WORLD TRADE ORGANIZATION

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Dispute Settlement Body
3 June 2002

MINUTES OF MEETING

Held in the Centre William Rappard
on 3 June 2002

Chairman: Mr. Carlos Pérez del Castillo (Uruguay)

Subjects discussed: Page

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

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

(b) Request for the establishment of a panel by Japan

(c) Request for the establishment of a panel by Korea

1. The Chairman said that the three sub-items to which he had just referred pertained to the same matter, but that the request for the establishment of a panel by the European Communities had already been considered by the DSB at its meeting on 22 May 2002. He, therefore, proposed that the DSB consider the first sub-item separately from the other two sub-items pertaining to the requests by Japan and Korea, which would then be taken up together.

(a) Request for the establishment of a panel by the European Communities (WT/DS248/12)

2. The Chairman drew attention to the communication from the European Communities contained in document WT/DS248/12.

3. The representative of the European Communities said that the EC's panel request was on the agenda for the second time. He noted that since the previous DSB meeting no serious attempt had

been made by the United States to find a solution. The United States continued to delay the establishment of panels and, therefore, it had been necessary for the EC and other parties to request a special DSB meeting in order to have a panel established. This was unfortunate, but as long as the United States continued to insist on using its rights to the fullest, it would be necessary for the complaining parties to request special DSB meetings. Since no progress had been made, the EC was requesting, for the second time, the establishment of a panel to examine the US steel safeguards. The EC expected that the panel would proceed as expeditiously as possible. He noted that every day the EC was losing thousands of dollars as a result of US safeguard measures. Many other Members had questioned the compatibility of the US action with WTO requirements on safeguards and had initiated the DSU procedures against the US measures. Beside Japan and Korea, whose panel requests were before the DSB at the present meeting, joint consultations under the DSU held on 11 and 12 April 2002 involved China, whose panel request would be examined at the special meeting of the DSB on 7 June 2002. Switzerland and Norway had also participated in these consultations. In addition, New Zealand and Brazil had initiated the DSU procedures against the US steel safeguards on 14 and 21 May 2002, respectively. All these Members had raised similar issues, including lack of increased imports, absence of injury, flawed causal link between imports and injury, disproportionate remedy, violation of parallelism requirement. The EC, therefore, expected that the United States would avoid procedural tactics in order not to delay the DSU procedure with regard to the related 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 asked the United States to adopt a cooperative approach concerning forthcoming panel requests related to the steel case.

4. The representative of the United States said that, as had been stated at the 22 May DSB meeting, it was regrettable that the EC had chosen to challenge the US safeguard measures. In the view of the United States, these measures were fully consistent with the applicable portions of the Safeguards Agreement and the GATT 1994. The United States understood, however, that a panel would be established at the present meeting to consider the claims of the European Communities.

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.

6. The representatives of the Brazil, Canada, China, Chinese Taipei, Japan, Korea, Norway, Switzerland and Thailand reserved their third-party rights to participate in the Panel's proceedings.

7. The representative of Malaysia said that, at this stage, his country was still in the process of deciding whether or not to become a third party in this dispute, and wished to keep its options open since it had both trade and systemic interests in this case. If Malaysia decided to reserve its third-party rights it would do so through a written communication within the next 10 days.

8. The DSB took note of the statement.

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

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

9. The Chairman said that, as he had already indicated in his introductory statement, the two requests to which he had referred would be considered together. First, he drew attention to the communication from Japan contained in document WT/DS249/6.

10. The representative of Japan said that, on 21 May 2002, his country had submitted the request for the establishment of a panel to examine the US definitive safeguard measures on imports of certain steel products. Japan believed that the US safeguard measures violated the WTO Agreement. Since Japan's claims were outlined in its panel request, at the present meeting, he only wished to provide a summary of those claims. Japan considered that the United States had acted inconsistently

with several provisions of the Agreement on Safeguards and the GATT 1994, by failing to meet the requirements of increased imports, causation between increased imports and serious injury, definition of domestic industries producing products like or directly competitive with the imported products, parallelism between the scope of the investigation and that of the measures, the extent of measures and the principle of non-discrimination. The consultations with the United States that Japan had held jointly with the EC, Korea, China, Switzerland and Norway in April 2002 did not bring about a satisfactory resolution. Japan was, therefore, requesting that a panel be established at the present meeting.

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

12. The representative of Korea said that, on 20 March 2002, his country had requested consultations with the United States with regard to the US safeguard measures on steel products. These consultations had been held on 11-12 April 2002, but unfortunately they had not resulted in a satisfactory solution to the matter. Korea was, therefore, requesting that a panel be established to examine the US safeguard measures on imported steel products. In Korea's view, the US measures were in multiple violations of the GATT 1994 and the Safeguards Agreement. At the present meeting, he did not wish to go into further details regarding this matter since Korea's claims were outlined in its panel request. He recalled that after the United States had announced its decision to take safeguard measures on steel in early March 2002, there had been an outpouring of protests, and the international media covered the issue almost on a daily basis. As his delegation had warned at the 5 April DSB meeting, the US action was leading to a spiral of protectionist measures, with several Members taking restrictive measures on imports of steel in their own way, citing the need to protect their own steel industry in response to the US steel safeguard measures. The situation was dangerously approaching a critical mass where more and more Members, who would otherwise never consider doing so, were being forced to consider taking their own safeguard measures on steel. Furthermore, five affected Members had announced their list of suspension of concessions against the United States due to the absence of compensation from the United States. This new development was a source of grave concern since the situation might easily get out of control and escalate into cross retaliations by major Members on a level that had never before been witnessed in the history of the WTO.

