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Dispute Settlement Body
25 January 2017

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 25 JANUARY 2017

Chairman: Mr. Xavier Carim (South Africa)

Prior to the adoption of the Agenda, the Chairman welcomed Mr. John Adank, the new Director of the Legal Affairs Division.

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B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.143)

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.106)

1.1. The Chairman noted that there were three sub-items under the Agenda item concerning status reports submitted by delegations pursuant to Article 21.6 of the DSU. He recalled that Article 21.6 required 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 and shall remain on the DSB's Agenda until the issue is resolved". Under this Agenda item, the Chairman invited delegations to provide up-to-date information about compliance efforts and to focus on new developments, suggestions and ideas on progress towards the resolution of disputes. He also reminded delegations that, as provided for in Rule 27 of the Rules of Procedure for DSB meetings: "Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record". He then turned to the first status report under this Agenda item.

A. United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.168)

1.2. The Chairman drew attention to document WT/DS184/15/Add.168, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

1.3. The representative of the United States said that the United States had provided a status report in this dispute on 12 January 2017, in accordance with Article 21.6 of the DSU. The United States had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue. With respect to the recommendations and rulings of the DSB that had yet to be addressed, the US Administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

1.4. The representative of Japan thanked the United States for its statement and its status report submitted on 12 January 2017. Japan referred to its previous statements on this matter and hoped that this issue would be resolved as soon as possible under the new US Administration.

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

B. United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.143)

1.6. The Chairman drew attention to document WT/DS160/24/Add.143, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

1.7. The representative of the United States said his country had provided a status report in this dispute on 12 January 2017, in accordance with Article 21.6 of the DSU. The US Administration

would continue to confer with the European Union, and to work closely with the US Congress, in order to reach a mutually satisfactory resolution of this matter.

1.8. The representative of the European Union thanked the United States for its status report and its statement made at the present meeting. The EU referred to its previous statements on this matter and said that it would wish to resolve this dispute as soon as possible.

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

C. European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Union (WT/DS291/37/Add.106)

1.10. The Chairman drew attention to document WT/DS291/37/Add.106, which contained the status report by the European Union on progress in the implementation of the DSB's recommendations in the case concerning measures affecting the approval and marketing of biotech products.

1.11. The representative of the European Union said that the draft authorisation decision for one GM maize, for food and feed uses, would be submitted for a vote at the member States Committee on 27 January 2017. There had not been any further developments since the previous regular DSB meeting held on 16 December 2016. The EU continued to be committed to acting in line with its WTO obligations. But more generally, and as had been stated many times before, the EU recalled that the EU approval system was not covered by the DSB's recommendations and rulings.

1.12. The representative of the United States said his country thanked the EU for its status report and its statement made at the present meeting. The EU measures affecting the approval and marketing of biotech products continued to be characterized by lengthy, unpredictable, and unexplained delays in approvals. For example, the EU's scientific review process had slowed in recent years. Many corn and soybean products had now been under consideration by the EU's scientific authority for several years. Furthermore, the EU had recently proposed regulations that created more, rather than less, uncertainty with regard to the information required for scientific evaluation of biotech products. The delays in approvals caused adverse effects on trade, particularly with respect to soybeans and corn. The United States encouraged the EU to ensure that products in the biotech approval pipeline moved forward in a timely manner, as was required by EU regulations and WTO rules.

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

2 UNITED STATES – CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

A. Statement by the European Union

2.1. The Chairman said that this item was on the Agenda of the present meeting at the request of the European Union, and he invited the representative of the European Union to speak.

2.2. The representative of the European Union said that his delegation requested, once again, that the United States stop transferring anti-dumping and countervailing duties to the US industry. Every disbursement that still took place was clearly an act of non-compliance with the DSB's recommendations and rulings. The EU renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU to submit status reports regarding implementation in this dispute. The EU would continue to place this matter on the Agenda for as long as the United States had not implemented the WTO ruling.

