WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/233
25 June 2007

(07-2661)

Dispute Settlement Body
4 June 2007

MINUTES OF MEETING

Held in the Centre William Rappard
on 4 June 2007

Chairman: Mr. Bruce Gosper (Australia)

Subjects discussed: Page

1. United States – Sunset reviews of anti-dumping measures on oil country tubular goods from Argentina

(a) Recourse to Article 22.2 of the DSU by Argentina (WT/DS268/24)

1. The Chairman drew attention to the communication from Argentina contained in document WT/DS268/24, and invited the representative of Argentina to speak.

2. The representative of Argentina said that his country had come twice before the DSB regarding the measures imposed against the OCTG from Argentina. The first time, it had been in connection with the first sunset review of the order, and then, Argentina had succeeded on its claim that the measure maintained by the United States was inconsistent with the Anti-Dumping Agreement. The second time, it had challenged the Section 129(b) determination made by the United States in connection with the implementation of the DSB's recommendations in the first case, and Argentina had succeeded once again, and the measure taken to comply had been accordingly declared to be WTO-inconsistent as well. In accordance with the mutual agreement on sequencing signed in 2006, and pursuant to Article 22.2 of the DSU, Argentina had requested on 24 May 2007, authorization from the DSB to suspend concessions, until the United States fully implemented the DSB's recommendations, as it had declared at the 11 May DSB meeting that it was its intention to do so.

3. Between Argentina's request then, and the present meeting, Argentina had noted that on 31 May 2007 the US International Trade Commission (USITC) had voted negatively on the issue of whether the revocation of the order would lead to the continuation or recurrence of injury. That was really good news, and Argentina celebrated it. On 1 June, the United States had filed its objection to the level of suspension of concessions requested by Argentina, thus having the matter referred to arbitration, pursuant to Article 22.6 of the DSU as a consequence. While Argentina remained firmly determined to keep arguing its case, at each and every stage provided for by the DSU, it was truly optimistic that following the vote in the USITC, the US Department of Commerce would, at last, proceed to revoke the order imposed on Argentina in 1995, the main objective of the actions pursued by Argentina throughout those years to date.

4. The representative of the United States said that, on 21 May 2007, Argentina had requested that the DSB authorize it to suspend tariff concessions and related obligations under the GATT 1994. On 1 June 2007, the United States had objected to the level of suspension of concessions or other obligations proposed by Argentina. The United States and Argentina agreed that the matter had been thereby referred to arbitration pursuant to Article 22.6 of the DSU. While the parties had, on 1 June 2007, already asked the Secretariat to contact the original panelists to determine their availability to serve as the Arbitrator, the United States believed it would not prove necessary to complete this arbitration. That was because on 31 May 2007, the US International Trade Commission had made a negative determination of likelihood of continuation or recurrence of injury in its sunset review concerning Oil Country Tubular Goods from Argentina. The anti-dumping order would therefore be revoked. The United States looked forward to continuing to cooperate with Argentina to resolve this matter.

5. The DSB took note of the statements and the agreement of the parties that the matter raised by the United States in WT/DS268/25 has been referred to arbitration, as required by Article 22.6 of the DSU.

2. United States – Continued existence and application of zeroing methodology

(a) Request for the establishment of a panel by the European Communities (WT/DS350/6)

6. The Chairman recalled that the DSB had considered this matter at its meeting on 22 May 2007, and had agreed to revert to it. He drew attention to the communication from the European Communities contained in document WT/DS350/6, and invited the representative of the European Communities to speak.

7. The representative of the European Communities said that, as Members were aware, this was the second request for a panel in the present case. The EC had explained, in some detail, at the 22 May 2007 DSB meeting, the reasons behind the current request and would not repeat them in detail at the present meeting. It sufficed to note that the Appellate Body had established a consistent line of interpretation of the provisions at issue, from which the United States had refused to draw the inevitable consequences. The EC would have preferred to avoid a further dispute, but in these circumstances it had no alternative other than to confirm, at the present meeting, its request for the establishment of a panel.

8. The representative of the United States said that, as his delegation had previously noted in the DSB, the United States was no longer performing average-to-average comparisons in anti-dumping investigations without offsets. In addition, the United States was considering the issue of zeroing in assessment reviews in the context of a separate dispute. The reasonable period of time in that dispute would end on 24 December 2007. While the United States understood that a panel would be established at the present meeting, it continued to consider that the EC's request was premature. The

United States would also note that the EC's panel request included a number of assessment reviews and sunset reviews that had not been consulted upon.

9. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

10. The representatives of the India, Japan, Mexico and Chinese Taipei reserved their third-party rights to participate in the Panel's proceedings.

3. India – Additional and extra-additional duties on imports from the United States

(a) Request for the establishment of a panel by the United States (WT/DS360/5)

11. The Chairman drew attention to the communication from the United States contained in document WT/DS360/5, and invited the representative of the United States to speak.

12. The representative of the United States said that, as described in the US panel request of 24 May 2007, the United States was concerned with an additional duty and an extra additional duty that India imposed on imports from the United States, in particular on imports of wine and distilled spirits. The additional duty and extra additional duty, individually and in combination, subjected imports of the United States to ordinary customs duties or other duties or charges in excess of those in India's WTO Tariff Schedule. The United States, therefore, considered that each of the additional duty and the extra additional duty was inconsistent with Article II:1(a) and (b) of the GATT 1994. India and the United States had held consultations on these issues on 13 April 2007, but unfortunately, those consultations had failed to resolve the US concerns. Accordingly, the United States requested that the DSB establish a panel to examine these matters, pursuant to Article 6 of the DSU, with standard terms of reference. And, finally, the United States noted that, on 24 April 2007, the DSB had established a panel to consider the EC's claims with respect to the additional duty and extra additional duty on wine and distilled spirits. In this connection, the United States called attention to Article 9.3 of the DSU. Pursuant to that provision, to the greatest extent possible, the panelists in the US and EC disputes shall be the same, and the time-table in each dispute shall be harmonized, as had recently been done in the disputes brought separately by Thailand and India relating to certain US measures on shrimp (DS343 & DS345).

13. The representative of India said that her country had received the US request for the establishment of a panel. India considered it very unfortunate and disappointing that the United States had chosen to pursue this matter by requesting the establishment of a panel. Both India and the United States had had constructive and effective consultations in Geneva during April 2007 and several issues that had been thrown up during these consultations had been discussed by the parties. Both sides had agreed to work for a mutually acceptable solution to resolve the issues discussed during the consultations. In addition, India was seriously considering to take steps to resolve the issues so that a mutually acceptable solution could be reached between the parties. The US panel request was thus premature and India could not agree to the establishment of a panel at the present meeting. Therefore, India rejected the US request for the establishment of a panel.

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