13. Korea noted that considering the huge potential damage to the global trading system involved in such a cycle of retaliations, all the Members concerned should bear in mind the consequences of their actions. Korea was also concerned about the implications of the recent US measures of the United States on the ongoing negotiations, which had recently been launched at Doha. The steel safeguard measures had been followed by a couple of other actions in non-steel areas in the United States, which were viewed as concessions to its domestic protectionist forces. All these measures undermined the climate for ongoing negotiations and Korea wondered how countries could successfully conclude these negotiations in time with such protectionist measures in place. His delegation firmly believed that each Member should resolutely stand up for the open market principles on which this organization had been founded and roll back all the measures which would stand in the way of the progress of the negotiations. Since it was the US safeguard measures on steel that had, directly or indirectly, led to this disturbing trend in international trade, countries had to deal with this issue as the first step in redressing this situation. First and foremost, there was a need to resolve this issue on an urgent basis through the dispute settlement mechanism. At the same time, Korea strongly urged the United States to reconsider its steel trade policy and repeal the measures. If the countries did not act quickly and decisively, it might not be possible to reverse the threats to the global trading system.

14. The representative of the United States said that it was regrettable that Japan and Korea had now also chosen to challenge the US safeguard measures. As the United States had stated in its previous statement, the measures in question were fully consistent with the applicable portions of the

Safeguards Agreement and the GATT 1994. The United States was confident that the dispute settlement process would ultimately reach the same conclusion. However, at the present meeting, the United States was not in a position to accept the panel requests submitted by Japan and Korea.

15. The representative of Japan said that it was regrettable that the United States was not in a position to accept Japan's request for the establishment of a panel at the present meeting. In light of the statement made by the United States, he wished to announce that Japan would be requesting a special DSB meeting to be held on 14 June in order to allow for the second consideration of its panel request.

16. The representative of Norway said that his country was in a similar situation like many other countries since the consultations with the United States on safeguard measures had not resulted in a satisfactory solution to this dispute. Therefore, his country would be requesting the establishment of a panel to examine this matter and hoped that this request would be considered at the special DSB meeting to be held on 14 June 2002.

17. The representative of Switzerland said that the US safeguard measures had far-reaching consequences. They had not only seriously disrupted the world steel market, but had also prompted a series of restrictive measures taken by other Members. It was well known that Switzerland had also been affected by the US safeguard measures. In the view of Switzerland, the US measures were in clear violation of the WTO Agreement and his country had urged the United States to terminate these measures immediately. In April 2002, Switzerland had held consultations under the DSU with the United States, together with the EC and other Members concerned. Unfortunately, it had not been possible to reach a mutually agreeable solution. He said that Switzerland had reserved its rights under Article 8.2 of the Agreement on Safeguards after no mutually satisfactory solution had been found with the United States during the consultations held pursuant to the Safeguard Agreement in April 2002. Under the circumstances, Switzerland fully supported the request made by the EC and other Members concerned for the establishment of a panel to examine the conformity of the US measures with the WTO rules. Switzerland would be requesting a special meeting of the DSB on 14 June 2002 in order to consider its own request for the establishment of a panel to examine the US measures.

18. The representative of the European Communities reiterated that the EC regretted the position taken by the United States and the fact was that the United States was using all procedural options in order to delay the dispute settlement process. He recalled that the DSU provisions provided that a rapid solution of disputes was one of the fundamental principles of the system. The EC regretted that the United States had decided to adopt this attitude, which delayed the possibility of reaching a solution of the dispute, and had invoked procedural obstacles in order to prevent the establishment of a panel to examine this matter. He regretted that as a result of this attitude countries concerned had to request several special DSB meetings in order to deal with the same matter. It would be so simple if the United States accepted the six panel requests at one single DSB meeting.

19. The representative of China said that her country also believed that the US safeguard measures were not consistent with the United States' WTO obligations. She recalled that China had held consultations with the United States, but these consultations had failed to resolve the matter. Therefore, China had submitted its own request for the establishment of a panel and had requested a special DSB meeting, which would take place on 7 June 2002. China wished to join the EC as well as other countries concerned in urging the United States to find a rapid solution to this dispute.

20. The DSB took note of the statements and agreed to revert to this matter.

2. Japan – Measures affecting the importation of apples

(a) Request for the establishment of a panel by the United States (WT/DS245/2)

21. The Chairman recalled that the DSB had considered this matter at its meeting on 22 May 2002 and had agreed to revert to it. He drew attention to the communication from the United States contained in document WT/DS245/2.

