

**Dispute Settlement Body
7 February 2011**

MINUTES OF MEETING

Held in the Centre William Rappard
on 7 February 2011

Chairman: Mr. Yonov Frederick Agah (Nigeria)

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 1. Dominican Republic – Safeguard measures on imports of polypropylene bags and tubular fabric	
(a) Request for the establishment of a panel by Costa Rica (WT/DS415/7)	
(b) Request for the establishment of a panel by Guatemala (WT/DS416/7)	
(c) Request for the establishment of a panel by Honduras (WT/DS417/7)	
(d) Request for the establishment of a panel by El Salvador (WT/DS418/7)	
 1. The <u>Chairman</u> proposed that the four sub-items to which he had just referred be considered together since they pertained to the same matter. He recalled that the DSB had considered those matters at its meeting on 25 January 2011 and had agreed to revert to them. First, he drew attention to the communication from Costa Rica contained in document WT/DS415/7 and invited the representative of Costa Rica to speak.	
 2. The representative of <u>Costa Rica</u> said that, at the 25 January 2011 DSB meeting, Costa Rica had requested the establishment of a panel to examine the Dominican Republic's safeguard measures on imports of polypropylene bags and tubular fabric from Costa Rica. However, due to the Dominican Republic's objection, the panel had not been established at that meeting. Consequently,	

Costa Rica was requesting, for the second time, that a panel be established to examine this matter. In that regard, Costa Rica wished to recall the statement it had made at the 25 January 2011 DSB meeting. Given the similarities between the issues raised in the panel request put forward by Costa Rica and those set out in the requests by Guatemala, Honduras and El Salvador, at the present meeting Costa Rica was requesting, pursuant to Article 9.1 of the DSU, that a single panel be established to examine those different complaints, with standard terms of reference as set out in Article 7 of the DSU. Moreover, as indicated in the panel request, given the urgency of the matter, Costa Rica hoped that the panel would finalize its report within six months, as stipulated in Article 12.8 of the DSU.

3. The Chairman drew attention to the communication from Guatemala contained in document WT/DS416/7 and invited the representative of Guatemala to speak.

4. The representative of Guatemala said that since at the 25 January 2011 DSB meeting the Dominican Republic had objected to the establishment of a panel, Guatemala was now requesting, for the second time, that such a panel be established to examine this matter. Accordingly, Guatemala wished to reiterate all the points it had raised at the January DSB meeting. Moreover, as had been stated in the panel request, given the urgency of the matter, Guatemala also hoped that the panel would finalize its report within six months, as stipulated in Article 12.8 of the DSU.

5. The Chairman drew attention to the communication from Honduras contained in document WT/DS417/7 and invited the representative of Honduras to speak.

6. The representative of Honduras said that, on 18 October 2010, Honduras had requested consultations with the Dominican Republic regarding its safeguard measures imposed on imports of polypropylene bags and tubular fabric. Honduras considered those measures to be inconsistent with Article XIX of the GATT 1994 and the Agreement on Safeguards. Those consultations had been held on 16 and 17 November 2010. Although they had helped to narrow the gap between the parties and had enabled them to exchange views on the challenged measures, those consultations had unfortunately not resolved the matter. Therefore, Honduras was requesting the establishment of a panel to examine this matter. The DSB had already considered this panel request at its meeting on 25 January 2011 but, due to the Dominican Republic's objection, the panel had not been established at that meeting. Consequently, Honduras was, once again, requesting the establishment of a panel at the present meeting. Since other Members had also requested the establishment of a panel on the same matter, Honduras was requesting, pursuant to Article 9.1 of the DSU, that a single panel be established to examine those different complaints with standard terms of reference, as set out in Article 7 of the DSU. Moreover, given the urgency of the matter, and as indicated in the panel request, Honduras hoped that the panel would finalize its report within six months, as stipulated in Article 12.8 of the DSU.

7. The Chairman drew attention to the communication from El Salvador contained in document WT/DS418/7 and invited the representative of El Salvador to speak.

8. The representative of El Salvador said that, on 19 October 2010, El Salvador had requested consultations with the Dominican Republic regarding its safeguard measures on imports of polypropylene bags and tubular fabric. El Salvador considered that those measures were inconsistent with, *inter alia*, Article XIX of the GATT 1994 and the Agreement on Safeguards. El Salvador, together with the other Members, which had been affected by the safeguard measures on imports of polypropylene bags and tubular fabric, had held consultations with the Dominican Republic on 16 and 17 November 2010. As El Salvador had stated at the 25 January 2011 DSB meeting, those consultations had helped to narrow the gap between the parties and had enabled them to exchange views on the challenged measures but, unfortunately, had not resolved the dispute. Prior to the consultations, El Salvador had expressed concern regarding the measures at issue through various

