World Trade Organization

RESTRICTED

WT/DSB/M/156
10 November 2003

(03-5988)

Dispute Settlement Body
2 October 2003

MINUTES OF MEETING

Held in the Centre William Rappard
on 2 October 2003

Chairman: Mr. Shotaro Oshima (Japan)

Prior to the adoption of the agenda, the item concerning the adoption of the Panel Report in the case on "United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada" was removed from the proposed agenda, following the decision by the United States to appeal the Panel Report.

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1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.19 - WT/DS162/17/Add.19)

(b) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.12)

(c) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.12)

(d) Chile – Price band system and safeguard measures relating to certain agricultural products: Status report by Chile (WT/DS207/15)

1. The Chairman recalled that Article 21.6 of the DSU required that "unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved". He proposed that the four sub-items to which he had just referred be considered separately.

(a) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.19 - WT/DS162/17/Add.19)

2. The Chairman drew attention to document WT/DS136/14/Add.19 – WT/DS162/17/Add.19 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US Anti-Dumping Act of 1916.

3. The representative of the United States said that his country had provided an additional status report in this dispute on 19 September 2003, in accordance with Article 21.6 of the DSU. As noted in the report, legislation repealing the 1916 Anti-Dumping Act had been introduced in both the US Senate and the US House of Representatives. The US administration was continuing to work with the US Congress to achieve further progress in resolving this dispute with the EC and Japan. The United States regretted that the EC had nevertheless decided to request the resumption of the arbitration in this dispute.

4. The representative of the European Communities said that three years had now passed since the DSB had adopted the Panel and the Appellate Body Reports, which had found the 1916 Anti-Dumping Act to be in violation of several obligations of the WTO Agreements. In those three years, the only actions to implement the DSB's decision had been the introduction of six repealing bills. Three had become void after the last US Congress adjourned in November 2002 without even discussing them. The other three had now been pending in the new Congress for several months without again being even discussed. In the meantime, EC companies had been facing substantial litigation costs to defend themselves against a law that should have been repealed long ago, actually even before some of these Court actions had started. Furthermore, the United States was now envisaging to repeal the 1916 Anti-Dumping Act without terminating the pending litigation. He stressed again that the EC had accepted to extend the implementation deadline and to suspend the arbitration on its request for retaliation on the express understanding that the repealing Act would also terminate the pending litigation. The EC had been extremely patient and had shown on several occasions its readiness to accommodate the US difficulty in implementing this decision. But, on the third anniversary of the WTO decision, the EC could legitimately expect that the United States would finally repeal the 1916 Anti-Dumping Act and terminate the pending court cases. In the absence of any signs that this was forthcoming, the EC had decided to exercise its rights under the WTO and had asked for re-activation of the arbitration.

5. The representative of Japan said that her country remained gravely concerned whether the implementation by the United States in this proceeding would soon be secured. The end of the first session of the 108th Congress was fast approaching. Japan, once again, called on the United States to pass the legislation repealing the 1916 Anti-Dumping Act during this session of the US Congress in order to solve this dispute and to restore credibility of not only the United States, but also the WTO dispute settlement system. The legislation must also have the proper retroactive effect to terminate the pending cases, so that the respondent Japanese companies would no longer be subject to the undue and significant damages, including substantial legal costs. The United States must do a better reporting to the DSB by making it clear if and how the repealing bills introduced to the US Congress were being addressed, and how it intended to implement the DSB's recommendations and rulings promptly and correctly. Finally, while Japan was still contemplating the question of reactivation of the DSU Article 22 arbitration, it reminded the United States of its right to suspend concessions or other obligations.

6. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

(b) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.12)

7. The Chairman drew attention to document WT/DS176/11/Add.12 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

8. The representative of the United States said that his country had provided a status report in this dispute on 19 September 2003, in accordance with Article 21.6 of the DSU. The US administration would continue to work with the US Congress on appropriate statutory measures to resolve this matter.

9. The representative of the European Communities said that the EC had welcomed the introduction of a bill last June in Congress that would, inter alia, repeal Section 211. This repeal was part of a whole scheme of measures that would ensure an effective protection of intellectual property rights both in Cuba and in the United States. It reaffirmed the US attachment to ensure adequate protection of intellectual property rights, which should not be affected by a special interest legislation. The EC had hoped that this would offer a solution to this dispute to the benefit of all.

10. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

(c) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.12)

11. The Chairman drew attention to document WT/DS184/15/Add.12 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

12. The representative of the United States said that his country had provided a status report in this dispute on 19 September 2003, in accordance with Article 21.6 of the DSU. The US administration continued to work with the US Congress to address the recommendations and rulings of the DSB that had not been addressed by the original deadline of 23 November 2002, and was working in support of specific legislative amendments that would do so.

