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Dispute Settlement Body
10 September 2001

MINUTES OF MEETING

Held in the Centre William Rappard
on 10 September 2001

Chairman: Mr. R. Farrell (New Zealand)

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 1. United States – Anti-dumping measures on certain hot-rolled steel products from Japan	
(a) Implementation of the recommendations of the DSB	
1. The <u>Chairman</u> 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 adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the	

recommendations and rulings of the DSB. He recalled that at its meeting on 23 August 2001, the DSB had adopted the Appellate Body Report on "United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan" and the Panel Report on the same matter, as modified by the Appellate Body Report.

2. The representative of the United States said that it was his country's intention to implement the DSB's recommendations and rulings in a manner that would respect its WTO obligations. The United States was currently evaluating options for implementation, but would need a reasonable period of time in order to implement. The United States was ready to discuss this matter with Japan, in accordance with Article 21.3(b) of the DSU.

3. The representative of Japan welcomed the statement by the United States on its intention to implement the DSB's recommendations and rulings in this case. However, in order to implement, the United States should first amend Section 735(c)(5)(A) of 1930 Tariff Act, which had been confirmed to be WTO-inconsistent. The United States should also revoke immediately the anti-dumping duties in force since they were based on the injury determination as well as the methods of calculating the dumping margin both of which the Appellate Body and the Panel had found to be inconsistent with the WTO Agreement. In addition, Japan expected that the United States would immediately cease to apply the calculation and injury determination method, which had been found to be inconsistent with the WTO Agreement, including the so-called 99.5 per cent arm's length test, the particular manner the United States resorted to facts available and employed captive production provisions. Japan wished to receive information from the United States, as soon as possible, regarding steps, procedures and the period for implementation. Japan was ready to enter into consultations with the United States in order to determine a reasonable period of time.

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

2. United States – Countervailing measures concerning certain products from the European Communities

(a) Request for the establishment of a panel by the European Communities (WT/DS212/4)

5. The Chairman recalled that the DSB had considered this matter at its meeting on 23 August 2001 and had agreed to revert to it. He drew attention to the communication from the European Communities contained in document WT/DS212/4.

6. The representative of the European Communities said that his statement related to the three cases on steel pertaining to items 2, 3 and 4. At the 23 August DSB meeting, the EC had lodged its first requests for the establishment of a panel in the three cases at issue. The situation had not evolved since then and, therefore, the EC was requesting the establishment of panels for the second time. The three cases in question covered 15 US measures. Twelve countervailing duty orders were imposed against pre-privatization subsidies. Eleven of these measures had been imposed on the basis of an old methodology, which the Appellate Body in the British Steel case¹ had found to be WTO-incompatible. In that case, the Appellate Body had ruled against the US presumption that privatized firms continued to benefit from subsidies obtained by previous state-owned companies. The EC attached great importance to the removal of these US measures, which were the consequence of a law and a methodology grounded on an erroneous interpretation of WTO rules. In the "*de minimis*" case, which involved a sunset review of corrosion-resistant steel from Germany, the issue concerned the maintenance of the measure where subsidization or dumping was at under *de minimis* levels in sunset reviews. Two safeguard measures concerned welded line pipe and steel wire rod, where the main

¹ WT/DS138.

problem related to the very low standard of injury applied by the United States in safeguard cases, which were only intended to address emergency situations. These matters, and in particular the case on countervailing duty orders, were of major economic and systemic importance to the EC since the contested US measures had severely impeded access to the US market and US steel consumers were denied the opportunity to purchase European products at a fair and competitive price.

7. The representative of the United States said that since a panel to examine the case at issue would be established at the present meeting, he did not wish to reiterate the points made by the United States at the 23 August DSB meeting. Instead, the United States would raise these points before the panel.

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.

9. The representatives of India and Mexico reserved their third-party rights to participate in the Panel's proceedings.

3. United States – Countervailing duties on certain corrosion-resistant carbon steel flat products from Germany

(a) Request for the establishment of a panel by the European Communities (WT/DS213/3)

10. The Chairman recalled that the DSB had considered this matter at its meeting on 23 August 2001 and had agreed to revert to it. He drew attention to the communication from the European Communities contained in document WT/DS213/3.