2.3. The representative of Brazil said that his country thanked the European Union for keeping this item on the Agenda of the DSB. As an original party to the Byrd Amendment dispute, Brazil referred to its previous statements on this matter. In particular, Brazil referred to its statements regarding the continuation of illegal disbursements, which should cease immediately. Brazil renewed its calls on the United States to fully comply with the DSB's recommendations and rulings

in this dispute. Until then, the United States was under an obligation to submit status reports, pursuant to Article 21.6 of the DSU.

2.4. The representative of Canada said his country thanked the EU for keeping this item on the Agenda of the DSB. Canada agreed that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

2.5. The representative of China said her country thanked the EU for placing this item on the Agenda of the present meeting. China urged the United States to fully implement the DSB's recommendations and rulings on this matter as soon as possible.

2.6. The representative of the United States said that, as the United States had noted at previous DSB meetings, the Deficit Reduction Act – which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 – had been enacted into law in February 2006. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that the EU had acknowledged that the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007, over nine years ago. Nevertheless, the EU continued to request status reports in this matter. As it had already explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports which would repeat, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. Indeed, as the EU had demonstrated repeatedly when it had been a responding party in another dispute, such as in the "EC – Large Civil Aircraft" dispute, there was no obligation under the DSU to provide further status reports once a Member announced that it had implemented those DSB recommendations and rulings, regardless of whether the complaining party disagreed about compliance.

2.7. The DSB took note of the statements.

3 CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. Statement by the United States

3.1. The Chairman said that this item was on the Agenda of the present meeting at the request of the United States and he invited the representative of the United States to speak.

3.2. The representative of the United States said the DSB had adopted its recommendations in this dispute in August 2012, and the reasonable period of time had long since expired. China had issued a regulation several months before that purported to set out a licensing application process for foreign electronic payment services (EPS) suppliers. However, the only entity authorized to provide EPS in China remained a business set up by the People's Bank of China and other Chinese Government-related entities. The United States urged China to ensure that foreign EPS suppliers could apply for and receive permission to operate in China, in accordance with China's WTO obligations.

3.3. The representative of China said her country regretted that the United States had, once again, brought this matter before the DSB. China referred to its statements made at previous DSB meetings and emphasized that it had taken all necessary actions and had fully implemented the DSB's recommendations and rulings in this dispute. China also reiterated that the regulation mentioned by the United States was not relevant to the implementation of the DSB's recommendations and rulings. Nor was the DSB meeting an appropriate forum to discuss China's domestic regulatory action which was irrelevant to this specific dispute.

3.4. The DSB took note of the statements.

4 CHINA – DOMESTIC SUPPORT FOR AGRICULTURAL PRODUCERS

A. Request for the establishment of a panel by the United States (WT/DS511/8)

4.1. The Chairman recalled that the DSB had considered this matter at its meeting on 16 December 2016 and had agreed to revert to it. He drew attention to the communication from

the United States contained in document WT/DS511/8, and invited the representative of the United States to speak.

4.2. The representative of the United States said that, as explained at the 16 December 2016 DSB meeting, the United States was concerned that China provided domestic support for agricultural producers at a level in excess of the commitments it had agreed to when it joined the WTO. In particular, the United States was concerned that China's market-price support for wheat, rice, and corn each exceeded China's permissible level of domestic support for agricultural producers. The US panel request specified the US claims under the Agreement on Agriculture. The United States therefore requested, again, that the DSB establish a panel to examine the matter set out in the US panel request, with standard terms of reference.

4.3. The representative of China said her country regretted the US request for the establishment of a panel. China was particularly disappointed by the US unprecedented and unjustified step to challenge China's legitimate and WTO-consistent domestic support with respect to vital agricultural staples including Indica rice, Japonica rice, wheat and corn. Indeed, it was a well-recognized international practice, supported by WTO rules, that WTO Members had the right to provide necessary and essential support to their respective domestic agricultural sectors. China said it would strongly defend its interests and demonstrate the WTO-consistency of its measures before the panel.

4.4. 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.

