

WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/58

19 May 1999

(99-2038)

Dispute Settlement Body
15 April 1999

MINUTES OF MEETING

Held in the Centre William Rappard
on 15 April 1999

Chairman: Mr. Nobutoshi Akao (Japan)

1. Implementation of the recommendations of the DSB

- (a) Japan - Measures affecting agricultural products
- (b) United States - Anti-dumping duty on dynamic random access memory semiconductors (DRAMs) of one megabit or above from Korea

The Chairman recalled that in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the Panel or Appellate Body Report, of its intentions in respect of implementation of the recommendations and rulings of the DSB.

- (a) Japan - Measures affecting agricultural products

The Chairman recalled that on 19 March 1999, the DSB had adopted the Appellate Body Report on "Japan - Measures Affecting Agricultural Products" and the Panel Report on the same matter, as modified by the Appellate Body Report.

The representative of Japan reiterated his country's deep regret that its arguments had not been accepted by the Panel and the Appellate Body. However, Japan was satisfied that the product testing contention, which had been advanced by the United States, had been concluded not to provide sufficient evidence before the Panel to convince it that it achieved Japan's appropriate level of protection. Pursuant to Article 21.3 of the DSU, Japan had an obligation to inform the DSB of its intentions in respect of the DSB's recommendations. It was Japan's intention to comply with its obligations under the SPS Agreement. His Government would conduct the necessary review to respect the DSB's recommendations. Japan noted that neither the Panel nor the Appellate Body denied it from taking measures to achieve its appropriate level of protection against the intrusion of foreign pests and diseases into Japanese territory. Japan therefore considered it necessary to adopt new phytosanitary measures to replace the current ones in order to ascertain safety by preventing such intrusion. To be ready for such new measures, a certain amount of time would be necessary for conducting scientific and technical examinations. Japan therefore requested to be granted, in accordance with Article 21.3 of the DSU, a reasonable period of time for implementing the DSB's recommendations. Japan further intended to consult with the United States in order to agree on a reasonable period of time.

The representative of the United States said that his country welcomed the statement by Japan. The United States was interested in engaging constructively with Japan on this matter, and looked forward to working together to try to resolve this dispute promptly as envisaged under the DSU.

The representative of Australia said that his country had an interest in this matter and expected that implementation would be consistent with Article 3.5 of the DSU.

The DSB took note of the statements and of the information provided by Japan regarding its intention in respect of implementation of the DSB's recommendations.

- (b) United States - Anti-dumping duty on dynamic random access memory semiconductors (DRAMS) of one megabit or above from Korea

The Chairman recalled that on 19 March 1999 the DSB had adopted the Panel Report on "United States - Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea".

The representative of the United States said that his country was pleased that, for the most part, the Panel had found no inconsistency between the US Administration of the anti-dumping order on DRAMS from Korea and the US obligations under the WTO. While the United States had noted at the 19 March meeting that it had some disagreements with the analysis of the Panel concerning the revocation standard contained in the regulations of the Department of Commerce, it had indicated that it would not let these disagreements stand in the way of a consensus to adopt the Panel Report that was of high quality and had reached the right conclusions. As provided in Article 21.3 of the DSU, it was now the United States' responsibility to advise the DSB of its intentions with respect to the implementation of the DSB's recommendations. It was the intention of the United States to implement the DSB's recommendations in the DRAMS dispute in a manner consistent with its obligations and the Panel's findings. In this regard, he noted that the Panel had expressly rejected Korea's request that the Panel suggest revocation of the anti-dumping order as the method of implementing the Panel's recommendations and rulings. Instead, the Panel had stated that there was "a range of possible ways" in which the Panel believed that the United States could appropriately implement the recommendations. As envisaged under the DSU, the United States would require a reasonable period of time to complete the compliance process and would be meeting with Korea to discuss this matter further.

The representative of Korea said that his delegation welcomed the statement by the United States confirming its commitment to implement the DSB's recommendations with regard to this matter. Korea was interested in receiving details of the US implementation plan, and hoped that the United States would discuss this matter with Korea at the earliest possible date. In this regard, his delegation wished to reiterate several points made at the 19 March meeting. Korea maintained that in order to be in compliance with the DSB's recommendations, the United States should first immediately revoke the anti-dumping duty order on DRAMS of one megabit or above from Korea, and second revise its regulation to remove the "not likely" criterion as soon as possible. The Panel had found both the DRAMS determination and the anti-dumping duty regulations of the US Department of Commerce to be inconsistent with Article 11.2 of the Anti-Dumping Agreement. The only way in which the United States could comply with this aspect of the Panel's findings and rulings was to immediately revoke the anti-dumping duty order on DRAMS from Korea. There was no legal justification under the DSU for linking the timing of this administrative action to the separate regulatory action that would be required to amend the revocation regulation. The United States might require a reasonable period of time to complete the process of amending its revocation regulation. However, the process should start immediately – in fact, it already should have started - and it should be completed expeditiously. His delegation hoped that the United States and Korea would be able to

reach a mutually satisfactory understanding as to the timing and substance of the US implementation of the DSB's recommendations. Korea looked forward to receiving details of the US implementation plan.

The DSB took note of the statements and of the information provided by the United States regarding its intention in respect of implementation of the DSB's recommendations.