13. The representative of Japan said her country had taken note of the US status report and the statement, which again contained no concrete explanation of its plan for the implementation of the DSB's recommendations and rulings. There was no indication whatsoever that the US administration intended to follow up on its pledge more than five months ago to "support" specific statutory changes. No bills had been introduced to the US Congress, and the parties were now faced with the end of the reasonable period of time, the end of the first session of the 108th Congress, coming nearer and nearer. This concerned, disappointed and perplexed Japan. She, therefore, questioned whether the United States honestly believed that it could again fail to implement the recommendations despite its own promise made to solicit Japan's acquiescence to the extension of the original reasonable period of time. Japan again demanded that the United States implement the DSB's recommendations and rulings before the end of the first session of the 108th Congress, and that the United States consult with Japan in an urgent and detailed manner on how and when it intended to fulfill its pledge. Should the United States choose not to implement the recommendations before the end of the extended reasonable period of time, Japan would of course have the right to suspend concessions or other obligations.

14. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

(d) Chile – Price band system and safeguard measures relating to certain agricultural products: Status report by Chile (WT/DS207/15)

15. The Chairman drew attention to document WT/DS207/15, which contained the status report by Chile on progress in the implementation of the DSB's recommendations in the case concerning price band system and safeguard measures relating to certain agricultural products.

16. The representative of Chile said that, pursuant to Article 21.6 of the DSU, his country presented its first status report on the implementation of the DSB's recommendations or rulings in this dispute. He said that on 25 September 2003, after Chile had submitted its status report, Law No. 19.897 had been published in the Chilean Official Journal, which had replaced Article 12 of Law No. 18.525 establishing a new price band system. The entry into force of this Law in respect of the products at issue in this dispute, namely wheat and wheat flour, would be 16 December 2003; i.e. before the end of the reasonable period of time for compliance determined by the arbitrator. The Regulation established pursuant to this Law, which governed certain key aspects of the price band system had to be issued prior to 16 December 2003. He noted that the other products at issue in this dispute, namely edible vegetable oils and oilseeds, had been excluded from the Law and were, therefore, no longer subject to the price band system.

17. The representative of Argentina said that his country welcomed the information provided by Chile regarding the draft law which, as stated by Chile, had been approved "with a view to making legal adjustments in regard of the price band system". At the present meeting, his delegation wished to present its views on this matter. First, he recalled that the Panel and the Appellate Body Reports in this dispute had confirmed virtually all arguments made by Argentina concerning the inconsistency of Chile's price band system with Article 4.2 of the Agreement on Agriculture. For this reason, Argentina believed that there was only one way in which the DSB's recommendations could be implemented in this case, namely by applying ordinary customs duties to the products at issue.

18. He said that Argentina had had the opportunity to look at the draft Chilean law and, at the present meeting, he wished to ask Chile a few questions regarding this law. He then asked how it was possible that Chile considered the duty applied on wheat and wheat flour to be consistent with its WTO obligations while at the same time the Appellate Body had categorically stated that any duty resulting from the price band system was inconsistent with the obligations under Article 4.2 of the Agreement on Agriculture. The specific duties which Chile planed to continue to apply represented

the difference between the reference price and the lower band floor. Given that the original system worked on the basis of moving averages for the past 60 months used to define the lower and upper band threshold parameters, he asked if Chile did not consider that the current system would distort the international price transmission process even further given that the lower and upper band thresholds were to remain unchanged until 2007. Likewise, taking into consideration the fact that, starting from 2007, parameters would be established on the basis of relatively insignificant fixed coefficients, thereby insulating the system further from international market fluctuations over a seven-year period, he asked if Chile did not consider that the new PBS mechanism would lead to even greater distortions. Having regard to Chile's emphasis on the fact that "the law approved by Congress does not include edible vegetable oils ..., which would hence no longer be subject to the price band system", he stressed that this did not imply *per se* that Chile had brought its PBS into conformity with the provisions of Article 4.2 of the Agreement on Agriculture.

