

WORLD TRADE ORGANIZATION

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Dispute Settlement Body
15 October 2001

MINUTES OF MEETING

Held in the Centre William Rappard
on 15 October 2001

Chairman: Mr. R. Farrell (New Zealand)

Prior to the adoption of the agenda, the item concerning the Panel Report in the case on: "United States – Tax Treatment for 'Foreign Sales Corporations': Recourse to Article 21.5 of the DSU by the European Communities" was removed from the agenda following the US decision to appeal the Report.

Subjects discussed:

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1. Surveillance of implementation of recommendations adopted by the DSB

- (a) European Communities – Regime for the importation, sale and distribution of bananas: Status report by the European Communities (WT/DS27/51/Add.22)

1. The Chairman recalled that Article 21.6 of the DSU 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 pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved". He drew attention to document WT/DS27/51/Add.22 which contained the status report by the European Communities on its progress in the implementation of the DSB's recommendations concerning its banana import regime.

2. The representative of the European Communities recalled that the examination procedure for the necessary waivers had finally been unblocked. He confirmed that the EC was ready to work and discuss the matter with all interested parties in the framework of that examination procedure. He recalled that some Members had expressed concerns about the move to a tariff-only regime in 2006. He reiterated that the EC was ready to respond adequately to their concerns and that without prejudice to its rights, an Article XXVIII re-binding had to be a neutral operation in overall market access terms. He underlined that it was important that Members act quickly on this matter in order to end, once and for all, this long-standing and irritating case.

3. The representative of Ecuador said that his delegation had noted the status report submitted by the EC at the present meeting. He recalled that at the 25 September DSB meeting, Ecuador had referred to the new proposal by the EC Commission to modify the banana import regime. At that meeting, various features of the proposal had been identified which, in Ecuador's view, could further delay a solution to this long-standing dispute. He noted that the statement made by Ecuador at that meeting had been circulated in document WT/DS27/61. The concerns expressed by Ecuador at the 25 September meeting remained unchanged. Since his country's position on the Commission's proposal was outlined in the above-mentioned document, he did not wish to reiterate the same arguments at the present meeting. At its meeting on 5 October 2001, the Council for Trade in Goods had started examination of the waiver requests submitted by the EC and the ACP countries concerning implementation of the Partnership Agreement and the EC's banana import regime. A Working Party had been established to review the waiver requests and the whole process had to be completed within 90 days, pursuant to Article IX:3(b) of the WTO Agreement. Ecuador understood why the ACP countries and the EC wished to obtain the requested waivers as soon as possible. It had been suggested that the waiver should be granted before the Fourth Ministerial Conference. However, granting of the waiver should not be dependent on the Fourth Ministerial Conference, nor on the results that might be achieved therein, but had to be the result of implementation of the DSB's recommendations in this case.

4. He noted that the requested waivers were related to the banana dispute for the following reasons: (i) various panels, the Appellate Body and two arbitrations had established that the EC's banana import regime was inconsistent with the WTO rules; (ii) the EC had negotiated the Understandings with Ecuador and the United States, which would lead to a WTO-consistent and tariff-only regime as from 1 January 2006; (iii) the EC had negotiated the possibility of maintaining a transitional regime on the basis of tariff quotas, which required waivers from Articles I and XIII of GATT 1994; (iv) the waivers in relation to the EC's banana imports regime had to be limited to correspond to the implementation of the transitional regime that the EC had undertaken to bring into force in two stages. The first stage had begun on 1 July 2001 and the second one would be from 1 January 2002 until 31 December 2005; and (v) the granting of the Article XIII waiver was conditional on the transfer of 100,000 tonnes from quota C to B. Therefore, the waivers had to be restricted only to the extent necessary in order to implement the transitional regime and in relation to the precise quantity of bananas to which they would apply. The waivers would allow preferential treatment for ACP countries, with access limited to 750,000 tonnes at a preference of €75 per tonne within a tariff quota exclusively for ACP bananas. In the Council for Trade in Goods, Ecuador had identified all the other aspects that should be covered by the waivers and had submitted them in writing in the form of a draft decision for granting of the waivers. Ecuador believed that if the EC recognized that this draft decision covered all the necessary requirements for implementation of the transitional regime, the examination procedure would be speeded up considerably since this would meet the legitimate expectations of all the interested parties.

