

Dispute Settlement Body
10 December 2001

MINUTES OF MEETING

Held in the Centre William Rappard
on 10 December 2001

Chairman: Mr. R. Farrell (New Zealand)

1. Romania – Import prohibition on wheat and wheat flour

(a) Request for the establishment of a panel by Hungary (WT/DS240/2)

1. The Chairman drew attention to the communication from Hungary contained in document WT/DS240/2.

2. The representative of Hungary said that in August 2001, through the Joint Decree of the Ministry of Agriculture, Food Industry and Forestry No. 119069 (16.07.2001), Ministry of Family and Health No. 495 (18.07.2001) and the National Consumer Protection Authority No. 1/3687 (19.07.2001), Romania had prohibited the import of wheat and wheat flour which did not meet certain quality requirements established by the Decree. In other words, if foreign products did not meet all the requirements listed in the Joint Decree, their import would be prohibited. Hungary believed that it was impossible to meet all the quality requirements because Romania had established unrealistically high standards. Hungary considered that the measure had been imposed in a manner inconsistent with Romania's obligations under Article XI:1 of GATT 1994. Moreover, domestically-produced products were not subject to the same quality requirements. Therefore, the measure was also in breach of Article III:4 of GATT 1994.

3. In a letter dated 4 September 2001, Hungary had asked Romania to provide detailed information on the measure, and in particular on its WTO justification. However, no response had been provided thus far. Bilateral attempts to obtain some explanation and justification had not been answered. Therefore, in a letter dated 30 October 2001¹, Hungary had requested consultations with Romania, pursuant to Article 4.8 of the DSU. Hungary had indicated that if the consultations failed to settle the dispute within a period of 20 days after the date of receipt of the request for consultations, it would request the establishment of a panel. He noted that consultations, which had been held on 10 November 2001 in Doha, had not resulted in a mutually satisfactory solution. Romania had promised to eliminate the measure by 23 November 2001, during the session of the Government. Unfortunately, to Hungary's knowledge, this had not been done.

4. The products concerned accounted for a substantial part of Hungary's total agricultural exports to Romania. For example, in the year 2000, they represented 23 per cent. In the first seven months of the current year, prior to the import prohibition being introduced, the share was 24 per cent. Since August 2001, Hungary's exports of the products in question ceased. Articles III and XI of GATT 1994 were the most fundamental rules upon which the multilateral trading system was based. The blatant disregard of the basic rules and the resulting disruption of trade was a very serious issue

¹ WT/DS240/1/Add.1.

threatening and challenging the multilateral trading system. Hungary's concern was further aggravated by the lack of Romania's attempt until now to try to justify such a serious violation of rules and to remedy the situation. Due to critical circumstances resulting from the imposition of the measure: i.e. the blockage of all Hungarian exports of the products concerned to Romania, Hungary had invoked the urgency procedure of the DSU and had requested that a panel be established pursuant to Articles 6 and 4.8 of the DSU with standard terms of reference to examine the consistency of the measure at issue with WTO rules. Taking into account the inconsistency of the measure with fundamental WTO obligations, the severe economic and trade losses caused to Hungarian farmers and exporters and the seasonal character of the measure, Hungary had invoked Article 4.9 of the DSU. Thus, Hungary expected the panel to accelerate its proceedings to the greatest extent possible, in accordance with Article 4.9 of the DSU.

5. The representative of Romania drew attention to the fact that the date of the Joint Decree referred to by Hungary at the present meeting was July, not August 2001. Romania noted Hungary's request for the establishment of a panel as well as the statement made by Hungary at the meeting. In this regard, Romania wished to raise a number of points. On 18 October 2001, Romania had received Hungary's request for consultations pursuant to Article 4 of the DSU regarding the Joint Decree of the Ministry of Agriculture, Food Industry and Forestry, Ministry of Family and Health and the National Consumer Protection Authority, establishing certain quality requirements for wheat and wheat flour. In that request, no reference had been made to this being a matter of urgency.