19. Argentina believed that Chile's decision to comply with the DSB's recommendations as far as oils were concerned and to exclude them from the PBS was a positive sign. This did not, however, mean that, as far as wheat and wheat flour were concerned, the price bands were WTO-consistent on the basis of the new legislation. In this respect, Argentina maintained that the exclusion of oils was a basic obligation within the framework of the obligations arising from the ruling. Finally, Argentina wished to point out that, although Chile's status report of 22 September 2003 specified that the draft "has not been published, pending the issuing of the Regulation established in Article 1.10 of the approved law", Law No. 19.897 – amending Article 12 of Law No. 18.525 and the Customs Tariff – had been published in the Official Journal of the Republic of Chile on 25 September 2003, as indicated. Argentina, therefore, wished to underscore that what Chile continued to refer to as a "draft" had already force of law in spite of the fact that, pursuant to its first transitional article, it would enter into force on 16 December 2003 in respect of wheat and wheat flour. Accordingly, and given that the Law contained no provision in that respect, Argentina asked Chile to confirm the date of entry into force of this new Law in respect of edible vegetable oils. He asked if Chile had already brought its PBS into conformity with DSB's recommendations by excluding edible oils. Consequently, Argentina wished to state that the new Law was not in compliance with the DSB's recommendations, in that the measure – the price band system – had to be brought into conformity with Chile's obligations under Article 4.2 of the Agreement on Agriculture. Argentina attached importance to the search for alternatives to comply before the end of the reasonable period of time, to which Chile was entitled pursuant to Article 21.3(c) of the DSU as a means of preventing further legal procedures as of that date.

20. The representative of Bolivia said that his country had taken note of the efforts made by Chile in issuing the new Law and would carefully follow the regulatory provisions to be implemented. He said that, like Argentina, Bolivia also wished to know the date of entry into force of this new law.

21. The representative of Chile said that his delegation had noted the statement made by Argentina and its questions. He wished to receive Argentina's questions in writing so that he could send them back to capital in order to provide a timely response.

22. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

2. European Communities – Anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil

(a) Implementation of the recommendations of the DSB

23. The Chairman 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 date of 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 18 August 2003, the DSB had adopted the Appellate Body Report and the Panel Report in the case on "European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil". He said that the 30-day period in this case had expired on 17 September and on 15 September the European Communities had informed the DSB in writing of its intentions in respect of implementation. He noted that the relevant communication was contained in document WT/DS219/11.

24. The representative of the European Communities said that on 18 August 2003, the DSB had adopted the recommendations and rulings in this case. At that meeting, the EC had indicated that, in due course, it would inform the DSB of the steps it had intended to take to implement the DSB's recommendations of concern to it. In fact, on 15 September 2003 a written communication had been sent to the DSB concerning the EC's intentions with regard to implementation. At the present meeting, the EC wished to confirm its intention to implement the DSB's recommendations and rulings in a manner consistent with its WTO obligations. Due to the relative complexity of the issues involved and the need for re-determinations, the EC would need a reasonable period of time in which to do so. In the meantime, the EC and Brazil had agreed pursuant to Article 21.3(b) of the DSU that a reasonable period of time for implementation in this case would be seven months from the adoption of the Appellate Body/Panel Reports, thus ending on 19 March 2004.

25. The representative of Brazil said that the Reports issued by the Panel and the Appellate Body in the case on "EC – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil" had been adopted by the DSB on 18 August 2003. As provided under Article 21 of the DSU, the EC was requested to ensure prompt compliance with the DSB's rulings and recommendations, as the EC had been found to breach several provisions of the Anti-Dumping Agreement. Brazil welcomed the confirmation by the EC of its decision to comply with these rulings and recommendations. In the framework of Article 21.3(b) of the DSU, Brazil had agreed with the time-frame of seven months proposed by the EC with a view to implementing the DSB's recommendations and rulings in this case. As to the content of the measures to be taken by the EC to implement the DSB's rulings and recommendations, Brazil wished to receive, in the process of implementation, further information about the specific steps taken towards implementation, in order to be able to examine whether or not the measures proposed or adopted would effectively comply with the DSB's recommendations and rulings and if they were consistent with the covered agreements.

26. The DSB took note of the statements and of the information provided by the European Communities regarding its intentions in respect of implementation of the DSB's recommendations in this case.

3. European Communities – Protection of trademarks and geographical indications for agricultural products and foodstuffs

(a) Request for the establishment of a panel by the United States (WT/DS174/20)

(b) Request for the establishment of a panel by Australia (WT/DS290/18)

27. The Chairman proposed that the two sub-items to which he had just referred be considered together. He recalled that the DSB had considered these matters at its meeting on 29 August 2003 and had agreed to revert to them. First, he drew attention to the communication from the United States contained in document WT/DS174/20.

28. The representative of the United States said that, as discussed at the 29 August DSB meeting, the United States had had serious concerns for many years regarding the EC's Regulation 2081/92, which governed the protection of geographical indications for agricultural products and foodstuffs. As noted, a primary concern was that Regulation 2081/92 did not allow the registration of non-EC GIs unless the GI was from a country that offered GI protection that was equivalent to that of the EC. This "reciprocity requirement" appeared to be inconsistent with the national treatment or MFN obligations under the TRIPS Agreement and the GATT 1994. In addition, Regulation 2081/92 had diminished the value of foreign trademarks by not allowing trademark owners to assert their rights to protect their trademarks against confusing use. This appeared to be inconsistent with Article 16 of the TRIPS Agreement. For these and other reasons discussed at the 29 August DSB meeting, the United States again requested that the DSB establish a panel pursuant to Article 6 of the DSU with standard terms of reference to examine the matters set forth in the US panel request. The United States also requested that, pursuant to Article 9.1 of the DSU, a single panel be established to examine both the US complaint and that of Australia.