11. The representative of the European Communities said that the statement made by the EC under item 2 of the agenda of the present meeting also applied to item 3.

12. The representative of the United States noted that given that a panel would be established at the present meeting to examine the EC's complaint in this case, he did not wish to reiterate the points made by the United States at the 23 August DSB meeting. Instead, the United States would make these points before the panel.

13. 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.

14. The representative of Japan reserved third-party rights to participate in the Panel's proceedings.

4. United States – Definitive safeguard measures on imports of steel wire rod and circular welded quality line pipe

(a) Request for the establishment of a panel by the European Communities (WTDS214/4)

15. The Chairman recalled that the DSB had considered this matter at its meeting on 23 August 2001 and had agreed to revert to it. He drew attention to the communication from the European Communities contained in document WT/DS214/4.

16. The representative of the European Communities recalled that the EC had made a statement on this matter at the 23 August DSB meeting. He said that the EC had held consultations with the United States regarding steel wire rods. Thus, it was possible that, at a later stage, the examination by the panel would only be limited to line pipes.

17. The representative of the United States said that his country had noted the statement made by the EC, but was disappointed that the EC had chosen to move ahead with the establishment of a panel to examine these measures. The United States had implemented the measures only after the US International Trade Commission had conducted careful and exhaustive investigations, which demonstrated that imports of these products were causing or threatening to cause serious injury to US industries. The WTO rules specifically provided that governments might impose temporary import restrictions to prevent or remedy serious injury under these types of circumstances. He recalled that at the 23 August DSB meeting, the United States had stated that the EC had alleged, in its panel request, that the safeguard measures were inconsistent, "in particular, but not necessarily exclusively," with certain listed provisions of the Agreement on Safeguards and the GATT 1994. At the present meeting, he wished to reiterate the objections and difficulties his country had with that phrase and said that the United States would vigorously defend these measures before the panel. In the meantime, the United States hoped that the establishment of the panel would not prevent the EC from exploring the possibility of finding a mutually satisfactory solution to this matter.

18. 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.

19. The representatives of Canada, Japan and Mexico reserved their third-party rights to participate in the Panel's proceedings.

5. United States – Continued Dumping and Subsidy Offset Act of 2000

(a) Request for the establishment of a panel by Canada (WT/DS234/12)

(b) Request for the establishment of a panel by Mexico (WT/DS234/13)

20. The Chairman recalled that the DSB had considered this matter at its meeting on 23 August 2001 and had agreed to revert to it. He proposed that the two sub-items be considered together. He then drew attention to the communication from Canada contained in document WT/DS234/12.

21. The representative of Canada said that this was his country's second request for the establishment of a panel to examine the WTO-consistency of the Byrd Amendment. He recalled that at the 23 August meeting, when the DSB had established a panel on the Byrd Amendment at the request of nine other Members, the United States had unfortunately refused the first requests for a panel made by both Canada and Mexico. At that meeting, Canada had recalled that it had repeatedly expressed its concerns to the United States about the negative systemic implications of this legislation. As had been noted at that meeting, WTO rules only permitted Members to take measures that offset dumping or subsidization. They did not allow Members to redistribute remedial duties in order to offer their industry double protection. Moreover, by creating a clear incentive for US industry to file and support cases against companies exporting to the United States, this legislation also exposed imports of other Members to the threat of arbitrary dumping and countervailing duty investigations. Canada remained of the view that the Byrd Amendment violated US obligations under the WTO Agreement, and reiterated its request for the establishment of a panel. It was his country's hope and expectation that all complaints relating to this matter would be examined by a single panel, in accordance with Article 9 of the DSU.

