



**Dispute Settlement Body
3 April 2017**

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 3 APRIL 2017

Chairman: Mr. Junichi Ihara (Japan)

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1 EUROPEAN UNION – MEASURES RELATED TO PRICE COMPARISON METHODOLOGIES

A Request for the establishment of a panel by China (WT/DS516/9)

1.1. The Chairman recalled that the DSB had considered this matter at its meeting on 21 March 2017 and had agreed to revert to it. He then drew attention to the communication from China contained in document WT/DS516/9 and invited the representative of China to speak.

1.2. The representative of China said that his country wished to refer to the statement made by China at the 21 March 2017 DSB meeting when its request for the establishment of a panel was first considered by the DSB. China attached great importance to resolving this dispute promptly and had requested a special DSB meeting in order to seek the establishment of a panel for a second time. China did not wish to repeat its statement made on 21 March 2017, other than to reiterate that the agreement between China and other WTO Members was for special rules to apply in anti-dumping proceedings concerning imports from China on a time-bound and temporary basis. China noted that the 15-year transitional period had expired in December 2016. As a consequence, the special rules no longer applied. All Members were now obliged to ensure that Chinese imports were dealt with under the generally-applicable WTO rules governing the determination of all elements of price comparability in anti-dumping proceedings. At the 21 March 2017 DSB meeting, both the EU and the United States had made a number of comments. China noted that the United States had signaled that it planned to continue discriminatory practices applied prior to the expiry of the relevant provision of China's Accession Protocol. This was WTO-inconsistent.

1.3. China did not consider that the present meeting was the appropriate forum to respond to each of the points raised at the 21 March 2017 DSB meeting, but would take the opportunity to clarify two issues. First, contrary to the EU's suggestion there was no deficiency in China's panel request with respect to either the Basic Anti-Dumping Regulation as it currently existed, or to modifications, replacements or amendments to that measure. China considered the EU view with respect to the inclusion of modifications, replacements or amendments in this dispute to be incorrect as a matter of law and fact. It was not for a responding Member to pick and choose the matters that could be brought before the DSB. Rather, China expected the DSB to refer the matter described in China's panel request to a panel. The panel would then undertake an objective

assessment of the matter. Second, China rejected the EU's position that bringing this dispute was premature in light of proposals to amend the Basic Regulation. The EU had been aware of the date upon which the relevant provisions of China's Accession Protocol would expire for more than 15 years. And yet the EU had taken no action to ensure the timely WTO-conformity of its measures on that date. China agreed that Members could use "appropriate WTO tools" to address injurious dumping according to WTO law. The problem raised by China in this dispute was that the EU had failed to use WTO-consistent tools in anti-dumping proceedings involving China. This situation manifestly disturbed the balance of rights and obligations agreed between China and the EU at the time of China's accession. China therefore reiterated that this matter be referred to a panel.

1.4. The representative of the European Union said that his delegation regretted that China had decided to request the establishment of a panel. As the EU had previously explained to China, and reiterated at the 21 March 2017 DSB meeting, the EU very much regretted that China had chosen to bring panel proceedings with respect to a measure (Article 2(7) of Regulation (EU) 2016/1036, related to China) that was currently the subject of a legislative process, which could result in its withdrawal. The EU considered that such action was unnecessary and ultimately not fruitful within the meaning of Article 3.7 of the DSU. Similarly, the EU wished to recall its concerns about China's attempt to create and maintain an unlawful shortcut between this dispute, as it related to Article 2(7) of Regulation (EU) 2016/1036, and the, as yet unknown, outcome of the EU's internal legislative processes for the reasons already explained at the 21 March 2017 DSB meeting. Accordingly, the EU once again called upon China to respect both the letter and the spirit of the DSU, and to withdraw its panel request. In any event, should a panel be established in this dispute, the EU would defend its legislation vigorously.

1.5. The representative of the of the United States said that the United States was intervening again at the present meeting to express its support for the right of the EU to use a non-market economy methodology in anti-dumping proceedings involving China. As the United States had explained at the 21 March 2017 DSB meeting, China's Accession Protocol, as it currently existed, expressed that the EU and other WTO Members could continue using a non-market economy methodology with respect to China as long as such treatment was justified by the facts. China appeared to believe that the EU's finding that China was a non-market economy and use of a non-market economy methodology resulted in less favorable treatment. China's argument missed the point because it presupposed that China actually was a market economy and should be treated like other market economies for purposes of dumping comparisons. If the facts showed that China had made the reforms necessary to become a market economy, then the EU should treat it as such. But if the facts showed otherwise, then the EU did not need to do so. To be clear, the United States did not contend that the expiry of one provision in China's Accession Protocol had no meaning. Rather, any continued use of a non-market economy methodology under the Protocol had to be justified by the facts in China. But China's apparent view that neither the facts in China nor the remaining provisions of the Protocol had any relevance was not only implausible, but was contrary to the text of the Protocol and the rights of other Members under the WTO Agreement.

1.6. Consistent with this view, the United States had repeatedly asked China to engage on the facts. However, China had declined to request a change in its non-market economy status or to request that any of its industries be treated as market-oriented in any recent US anti-dumping proceeding. Despite China's lack of engagement, as Members may have been aware, the United States had decided to initiate a public process to ensure that it had the most recent information available regarding the status of China's economy. On 29 March 2017, the US Department of Commerce had announced an inquiry into China's non-market economy status in the context of an investigation on aluminum foil, the first anti-dumping duty investigation involving Chinese products initiated since the change in China's Protocol. The United States invited China to participate in this transparent and facts-driven process to demonstrate the results of any efforts to reduce governmental distortions in China. China should similarly make use of the procedures available in the EU, and other WTO Members, to establish that it was a market economy under their respective laws instead of pursuing unnecessary litigation. If China instead continued down the path of litigation, the United States would resolutely stand with the EU, supporting its right to use an appropriate methodology to defend the interests of its workers and its businesses suffering from China's injurious dumping. The United States strongly encouraged other Members concerned about the effects of China's dumping on their workers and businesses to do so as well.