4.5. The representatives of Australia, Brazil, Canada, Colombia, the European Union, Egypt, El Salvador, India, Indonesia, Japan, Kazakhstan, Korea, Norway, Pakistan, Paraguay, the Philippines, the Russian Federation, Saudi Arabia, Singapore, Chinese Taipei, Thailand, Turkey and Viet Nam reserved their third party rights to participate in the Panel's proceedings.

5 MOROCCO – ANTI-DUMPING MEASURES ON CERTAIN HOT-ROLLED STEEL FROM TURKEY

A. Request for the establishment of a panel by Turkey (WT/DS513/2)

5.1. The Chairman drew attention to the communication from Turkey contained in document WT/DS513/2, and he invited the representative of Turkey to speak.

5.2. The representative of Turkey welcomed Turkey's request for the establishment of a panel on the Agenda of the present meeting. He recalled that on 26 September 2014, Morocco had imposed definitive anti-dumping duties on imports of certain hot-rolled steel from, *inter alia*, Turkey. These duties applied to two large Turkish exporters and had already had significant effects on Turkish exports of this product. Turkey had consulted with Morocco in order to address the fundamental deficiencies of the definitive measure. Turkey's concerns related in particular to: (i) the duration of the investigation – which had exceeded 18 months; (ii) the arbitrary use of facts available in the dumping calculation; (iii) the lack of sufficient disclosure in the essential facts letter; (iv) the unsubstantiated finding of material retardation; and (v) the trade-restrictive system for import surveillance. Notwithstanding the efforts made by Turkey to avoid a formal dispute under the DSU, Morocco had failed to heed its concerns regarding the infirmities of the definitive measure. On 3 October 2016, Turkey had requested consultations with Morocco in accordance with Article 4 of the DSU. Consultations had been held on 18 and 28 November 2016. Unfortunately, however, these consultations had failed to resolve the dispute. Turkey had hoped that this matter could have been resolved without the need to resort to a panel. Turkey hoped that it still may be possible to resolve this matter. However, while maintaining an open and cooperative attitude, Turkey also had to preserve its rights under the Anti-Dumping Agreement. Turkey, therefore, requested the DSB to establish a panel, with standard terms of reference, to address the matter set out in its panel request.

5.3. The representative of Morocco said that his delegation regretted Turkey's decision to request the establishment of a panel in the DS513 dispute. Morocco considered that the anti-dumping duty imposed on imports of certain hot-rolled steel from Turkey on 26 September 2014, and notified to the Committee on Anti-Dumping Practices in G/ADP/N/265/MAR on 13 March 2015, were

consistent with its obligations under Article VI of the GATT 1994 and the Anti-Dumping Agreement. Following an objective investigation, Morocco's competent authorities had concluded that imports of certain hot-rolled steel from Turkey were being dumped and caused injury to the domestic industry producing like products. Morocco, therefore, had the right to impose anti-dumping measures on these imports. Morocco had engaged in substantive and constructive consultations with Turkey in an effort to reach an amicable settlement consistent with its rights under the WTO Agreement. At the present meeting, Morocco objected to the establishment of the panel and believed that the two countries could reach a diplomatic settlement of this dispute through further bilateral consultations.

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

6 CANADA – ANTI-DUMPING MEASURES ON IMPORTS OF CERTAIN CARBON STEEL WELDED PIPE FROM THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

A. Report of the Panel (WT/DS482/R and WT/DS482/R/Add.1)

6.1. The Chairman recalled that, at its meeting on 10 March 2015, the DSB had established a Panel to examine the complaint by Chinese Taipei pertaining to the DS482 dispute. The Report of the Panel, contained in document WT/DS482/R and Add.1 had been circulated on 21 December 2016 as an unrestricted document. The Panel Report was now before the DSB for adoption at the request of Chinese Taipei. This adoption procedure was without prejudice to the right of Members to express their views on the Panel Report.