22. The Chairman drew attention to the communication from Mexico contained in document WT/DS234/13.

23. The representative of Mexico said that at the 23 August DSB meeting his country had made its first request for the establishment of a panel to examine the application of the Byrd Amendment. However, that request had been declined by the United States. At the present meeting, he wished to reiterate his country's position that this legislation was counter to the US' WTO-obligations. Mexico was also requesting that a single panel be established to examine the complaints by Canada and Mexico together with the complaint by nine other Members, in accordance with Article 9 of the DSU.

24. The representative of the United States said that, as had been stated at previous DSB meetings, it was his country's view that the Byrd Amendment was fully consistent with US international obligations under the WTO and the United States intended to defend it vigorously before the panel. The United States re-emphasized that this law did not alter how the United States made anti-dumping or countervailing duty determinations, or the amount of duties assessed on dumped or subsidized imports, which were issues covered by the WTO Agreement. The WTO Agreement did not address what a country might do with anti-dumping and countervailing duties after they had been collected.

25. The representative of the Japan wished to reiterate his country's concerns regarding the WTO-consistency of the Byrd Amendment. He noted that the number of complainants against the legislation in question amounted to ten countries and the EC. This was a clear indication that the concern raised by the Byrd Amendment was shared world-wide. Since all the complaints related to the same legislation, Japan welcomed the establishment of a single panel, pursuant to Article 9.1 of the DSU.

26. The representative of the European Communities welcomed the request by Canada and Mexico for the establishment of a single panel. He noted that their panel requests related to the same matter like the one raised by nine countries. For this reason and in view of the systemic nature of the issues raised by this case, the EC could agree to the establishment of a single panel pursuant to Article 9.1 of the DSU.

27. The Chairman said that it was his understanding that the United States was ready to accept the establishment of a single panel.

28. The representative of the United States confirmed that his country was in a position to agree to the establishment of a single panel at the present meeting.

29. The DSB took note of the statements and agreed that the requests by Canada and Mexico for the establishment of a panel with standards terms of reference are accepted, and that as provided for in Article 9 of the DSU, in respect of multiple complainants, the Panel established on 23 August 2001 to examine the joint complaint by Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Korea and Thailand contained in document WT/DS217/5 would also examine Canada's complaint contained in document WT/DS234/12 and Mexico's complaint contained in document WT/DS234/13.

30. The Chairman noted that since a single Panel was established those delegations who had reserved their third-party rights to participate in the Panel established on 23 August 2001 at the request of Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Korea and Thailand, shall be considered as third parties in the single Panel.

31. The representative of Canada reserved its third-party rights in relation to the complaint by Mexico.

32. The representative of Mexico noted the statement made by the Chairman with regard to third-party participation in the single Panel. However, he wished to reserve his country's third-party rights in relation to the complaint by Canada.

33. The DSB took note of the statements.

6. United States – Anti-dumping measures on stainless steel plate in coils and stainless steel sheet and strip from Korea

(a) Statement by the United States

34. The representative of the United States, speaking under "Other Business", announced that his country had implemented the DSB's recommendations and rulings in this case by 1 September 2001, the date of expiry of the reasonable period of time. The re-determinations in both the stainless steel sheet and the stainless steel plate investigations had been effective on 28 August 2001.

35. The representative of Korea said that his delegation had noted the US statement and thanked the United States for implementing the DSB's recommendations in a prompt manner, within the reasonable period of time mutually agreed between Korea and the United States. In this connection, the US Department of Commerce was conducting administrative reviews of the anti-dumping orders on stainless steel plate in coils and stainless steel sheet and strip. He noted that the principles for calculating dumping margins specified by the Panel and recommended by the DSB applied equally to the administrative reviews as to the original investigation. Therefore, it was Korea's understanding that the United States would follow the same calculation methodologies in the reviews like in the present re-determinations. Korea also understood that the United States had taken cognizance of the relationship between the original investigations and the administrative review in this regard. Finally, Korea thanked the Panel and the WTO Secretariat for their work in this complex case, which had raised many important issues. As several Members had pointed out at previous DSB meetings, the Panel Report had made an important contribution to the clarification of Members' rights and obligations under the Anti-Dumping Agreement.

36. The DSB took note of the statements.