6. In accordance with the provisions of Article 4.3 of the DSU, Romania had responded in time – on 26 October 2001 – to Hungary's request and had proposed that consultations be held on 19 November 2001. The reason for this proposal had been explained to Hungary and had been justified by a number of events taking place at the same period, including the Fourth Ministerial Conference in Doha. On 30 October 2001, Hungary had made a new request for urgent consultations, pursuant to Article 4.8 of the DSU regarding the same Joint Decree. Acting in good faith, Romania had responded on 2 November 2001 to this new request. Romania had stated that by invoking Article 4.8 of the DSU in response to a proposal for a date for consultations under Article 4.3 of the DSU, instead of proposing another date for consultations, Hungary had made a substantial change concerning the conditions under which the initial request for consultations had been made. The representative of Romania noted that Romania had responded positively and in due time to the initial request for consultations.

7. In its response on 2 November 2001, Romania had reiterated its initial proposal to hold consultations under Article 4.3 of the DSU. Romania had never agreed with Hungary's approach that this was a matter of urgency. Moreover, the procedure of making reference to Article 4.8 of the DSU, which allowed Members to ask for expeditious procedures, had never been a matter of consultations. Similarly, Romania had never agreed and would not agree to Hungary's invocation of Article 4.8 of the DSU. The consultations held on 10 November 2001 in Doha, as suggested by Hungary, had been held at the level of Secretaries of State. Romania had accepted Hungary's proposal for convenience and not as an admission of the urgency of the matter. The issue of urgency had never been discussed during the consultations and Romania had never perceived or agreed that those consultations had been held under Article 4.8 of the DSU, but as an initial round of consultations under Article 4.3 of the DSU. During the consultations held in Doha, it had been agreed that further consultations on expert level should be held by the Chiefs of the Hungarian and Romanian delegations to the Ministerial Conference in Doha.

8. Another round of consultations between the representatives of the parties had been held on 16 November 2001 in Bucharest. Like in Doha, the matter of an urgent procedure under Article 4.8 of the DSU had not been referred to during the consultations. At that time, Romania had given assurances to Hungary that a mutually satisfactory solution was not far away. It had been and still was Romania's understanding that bilateral contacts had not yet been terminated. Romania regretted that this case was now going in the direction of litigation instead of bilateral settlement. Romania was

surprised that Hungary had chosen to proceed in this way despite bilateral discussions and the assurances given by Romania with a view to finding a mutually satisfactory solution. Romania urged Hungary to reconsider its decision and to agree to continue consultations and discussions rather than litigation. For all these reasons, and in order to allow time to put into practice a satisfactory solution, Romania considered that Hungary's request for establishment of a panel was not justified and not acceptable. Romania wished, therefore, to oppose the establishment of a panel. It hoped that this matter could be resolved without unnecessary resort to the dispute settlement mechanism and it remained open to finding a solution through bilateral consultations.

9. The representative of the United States said that in the view of the United States, pursuant to Article 4.7 of the DSU, a panel request generally could not be made until a period of 60 days from the date of receipt of the request for consultations had elapsed unless: (i) the consulting parties jointly considered that consultations had failed to settle the matter; or (ii) the parties had agreed that a case of urgency existed pursuant to Article 4.8 of the DSU. In this instance, Hungary appeared not to have claimed that the dispute was a case of urgency at the time that it had requested consultations. It was not clear what basis there was under Article 4 of the DSU for claiming after the fact that a dispute was a case of urgency. Furthermore, there was no agreement between the parties to this dispute that this was a case of urgency. The United States believed that the parties had to be in agreement that circumstances justified the urgency of a request for expedited consultation under Article 4.8 of the DSU with the attendant possibility of an expedited panel request and shortened panel and Appellate Body proceedings. The DSU did not state that a complaining party might obtain expedited consultations and establishment of a panel and obtain the benefit of shortened proceedings before the panel and Appellate Body, based solely on the complaining party's claim of urgency. The United States noted that some delegations had suggested in the DSU review an amendment to the DSU to explicitly authorize a complaining party to obtain on its own, without the consent of the responding party, the benefits of Articles 4.8 and 4.9 of the DSU. That proposal, however, had not been accepted.

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