official channels, including the Committee on Safeguards. Nevertheless, pursuant to a resolution of the Commission for the Regulation of Unfair Trade Practices and Safeguard Measures of the Dominican Republic, the measures imposed on imports of polypropylene bags and tubular fabric had been confirmed by the entry into force, as of 18 October 2010, of a definitive safeguard measure, which had a negative impact on El Salvador's exports to the Dominican Republic's market. At its meeting on 25 January 2011, the DSB had already considered El Salvador's request for the establishment of a panel to examine the safeguard measures imposed by the Dominican Republic, but due to the Dominican Republic's objection, the panel had not been established at that meeting. Consequently, El Salvador had requested, once again, that the DSB establish a panel at the present meeting. Since other Members had also requested the establishment of a panel on the same matter, El Salvador was requesting, pursuant to Article 9.1 of the DSU, that a single panel be established to examine those different complaints, with standard terms of reference as set out in Article 7 of the DSU. As indicated in the panel request, given the urgency of the matter, El Salvador hoped that the panel would finalize its report within six months, as stipulated in Article 12.8 of the DSU.

9. The representative of the Dominican Republic said that his country thanked its Central American trading partners for their statements and wished to reiterate what it had stated at the 25 January 2011 DSB meeting. As had been indicated at that meeting, the Dominican Republic believed that dialogue should be pursued, as this matter could not have been resolved in the course of just one round of consultations. Once again, the Dominican Republic was not in a position to agree to the establishment of a panel requested by Costa Rica, Guatemala, Honduras and El Salvador.

10. The representative of Panama said that his country regretted that the Dominican Republic had not given favourable consideration to the concerns and arguments put forward by Costa Rica, Guatemala, Honduras and El Salvador. He recalled that due to its substantial trade interest and the importance of the products at issue to its exporters, Panama had joined the consultations on this matter. Panama was currently excluded from the application of the measures in question, which was due to circumstances that could change at any time. Accordingly, Panama would reserve its third-party rights to participate in the Panel's proceedings.

11. The DSB took note of the statements and agreed to establish a single panel, pursuant to Article 9.1 of the DSU, with standard terms of reference, to examine the complaint by Costa Rica contained in WT/DS415/7, the complaint by Guatemala contained in WT/DS416/7, the complaint by Honduras contained in WT/DS417/7 and the complaint by El Salvador contained in WT/DS418/7.

12. The representatives of China, Colombia, the European Union, Nicaragua, Panama, Turkey and the United States reserved their third-party rights to participate in the Panel's proceedings.

2. United States – Measures affecting imports of certain passenger vehicle and light truck tyres from China

(a) Joint request by China and the United States for a decision by the DSB (WT/DS399/5)

13. The Chairman drew attention to the communication from China and the United States contained in document WT/DS399/5 and invited the representative of China to speak.

14. The representative of China said that, taking into account the current workload of the Appellate Body, China had agreed with the United States that the DSB shall, no later than 24 May 2011, adopt the Panel Report in this dispute unless the DSB decided by consensus not to do so or either party to the dispute notified the DSB of its decision to appeal. China considered that a DSB decision for this purpose would provide greater flexibility in scheduling, given the heavy workload of the Appellate Body.

15. The representative of the United States said that his country joined China in requesting that the DSB agree to provide additional time for adoption or appeal of the Panel Report in this dispute by adopting the draft decision set out in document WT/DS399/5. The United States clarified that it was not joining the request out of any concern with the Panel Report. To the contrary, the Panel had conducted a thorough evaluation of the issues in this dispute, in a clear and efficient manner. The Panel's findings that the United States had acted consistently with its WTO obligations were well-founded in the applicable provisions of the WTO Agreement and the factual record in the dispute. However, the Appellate Body had informally requested the parties to delay any appeal in this dispute until May 2011. After discussions between the parties, the United States and China had decided to make this joint request. The draft decision would provide for DSB adoption of the Panel Report by negative consensus until 24 May 2011. In that regard, the United States noted that this was the third decision the DSB had been asked to take in two months to delay possible appeals in three different disputes. The Appellate Body was currently working on two appeals, one of which had been filed in July 2010. The United States believed that swift resolution of those pending appeals could help minimize delays in, and a growing backlog of, any appeals in other disputes. The United States appreciated the DSB's support for the draft decision.

16. The DSB took note of the statements.

17. The Chairman proposed that: "The DSB agree that, upon a request by China or the United States, the DSB shall no later than 24 May 2011, adopt the Report of the Panel in the dispute: *United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China*, contained in document WT/DS399/R unless (i) the DSB decides by consensus not to do so or (ii) either party to the dispute notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU".

18. The DSB so agreed.