1.7. The representative of Japan said that, as his country had stated at the 21 March 2017 DSB meeting, Japan was generally supportive of the respective positions of the EU and the US on the interpretive issues raised by China in this dispute, and shared their concerns with respect to China's interpretations of the various provisions at issue in the WTO Agreement, including China's Accession Protocol. In particular, Japan was of the view that the WTO Agreement, including China's Accession Protocol, continued to allow WTO Members to use a methodology not based on a strict comparison with domestic prices or costs in China. Japan was also not sure how China's reference, in its panel request, to the EU's proposed measures under consideration in the legislative process could satisfy the specificity requirements under Article 6.2 of the DSU. A challenge to the EU's future measures, the precise content of which was unknown, appeared to be speculative and did not serve the efficient use of dispute settlement resources.

1.8. 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.

1.9. The representatives of: Australia, Brazil, Canada, Colombia, Ecuador, India, Indonesia, Japan, Kazakhstan, Korea, Mexico, Norway, the Russian Federation, Chinese Taipei, Turkey and the United States reserved their third-party rights to participate in the Panel's proceedings.

2 INDIA – CERTAIN MEASURES ON IMPORTS OF IRON AND STEEL PRODUCTS

A Request for the establishment of a panel by Japan (WT/DS518/5)

2.1. The Chairman recalled that the DSB had considered this matter at its meeting on 21 March 2017 and had agreed to revert to it. He drew attention to the communication from Japan contained in document WT/DS518/5 and invited the representative of Japan to speak.

2.2. The representative of Japan said that his delegation thanked the Chairman for agreeing to chair the present meeting to consider this matter. Japan recalled that its panel request regarding this dispute had first been considered by the DSB at its meeting on 21 March 2017. Following that meeting, Japan requested, pursuant to Article 6 of the DSU, that the DSB establish a panel, with standard terms of reference, to examine the matter set out in Japan's panel request, in accordance with Article 7.1 of the DSU. At the present meeting, Japan did not wish to reiterate its position on this matter, as it had already been explained in its panel request and the statement it had delivered at the 21 March 2017 DSB meeting. It sufficed to say that India's safeguard measures in question were inconsistent with India's various obligations under the GATT 1994 and the Agreement on Safeguards. As Japan had also stated at the 21 March 2017 DSB meeting, the measures at issue would expire on 13 March 2018 and Japan had been making serious efforts to resolve this matter with India since India had initiated the safeguard investigations at issue. Given the limited time available before the expiry of the measures, Japan expressed its sincere desire that the panel, which would be established at the present meeting, would observe the time-frames specifically prescribed in the DSU for the purpose of the prompt and satisfactory resolution of disputes. Japan said that it looked forward to working with the panel and India to this end.

2.3. The representative of India said that his country was deeply disappointed that, despite its sincere and best efforts, and thorough cooperation throughout the consultation process, Japan had decided to persist with its stance on the establishment of a panel in this matter. It was unfortunate that Japan had persisted with the dispute, despite the fact that India had been able to demonstrate that the safeguard measures it had applied were wholly consistent with the letter and spirit of the Agreement on Safeguards and India's obligations therein. During the consultation process, India had clearly and very transparently explained the legal framework as well as the exceptional circumstances that necessitated the safeguard measures. India still believed that this dispute was avoidable considering the fact that the safeguards measures had been undertaken by India under exceptional circumstances, which had been amply explained during the consultation process. India further believed that such disputes would lead to unnecessary burden being placed on WTO dispute settlement resources, which were already stretched. India had explained its position regarding the measure in question at the 21 March 2017 DSB meeting. India believed that its actions were consistent with the provisions of the relevant WTO Agreements. India, once again, requested Japan to withdraw its request. If Japan was, nonetheless determined to pursue this matter further, India would vigorously defend its measures before the panel.

2.4. In India's view the special meeting of the DSB had been requested by Japan without any underlying urgency or rationale, particularly given the fact that the regular DSB meeting was a few days away. At the 21 March 2017 DSB meeting, Japan had stated that the safeguard measures in question would expire on 13 March 2018 and hoped that the panel, to be established, would examine this matter as a matter of urgency and would endeavour to issue its report as early as possible with a view to securing a prompt and satisfactory resolution of this dispute. India stressed that every dispute that was initiated by a complainant was urgent and critical and desirous of a prompt and satisfactory resolution. Further, India was also a complainant in many disputes and the issues arising in those disputes were also of prime economic and systemic interest to India, for which India wanted an expedited process. However, understanding the present circumstances of staffing and other workload issues, India had accepted current timelines. Therefore any selective expedited process, merely because a measure was going to expire, would, in India's view, be unjustifiable. India expected the Secretariat as well as the panel, if established, to apply the same processes and standards that were applied in all other disputes.

2.5. 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.

2.6. The representatives of China, the European Union, Indonesia, Kazakhstan, Korea, Qatar, the Russian Federation, Singapore, Chinese Taipei, Ukraine, the United States and Viet Nam reserved their third-party rights to participate in the Panel's proceedings.