5. The representative of Guatemala said that the EC's status report had been submitted on 4 October 2001, one day before the meeting of the Council for Trade in Goods. Consequently, it reflected the situation at that time. Therefore, it was important to take into account developments that had taken place at the meeting of the Council for Trade in Goods on 5 October 2001, when objections had been raised to the waiver requested by the EC and the ACP countries. The situation described by the EC was not accurate. While Guatemala would make every effort to ensure that the examination of the waiver requests was carried out as quickly as possible, it wished to reserve its right to use the 90 days available for that purpose. As had been stated on many occasions, her delegation wished to be informed of any actions to be taken by the EC in order to implement the recommendations and rulings in this dispute. In accordance with Article 21.6 of the DSU, Guatemala requested that the item under consideration should remain on the DSB agenda until the matter had been satisfactorily resolved.

6. The representative of Honduras said that meetings had been held with the EC in an effort to resolve the banana dispute and if they had been conducted in a constructive way as proposed by several countries, it would have been possible to remove this item from the DSB agenda. He regretted that the EC had rejected his country's best efforts. Furthermore, the waiver request had been used as a means to prolong the illegal regime, and pressure had been applied through other channels to persuade Honduras to renounce its WTO rights as well as the rights which had been acquired and confirmed by the outcome of the panel. In bilateral meetings, Honduras had been made to understand that its rights did not matter. Honduras was deeply concerned and disappointed at the way in which some Members did not respect the rights of developing countries, in particular of Honduras. As a strong believer in, and an advocate of, the multilateral trading system, Honduras considered that the present situation confirmed that the rights of a small country were of little importance in the WTO. This was particularly true at this stage when confidence in the multilateral trading system was of vital importance, especially in light of discussions involving new obligations. Two years ago, Honduras had announced to the DSB that if the Appellate Body had found against it in this dispute, it would have complied with such a ruling within six months. However, it appeared that the WTO obligations were not the same for all Members: i.e. a Member's economic importance might allow it to evade its obligations and to ignore the DSB's rulings. All Members should be concerned about this. Although it was Honduras which found itself powerless in this situation, any other developing countries might have to face the same problem.

7. Another issue to which he wished to refer at the present meeting was being dealt with in the Council for Trade in Goods. He recalled that the EC's banana import regime had been condemned in three separate disputes, and the decision in the most recent one had been adopted by the DSB in September 1997. On the same date, the EC had asked for time in order to bring its regime into conformity with WTO rules. That period of time, which had expired on 1 January 1999, had been extended until now and, thus far, there had been no indication that the EC would meet its obligations. Furthermore, the EC now sought exemption from its responsibility by requesting a waiver. He noted that the EC had envisaged a system for the transitional administration of quotas until the end of 2005, but no description had been given of the measure to be taken from 2006 onwards. It was clear that a failure to describe fully the measure was intentional. This would give the EC greater leeway for discretion to adopt a single prohibitive tariff for Latin American bananas, thus in turn condemning Honduras to greater poverty.

8. He noted that a distributor in one of the EC member States had begun to grant licences which were contrary to the spirit of the Understanding. However, it was not for Honduras to speak on this matter but rather for the party directly concerned. Honduras believed in the system and would do everything in order to ensure that other countries respect it. Consequently, Honduras would continue to raise procedural objections, as it had done in the past, until the EC met its obligations under the WTO Agreement and the Understanding in Respect of Waivers of Obligations under the GATT 1994. Honduras had never opposed tariff preferences for developing countries, and in an effort to contribute to the process taking place in the Council for Trade in Goods, it had accepted the beginning of the review of the requested waiver. This was a clear demonstration of its good faith and its constructive participation in the multilateral trading system.

