

Dispute Settlement Body

14 June 2002

MINUTES OF MEETING

Held in the Centre William Rappard
on 14 June 2002

Chairman: Mr. Carlos Pérez del Castillo (Uruguay)

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1. United States – Definitive safeguard measures on imports of certain steel products

1. The Chairman said that the four sub-items to which he had referred pertain to the same matter, but that the requests for the establishment of a panel by Japan and Korea had already been considered by the DSB at its meeting on 3 June 2002. He, therefore, proposed that the DSB consider the requests by Japan and Korea separately from the requests by Switzerland and Norway, which would then be taken up together.

(a) Request for the establishment of a panel by Japan (WT/DS249/6)

(b) Request for the establishment of a panel by Korea (WT/DS251/7)

2. The Chairman drew attention to the communication from Japan contained in document WT/DS249/6.

3. The representative of Japan said that it was extremely unfortunate that his delegation had to ask the DSB to consider, for the second time, Japan's request for the establishment of a panel with regard to this matter. He noted that no progress had been made towards finding a solution to this dispute. At the present meeting, he did not wish to reiterate Japan's claims contained in its panel request, dated 21 May 2002, as they had already been summarized in the statement made by Japan at the 3 June DSB meeting. He only wished to state that the US safeguard measures were in clear violation of the WTO Agreement. Japan regretted that the United States had not yet addressed its concerns, and urged the United States, once again, to withdraw the WTO-inconsistent measures immediately. Since this was the second consideration of Japan's request, a panel would have to be established at the present meeting. Therefore, pursuant to Article 9.1 of the DSU concerning the establishment of a single panel, Japan was requesting the referral of its complaint to the same panel as the one established at the request by the EC at the 3 June DSB meeting.

4. The Chairman drew attention to the communication from Korea contained in document WT/DS251/7.

5. The representative of Korea said that on 20 March 2002, his country had requested consultations with the United States under Article 4 of the DSU regarding the US safeguard measures on steel imports. These consultations had been held on 11-12 April 2002 in Geneva together with the EC, Japan, China, Norway and Switzerland. Unfortunately, they had not led to a satisfactory solution of the matter. Accordingly, Korea had requested at the 3 June DSB meeting the establishment of a panel to examine the US measure, but the panel had not been established due to the objection by the United States. At the present meeting, Korea was requesting, for the second time, the establishment of a panel pursuant to Article 9.1 of the DSU since, on 3 June 2002, a panel had already been established at the request of the EC with regard to the same matter. In Korea's view, the United States was in violation of its obligations under the GATT 1994 and the Agreement on Safeguards on various aspects as outlined in its written request. Korea was confident that the Panel would find the US steel safeguards to be inconsistent with various WTO rules. First, the United States had failed to meet the requirement of "increased imports" contained in Articles 2 and 4 of the Agreement on Safeguards. Second, the United States had failed to separate and distinguish the injury caused by imports from the injurious effect of "other factors", in violation of Article 4 of the Agreement on Safeguards. Third, the US safeguard measures went beyond the extent necessary to prevent or remedy the injury caused by imports, in violation of Article 5 of the Agreement on Safeguards. The measures were not limited to the serious injury caused by increased imports. Fourth, the United States had failed to apply the safeguard measures to all imports irrespective of their sources on an MFN basis. Thus, the United States had excluded all the imports from FTA partners from the steel safeguards in violation of Article 2.2 of the Agreement on Safeguards and "parallelism requirement" between the scope of the investigation and the scope of the remedy. Korea believed that the Panel to be established at the present meeting would provide guidance to resolve this dispute by fixing the inconsistency of US steel safeguard measures.

6. The representative of the United States said that as he had stated at previous DSB meetings, it was regrettable that Korea and Japan had chosen to challenge the US safeguard measures. These measures were fully consistent with the applicable portions of the Safeguards Agreement and the GATT 1994, and the United States trusted that the dispute settlement process would reach the same conclusion. It was the understanding of the United States that a panel would be established at the present meeting to consider Japan's and Korea's claims. Consistent with Article 9.1 of the DSU, the United States agreed that a single panel should be established to hear those claims as well as those of the EC.

7. The representative of the European Communities said that with regard to the substance, the EC fully agreed with the statements made by Japan and Korea. With regard to the procedure, the EC also fully agreed that the two cases brought by Japan and Korea be referred to the Panel established at the 3 June DSB meeting.

8. The DSB took note of the statements and agreed that the requests by Japan and Korea for the establishment of a panel with standard terms of reference are accepted, and that as provided for in Article 9.1 of the DSU in respect of multiple complainants, the Panel established at the 3 June DSB meeting to examine the complaint by the European Communities contained in document WT/DS248/12 would also examine Japan's complaint contained in document WT/DS249/6 and Korea's complaint contained in document WT/DS251/7.

9. The Chairman said that since a single Panel had been established those delegations who had reserved their third-party rights to participate in the Panel established on 3 June 2002 at the request of the EC shall be considered as third parties in the single Panel.

10. The representatives of the EC, Japan, Korea, Mexico, Venezuela and Turkey reserved their third-party rights to participate in the Panel's proceedings.