22. The representative of the United States said that his country was requesting for the second time the establishment of a panel to examine Japan's measures restricting the importation of US apples. Among other things, these measures lacked the scientific basis required under the WTO agreements; they were not legitimate phytosanitary measures. At the 22 May DSB meeting, Japan had stated that it could not agree to the establishment of a panel. Japan had also stated that it was willing to consider the possibility of amending its import restrictions on apples should the United States provide additional information. The United States had provided Japan with ample information demonstrating that mature, symptomless apples did not pose a risk for fire blight, but Japan had yet to modify its measures to allow imports of those apples. The United States remained willing to resolve this issue based on the scientific evidence. However, as the United States had already presented the relevant science to Japan, it did not believe that there was any need to present additional information. If Japan was willing to conform its measures to the scientific evidence, it should do so. In the interim, the United States had no choice, but to proceed with this panel request. Accordingly, the United States was requesting that a panel be established at the present meeting.

23. The representative of Japan said that it was regrettable that his delegation was obliged to raise again the matter concerning Japan's legitimate measures to keep the country safe from contamination of fire blight. Japan's position on this matter had been made very clear at the previous DSB meeting. Contrary to the statement made by the United States at the present meeting, his delegation believed that the United States had yet to respond positively and sincerely to the questions raised by Japan. His country had repeatedly expressed its willingness to consider the possibility of amending the phytosanitary measures, if the United States provided more information. In addition, Japan had answered all the questions raised by the United States at the 18 April 2002 consultation. In contrast, the United States had never provided additional information, it had unilaterally terminated bilateral consultations and had requested the establishment of a panel concerning this dispute. Such an attitude of the United States was regrettable, as it was not consistent with the objectives and the spirit of the DSU, namely, to try in good faith to reach a mutually acceptable solution to a dispute through consultations. Despite its opposition to the establishment of a panel, Japan acknowledged that a panel would be established upon the second request by the United States. Japan believed that its phytosanitary measures were based on scientific evidence and were consistent with the relevant WTO Agreements, including the SPS Agreement. Japan intended to fully elaborate its views during the panel proceedings. Japan did not agree to including two elements in the terms of reference of the panel, namely, paragraph 5 of Article 5 of the SPS Agreement and paragraph 2 of Article 4 of the Agreement on Agriculture. These two elements did not appear in the US request for consultation, and had not been discussed in the bilateral consultation. In Japan's view, these two elements should not be included in the panel's terms of reference. Should the United States disagree, Japan was ready to consult with the United States on the terms of reference of the panel as indicated in Article 7 of the DSU. If such consultations did not lead to an agreement, Japan would, inevitably, seek a panel's decision on this matter.

24. 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.

25. The representatives of the Australia, Brazil and the European Communities reserved their third-party rights to participate in the Panel's proceedings.

3. Canada – Export credits and loan guarantees for regional aircraft

(a) Recourse by Brazil to Article 4.10 of the SCM Agreement and Article 22.2 of the DSU (WT/DS222/7)

26. The Chairman informed Members that Brazil and Canada had reached a bilateral agreement in respect of this agenda item and he invited the representative of Brazil to make a statement.

27. The representative of Brazil said that, pursuant to the bilateral agreement signed by Brazil and Canada on 1 June 2002, copies of which had been forwarded to the Chairman and were being made available to delegations in the meeting room, Brazil was requesting the DSB to adopt a decision to defer consideration of this item of the agenda and revert to it at its next regular meeting on 24 June 2002. Such deferral shall in no way affect Brazil's right to request authorization to take appropriate countermeasures pursuant to Article 4.10 of the SCM Agreement and Article 22.2 of the DSU. Any time-periods that might apply to this request and its approval by the DSB should be extended accordingly. The purpose of the decision was to grant Brazil and Canada some additional time to decide on how to proceed with this dispute, particularly with regard to the sequence of work under Articles 21 and 22 of the DSU. In this regard both parties had reserved their rights. Brazil also pointed out that footnote 6 of Article 4 of the SCM Agreement provided that "any time periods mentioned in this Article may be extended by mutual agreement".

28. The representative of Canada said that his country concurred with the statement made by Brazil at the present meeting. He said that the parties had entered into the bilateral agreement in order to gain some additional time to continue discussions with a view to resolving some procedural questions in this dispute. In particular, the parties were looking at the issue of how to sequence work under Articles 21 and 22 of the DSU. Canada noted that both parties had reserved their rights in this regard. In light of this agreement, Canada urged the DSB to agree to defer consideration of this item and revert to it at the next regular meeting on 24 June 2002.

29. The Chairman proposed that the DSB take note of the statements and decide to defer consideration of this item of the agenda and revert to it at its next regular meeting, currently scheduled to take place on 24 June 2002. Such deferral shall in no way affect Brazil's right to request authorization to take appropriate countermeasures pursuant to Article 4.10 of the SCM Agreement and Article 22.2 of the DSU. Any time-periods that might apply to this request and its approval by the DSB would be extended accordingly.

30. It was so agreed.