9. The representative of Panama said that his delegation supported the statement made by Honduras. In that statement reference had been made to the fact that one of the EC member States was violating the spirit of the Understanding. In Panama's view not only was the spirit of the Understanding being violated, but also the letter. The statement made by the EC at the present meeting contained many contradictions. For example, the EC had stated that the aim was to unblock the examination procedure of the waiver request. However, a waiver from Article XIII should be limited and, as far as that waiver was concerned, Panama had never objected to it. The examination procedure could have begun a long time ago. Latin American countries should not be blamed for this delay; those who had insisted that separate waiver requests be considered together should be blamed.

Panama was concerned that the EC had indicated that it would deal with the subject of bananas within the framework of the examination procedure of the waiver requests. This was in contradiction with what the EC had stated previously, namely, that this issue should not be dealt with in the Council for Trade in Goods but in the DSB. Panama was concerned that any obligation or a DSB decision could be circumvented through a waiver. This should be of concern to all Members. Panama was ready to make efforts to reach a speedy solution. Progress, however, would depend on the EC's compliance with its obligations. A waiver could be granted, but the EC should take into account the concerns of Latin American producers. A decision to start the examination procedure had been taken. Panama would exercise its rights and would request the EC to comply with its obligations and to provide a description of the measures to be put in place. He recalled that at the 5 October meeting of the Council for Trade in Goods there had been a persistent difference which should be resolved before a decision on the waiver could be taken. Panama was disillusioned by the lack of progress and urged, once again, that the EC take into account the concerns of Latin American producers.

10. The representative of the United States said that his country was pleased that the examination of the EC waiver requests had begun in the Council for Trade in Goods. The United States looked forward to making further progress towards resolving this dispute and said that it would play as constructive a role as possible in that examination.

11. The representative of Mexico wished to reiterate his country's interest that this matter be solved. He also reiterated that Mexico's preference was a tariff-only regime with tariffs at an appropriate level to grant market access to countries such as Mexico.

12. The representative of Saint Lucia said that certain comments made at the present meeting were inaccurate and unfair. The Lomé Convention which preceded the Cotonou Agreement was considered by all developing countries as a model of the relations for the treatment of developing countries in the North-South context. The preference which took into account the small and the vulnerable had been extended beyond ACP countries. Therefore, to suggest that the EC was acting in disregard of the rights of small and vulnerable countries or anything to that effect was inaccurate. At the previous DSB meeting, Saint Lucia had stated that there was a sense of unreality to the debate because it was not the countries which had been complaining that had been deprived of justice, but rather the ACP countries. The loss of 100,000 tonnes would cost the ACP countries and those who had already lost from the changes made thus far. At the present meeting, like the United States, Saint Lucia welcomed commencement of the examination of the ACP waiver request and expressed hope that any remaining difficulties could be resolved over the next few weeks. She exhorted Members to expedite favourable consideration of the request which was of fundamental importance to bringing stability to the trading relations of ACP states.

13. The representative of the European Communities said that, like Saint Lucia, the EC welcomed the fact that after lengthy discussions with a great number of countries an agreement had been found to start the examination of the requests for a waiver. In those discussions, the EC would make clear to all its trading partners that their concerns would be examined. However, in order to implement the mutually satisfactory solution, it was necessary from 1 January 2002 to have a new Council Regulation and to obtain a waiver. The EC had the right to request such a waiver. He reiterated that in its discussions, the EC would be open to the concerns of its trading partners. The statement by Honduras about the EC's position towards developing countries was an exaggeration. In this context, it was enough to recall not only the Cotonou Agreement but also what the EC had done for least-developed countries. It was not necessary to enter into such discussions. The EC hoped that the existing differences would be resolved in the near future, and that this be done in a friendly way as it had been done in the past.

14. The representative of Honduras said that it was difficult to find the right words to describe the impact produced by the EC's actions. He reiterated that his country was concerned that the decision

of this body could be undermined and believed that his comment about rights of developing countries was not an exaggeration.

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

2. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/172)

16. The Chairman drew attention to document WT/DSB/W/172 which contained additional names proposed 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/172.

17. The DSB so agreed.