6.2. The representative of Canada said his country thanked the Panel and the Secretariat for the time and effort that they had devoted to the DS482 dispute. Canada welcomed the Panel's finding that Chinese Taipei had failed to establish that Canada had not undertaken a proper non-attribution analysis. In particular, Canada welcomed the Panel's rejection of Chinese Taipei's argument that the Anti-Dumping Agreement required an investigating authority to distinguish the effect of subsidization from the effect of dumping in respect of goods that were both subsidized and dumped. However, Canada regretted certain aspects of the Panel's findings. However, taking into account the burden currently placed on the Appellate Body, including the backlog of cases in the dispute settlement system, Canada decided not to appeal the Panel Report. In summary, while Canada did not agree with all of the findings of the Panel, it accepted the Report. Pursuant to Article 21.3 of the DSU, Canada would inform the DSB of its intentions in respect of implementation of the DSB's recommendations and rulings within the next 30 days.

6.3. The representative of Chinese Taipei said his country thanked the Panel and the WTO Secretariat for their dedication and hard work throughout the proceedings. Chinese Taipei also thanked Canada and the third parties for their constructive participation and appreciated all the time and effort everyone had dedicated to resolving the DS482 dispute. In its Report, circulated on 21 December 2016, the Panel had confirmed that Canada's anti-dumping measures on carbon steel welded pipe and certain provisions of Canada's anti-dumping legislation were inconsistent with multiple WTO Agreements. The outcome of this dispute was significant, not only because it meant the end of unfair treatment towards Chinese Taipei's exporters of carbon steel welded pipe to Canada, but also because of the systemic effects of some of the Panel's findings. Indeed, some of the findings effectively required Canada to modify its anti-dumping practices. This dispute involved multiple challenges concerning provisional and definitive anti-dumping measures imposed by Canada on imports of certain carbon steel welded pipe. In particular, Chinese Taipei welcomed the Panel's findings that Canada had acted inconsistently with Article 5.8 of the Anti-Dumping Agreement by failing to immediately terminate the investigation with respect to individual exporters whose final margins of dumping had been found to be *de minimis*. The Panel had concluded that the second sentence of Article 5.8 referred to the margin of dumping established for each producer or exporter individually, rather than a country-wide margin of dumping. The Panel had also found that Canada had acted inconsistently with Article 9.2 of the Anti-Dumping Agreement by imposing definitive anti-dumping duties on imports from Chinese Taipei's exporters with final *de minimis* margins of dumping. The Panel further agreed that the volumes of exports from these exporters should not have been included in the injury and causation analyses. Consequently, Chinese Taipei welcomed the Panel's decision that Canada's treatment of these exporters had violated the relevant provisions of the Anti-Dumping Agreement and the GATT 1994.

6.4. The Panel had also found that Canada's treatment of non-cooperative exporters was inconsistent with Article 6.8 and Annex II of the Anti-Dumping Agreement. In this regard, Canada had been using the highest dumping margin, based on a single transaction, from a cooperative exporter, from a third country, for the imposition of anti-dumping duties – with no comparative assessment or logical relationship to the rate established for Chinese Taipei's exporters. Furthermore, with respect to Chinese Taipei's claim under Article 9.3, which concerned the imposition of anti-dumping duties on new product models or types from investigated and cooperative exporters, the Panel had emphasised the fundamental link between the dumping margin determined for a specific exporter and the maximum amount of anti-dumping duty applicable to that exporter – even for new product models or types. Thus, Chinese Taipei stood by the Panel's conclusion that resorting to facts available and applying anti-dumping duties on imports of new products models or types based on the all others rates, violated Article 9.3, Article 6.8 and Annex II of the Anti-Dumping Agreement. Finally, Chinese Taipei was pleased that the Panel had upheld its claims that multiple provisions of Canadian law, concerning the treatment of exporters with final *de minimis* dumping margins, were "as such" inconsistent with provisions of the Anti-Dumping Agreement, the GATT 1994 and the Marrakesh Agreement. Chinese Taipei invited Canada to take all the necessary steps to promptly and fully implement the Panel's recommendations and rulings. In its view, the necessary steps towards full compliance would be for Canada to withdraw, in a timely manner, its anti-dumping measures on imports of certain carbon steel welded pipe products originating from Chinese Taipei, and to amend its anti-dumping legislation to comply with the Panel's rulings and recommendations. Chinese Taipei therefore requested that the DSB adopt the Panel Report in the DS482 dispute and sought Canada's cooperation to resolve this dispute, as soon as possible.

