.

agreed solution had emerged from the TMB's recommendations. A mutually agreed solution depended on Brazil's response.

He recalled that in June 1996, Brazil had imposed unilateral restrictions on certain textile fabrics from Hong Kong pursuant to Article 6.11 of the ATC. Hong Kong had not agreed with the justification of the restrictions and consequently the matter was referred to the TMB for examination. In its report, issued in November 1996, the TMB had found that serious damage to the Brazilian industry in question could be demonstrated and that this damage could be attributed in part to imports from Hong Kong. The TMB, however, had not found that Brazil's action was justified under Article 6.11 of the ATC, which provided for provisional measures in highly unusual and critical circumstances.

The TMB had recommended that Brazil rescind the measure at the latest by 31 December 1997, i.e. 19 months after its imposition rather than the three-year period envisaged under Article 6.12 of the ATC. Brazil had informed the TMB that it would endeavour to accept in full the recommendations of the TMB, but had reserved its rights under Article 6.12 of the ATC, i.e. to preserve the option of maintaining the measure for three years rather than the maximum of 19 months recommended by the TMB.

Hong Kong had informed the TMB that it had been unable to accept the recommendations and the TMB had considered the matter further in accordance with Article 8.10 of the ATC. This Article also provided for invocation of paragraph 2 of Article XXIII of GATT 1994 if such further considerations did not resolve the matter. It had been Hong Kong's main contention that the data provided by Brazil to justify the restrictions had been mostly related to a broad industry, some hundred times bigger than the particular industry producing the products in question. This ran contrary to the requirements of the ATC.

Following its further consideration in February and March 1997, the TMB had agreed with Hong Kong's main contention that a determination of serious damage could not be made almost entirely by reference to inferences drawn from the data that were not specific to the particular industry in question, a point of principle to which Hong Kong attached great importance. The TMB had not conducted a fresh examination with a view to establishing whether serious damage could be demonstrated based on the limited amount of product-specific information provided by Brazil. However, it had observed that there had been indications that the Brazilian industry producing fabrics of category 618 had already undertaken important restructuring and adjustment. In this context, the TMB had recalled that it had recommended to Brazil that the measure taken against imports from Hong Kong should be rescinded at the latest by 31 December 1997. It was Hong Kong's understanding that the spirit of the TMB's report was that Brazil was expected to rescind the measure earlier than that date. Hong Kong had anticipated that Brazil would rescind the measure in good time. The status of the dispute between Brazil and Hong Kong was that his authorities were still awaiting a response from Brazil. Hong Kong might need to revert to this dispute at a future meeting of the DSB. If so, he hoped that this would be a notification under Article 3.6 of the DSU.

The representative of Brazil provided a brief summary of the background of the issue raised by Hong Kong in order to help Members to have a better understanding of Brazil's position. As stated in document G/TMB/9, dated 8 November 1996, which contained an examination of the transitional safeguard applied by Brazil on 1 June 1996 with regard to imports of products of category 618 (woven artificial filament fabric) from Hong Kong, the TMB had reached the following conclusions: "(a) serious damage to the industry producing products of category 618, caused by increased quantities in total imports of these products, could be demonstrated; (b) the serious damage experienced by the Brazilian industry could be attributed in part to imports from Hong Kong in accordance with paragraph 4 of Article 6" of the ATC.

However, in light of what the TMB had seen as indications of "restructuring and adjustment" on the part of the Brazilian industry that produced products of category 618, the TMB had recommended that Brazil rescind the transitional safeguard at the latest by 31 December 1997, a year and a half after the measure had come into effect. In the same report, the TMB had also recommended that Brazil rescind a transitional safeguard applied to imports of products of category 838 (men's and boy's shirts, knitted or crocheted, of other textile materials) from Hong Kong.

On 28 November 1996, in a letter addressed to the Chairman of the TMB, Brazil had informed the TMB that it would endeavour to accept in full the recommendations concerning the transitional safeguards applied to imports of products of categories 618 and 838 from Hong Kong. Brazil had also reserved its rights under Article 6.12 of the ATC in relation to such recommendations. On 2 December 1996, Hong Kong had informed the TMB that it had been unable to conform with the recommendations concerning products of category 618 and had asked the TMB, in accordance with Article 8.10 of the ATC, for further recommendations. In March 1997, the TMB had concluded a new review of the matter and "did not consider it appropriate to revise its recommendations adopted in November 1996 or to issue further recommendations", as stated in document G/TMB/R/26. Brazil had already rescinded the transitional safeguard on imports of products of category 838 from Hong Kong. With regard to products of category 618, taking into consideration the TMB's recommendations, and in light of its rights and obligations under the ATC, his country was carefully following developments in the industry producing these products.

The DSB took note of the statements.

4. United States - Measures affecting imports of woven wool shirts and blouses from India: Appellate Body Report
- Statement by the Chairman

The Chairman, speaking under "Other Business", said that the Appellate Body Report on "United States - Measure Affecting Imports of Woven Wool Shirts and Blouses from India" had been circulated on 25 April 1997 in document WT/DS33/AB/R. Pursuant to Article 17.14 of the DSU "an Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members". He noted that the 30-day period in this case would expire on 24 May. However, the next regular meeting of the DSB was scheduled for 28 May. In accordance with footnote 8 of Article 17.14 of the DSU, if a meeting of the DSB was not scheduled during the 30-day period, such a meeting of the DSB shall be held for this purpose. Therefore, he proposed that the DSB agree to hold its next regular meeting on 23 May instead of 28 May in order to consider the adoption of the Appellate Body Report and the Panel Report within the time-period required under Article 17.14 of the DSU, and thus avoid convening two DSB meetings within a five-day period. If agreed, the deadline for inscription of items on the agenda would be Monday, 12 May at 6 p.m. and the airgram convening the meeting would be issued on Tuesday, 13 May.

The DSB took note of the statement and agreed to the Chairman's proposal.