11. The representative of Switzerland sought confirmation from the Chairman as to whether those delegations who had reserved their third-party rights to participate in the Panel established on 3 June 2002 at the request of the EC shall be considered as third parties in the single Panel established at the present meeting.

12. The Chairman confirmed that those delegations who had reserved their third-party rights to participate in the Panel established on 3 June 2002 at the request of the EC shall be considered as third parties in the single Panel established at the present meeting.

13. The DSB took note of the statements.

(c) Request for the establishment of a panel by Switzerland (WT/DS253/5)

(d) Request for the establishment of a panel by Norway (WT/DS254/5)

14. The Chairman recalled that, as he had already indicated in his introductory statement, these two requests to which he had just referred would be considered together. First, he drew attention to the communication from Switzerland contained in document WT/DS253/5.

15. The representative of Switzerland said that as he had already stated at the 3 June DSB meeting, his country was also affected by the US safeguard measures on imports of certain steel products. In April 2002, Switzerland, together with other Members concerned, had held consultations under the DSU with the United States. However, it had not been possible to reach a mutually agreeable solution to this matter. Furthermore, the consultations held with the United States under the Agreement on Safeguards had also not led to a satisfactory solution. Switzerland, like other affected Members, had already announced its list of products for suspension of concessions against the United States. As a consequence, Switzerland was submitting its request for the establishment of a panel to examine the US measures. These measures clearly violated the WTO Agreement. He did not wish to provide details concerning these violations since this information was contained in the panel request. He underlined that the US measures had disrupted seriously the world steel market and could lead to a spiral of restrictive measures against imports of steel. More and more Members who would have never otherwise considered to do so, were imposing their own safeguard measures on steel. Therefore, at the present meeting, Switzerland was requesting that a panel be established to examine the US safeguard measures on imports of steel.

16. The Chairman drew attention to the communication from Norway contained in document WT/DS254/5.

17. The representative of Norway said that on 4 April 2002, his country had requested consultations with the United States concerning the US definitive safeguard measures on imports of certain steel products. These consultations had been held under Article 4 of the DSU on 11-12 April 2002, together with the EC, Japan, Korea, China and Switzerland. Unfortunately, they had not brought about a satisfactory solution. Norway was, therefore, requesting the establishment of a panel to examine the definitive safeguards measures imposed by the United States on imports of steel products, in particular tin mill products, on 3 June 2002. In the view of Norway, the United States was in breach of several provisions of the Agreement on Safeguards, as well as the GATT 1994. At the present meeting, he did not wish to go into further details, as Norway's claims were outlined in its panel request contained in document WT/DS254/5. Norway was, therefore, requesting that a panel be established at the present meeting.

18. The representative of the United States said that as his country had stated at previous DSB meetings, the US safeguard measures were fully consistent with the applicable portions of the Safeguards Agreement and the GATT 1994. The United States trusted that the dispute settlement process would ultimately reach the same conclusion. At the present meeting, however, the United States could not accept the establishment of a panel in response to the requests by Switzerland and Norway.

19. The representative of the European Communities said that in addition to the EC, Japan and Korea, many other Members questioned the compatibility of the US actions with the WTO requirements regarding safeguards and had initiated the DSU procedures against the US measures. In addition to Switzerland and Norway whose panel requests were also before the DSB at the present meeting, the first panel request by China had been considered by the DSB at its meeting on 7 June 2002. Also, New Zealand and Brazil had initiated the DSU procedures against the US safeguard measures on 14 and 21 May 2002 respectively. All these Members had raised similar points, including the lack of increased imports, absence of injury, flawed causal links between imports and injury, disproportionate remedy, violation of parallelism requirement. The EC, therefore, expected that the United States would avoid delaying tactics in order not to retard the DSU procedures in connected cases brought against the US measures on the basis of similar claims. In this respect the EC deplored the US decision to delay the DSU procedures and invited the United States to adopt a cooperative approach concerning forthcoming panel requests in relation to the steel case.

20. The representative of Korea said that his delegation was disappointed that the United States had blocked the panel requests submitted by Switzerland and Norway at the present meeting.

21. The representative of the United States said that this was the second time that the EC had made a statement to the effect that the United States was engaging in delaying tactics. His delegation was surprised to hear the complaint that the United States had not accepted panels at the present meeting in order to "delay" panel establishment. The United States noted that the EC itself had not accepted the establishment of a panel at the first DSB meeting nine times. In this context, the US representative questioned whether the EC was suggesting that each time that it had blocked the establishment of a panel, it was merely engaging in delaying tactics. The DSU provided various rights to defending parties and the United States had hardly been alone in asserting these rights.

22. The representative of Switzerland said that his country was disappointed by the negative stand taken by the United States with regard to the establishment of a panel requested by Switzerland. He requested that Switzerland's panel request be again placed on the agenda of the DSB's meeting scheduled to take place on 24 June 2002.

23. The representative of Norway said that his country wished to join Switzerland in noting that the United States had decided to use its rights under the DSU and requested that Norway's panel request be inscribed on the agenda of the DSB's meeting scheduled for 24 June 2002.

24. The DSB took note of the statements and agreed to revert to these matters at its regular meeting on 24 June 2002.