6.5. The DSB took note of the statements and adopted the Panel Report contained in WT/DS482/R and Add.1.

7 PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS (WT/DSB/W/587)

7.1. The Chairman drew attention to document WT/DSB/W/587, which contained additional names proposed by Korea and Singapore for inclusion on the Indicative List of Governmental and Non-Governmental Panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/587.

7.2. The DSB so agreed.

8 APPELLATE BODY MATTERS

A. Statement by the Chairman

8.1. The Chairman recalled that the second four-year term of Mr. Ricardo Ramírez Hernández would expire on 30 June 2017. Also, the second four-year term of Mr. Peter Van den Bossche would expire on 11 December 2017. Pursuant to Article 17.2 of the DSU, they would not be eligible for reappointment. Accordingly, as had been announced at the DSB meeting on 16 December 2016, the DSB would have to decide on the appointments of two new Appellate Body members to replace them. It was therefore the Chairman's intention to outline two possible approaches for a new selection process to fill these two upcoming vacancies on the Appellate Body, on which he would consult with Members. One approach would be for each vacancy to be subject to its own selection process, conducted in due time, to select the new Appellate Body member before the expiry of the relevant second four-year term. A second approach – and one that had been taken in similar situations in the past – would be to conduct one selection process for both positions, at the same time, with a view to completing the process by the end of June. In this approach, the Selection Committee would make recommendations for filling one position as of 1 July 2017 and the other as of 12 December 2017. Such a single approach, in the past, had consisted of the following elements: (i) to launch one selection process for the two vacant positions in the Appellate Body; (ii) to establish a Selection Committee composed of the Director-General and the 2017 Chairpersons of the General Council, the Goods Council, the Services Council, the TRIPS Council and the DSB, to be chaired by the DSB Chair; (iii) to set a deadline for Members to submit nominations of candidates; and (iv) to request the Selection Committee to carry out its work and make a recommendation to the DSB so that the DSB could

take a decision to appoint two new Appellate Body members prior to the expiry of the first expiring four-year term in order to ensure there was continuity in the work of the Appellate Body. The Chairman said that he intended to consult with Members on these approaches, and on the elements outlined above, with respect to the two vacant positons. He encouraged delegations to contact him directly or the Secretariat should they have any comments on any aspect of the approaches and elements outlined at the present meeting. He noted that the DSB would take up this matter at its next regular meeting, scheduled for 20 February 2017.

8.2. The DSB took note of the statement.

9 DISPUTE SETTLEMENT WORKLOAD

A. Statement by the Chairman

9.1. The Chairman, speaking under "Other Business", said that he wished to provide the DSB with information about the Appellate Body's workload, the number of disputes before panels, and at the panel composition stage, and the ability of the Secretariat to meet expected demand over the coming period. With regard to panels/Arbitrations, there were currently 16 active panels (including five panels under Article 21.5 of the DSU) that had not yet issued a final report to the parties. Multiple disputes that were being considered simultaneously, by the same panel, were being counted as one. As of the present meeting, all composed panels had been assigned staff to assist them and were active or in the process of commencing proceedings. There were an additional six panels at the composition stage. This did not count panels for which there had been no composition activity in the last twelve months. In addition, two matters had been referred to arbitration under Article 22.6 of the DSU, and one under Article 21.3(c) of the DSU. With regard to appeals, the Appellate Body was currently dealing with four appeals, including the extremely complex compliance proceedings in "EC and Certain Member States – Large Civil Aircraft" (Airbus). One of these appeals could not be staffed immediately. He noted that three panel reports had been circulated in December 2016 and another panel report would be circulated in January 2017. If they were appealed they could not be staffed immediately. In addition, four final panel reports that had been issued to the parties were currently being translated.

9.2. The DSB took note of the statement.