29. Finally, the United States recalled the comments made by the EC regarding the US panel request when this item had been discussed at the 29 August DSB meeting. The United States considered that its request in fact had fully complied with the requirements of Article 6.2 of the DSU. The EC should certainly understand the basis of the US request, both from its face and from the four years of consultations that the United States and the EC had held on these topics. In addition, the representative of the United States wished to emphasize that the United States was moving forward with this dispute because of its concerns with the EC system, not because of any link to other GI issues. The discrimination in the EC system, both against foreign GIs and trademarks, had serious commercial implications for the United States. Owners of valuable GIs in the United States, such as Idaho Potatoes and Florida Oranges, could not obtain protection under the EC system. US trademark owners were at risk of losing valuable trademark rights. The EC should not attempt to deflect attention from the serious deficiencies in its GI system by asserting that this dispute was being brought for tactical reasons but should, instead, address the US concerns by creating a non-discriminatory, transparent GI system that protected the GIs of all WTO Members and appropriately protected trademark rights.

30. The Chairman drew attention to the communication from Australia contained in document WT/DS290/18.

31. The representative of Australia said that for the second time in this dispute concerning the EC's regime for the registration and protection of geographical indications for agricultural products and foodstuffs, Australia requested the establishment of a dispute settlement panel. Australia's position on the issues raised in the dispute remained as outlined in its request for establishment of a panel in document WT/DS290/18 and in its statement at the DSB meeting on 29 August 2003 at the time of its first panel request. In summary, Australia believed that the EC's regime was inconsistent with existing WTO rules prohibiting discriminatory treatment, did not give due protection to trademarks and was overly complex and prescriptive. Further, Australia rejected the allegation made by the EC at the DSB meeting of 29 August 2003 that Australia had not complied with all of the requirements of Article 6.2 of the DSU. Australia's request for the establishment of a panel was fully consistent with the requirements of that provision. He requested that a panel be established to examine the claims made in document WT/DS290/18. Australia considered that a single panel should examine its complaint together with that of the United States, consistent with Article 9.1 of the DSU.

32. The representative of the European Communities said that the EC regretted that the United States and Australia had decided to persist in requesting the establishment of a panel with respect to the EC Regulation 2081/92 on the protection of geographical indications for agricultural products and foodstuffs. The EC considered this piece of legislation as fully compatible with WTO rules. The EC also noted that, notwithstanding its remarks on the fact that the first request had failed to meet the

minimum requirements of Article 6.2 of the DSU, a new request had not been lodged by the complainants. In this regard, the EC reserved its right to raise this issue during the panel proceedings.

33. 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 the United States contained in WT/DS174/20 and the complaint by Australia contained in WT/DS290/18.

34. The representatives of Australia, Colombia, Guatemala, India, Mexico, New Zealand, Chinese Taipei, Turkey and the United States reserved their third-party rights to participate in the Panel's proceedings.

4. Australia – Quarantine regime for imports

(a) Request for the establishment of a panel by the European Communities (WT/DS287/7)

35. The Chairman drew attention to the communication from the European Communities contained in document WT/DS287/7.

36. The representative of the European Communities said that the dispute with regard to the Australian quarantine regime for imports was a long-standing issue, which had been discussed between the EC and Australia over a number of years. The EC was disappointed at the failure of the discussions with Australia. Moreover, in the absence of any progress during WTO consultations, the EC had now decided to request a panel under Articles 6 of the DSU, Article XXII:2 of the GATT 1994 and Article 11 of the SPS Agreement. He then presented the key elements of the case. He said that the concerns of the EC related to the Australian regime for the importation of live animals, dead animals and animal parts, meat and meat products, dairy products, bee products, living plants, seeds, plant parts, and fresh fruits and vegetables. Australian legislation prohibited the importation of all of those products from all exporting countries, unless a Director of Quarantine granted a permit to import them into Australia. As a result of that very broad prohibition, combined with the procedures and criteria for granting import permits, a number of agricultural products from member States of the EC had been denied access to the Australian market. For example, pigmeat, poultry meat, tomatoes and citrus fruit. The effect of this highly restrictive regime on EC producers of agricultural and food products was as serious as it was obvious. The EC considered the Australian restrictions on imports of these products to be contrary to the provisions of SPS Agreement, in particular in so far as they were not based on an assessment of risks. In the light of the above, the EC sought a condemnation of these practices by the WTO.

37. The representative of Australia said that his country was concerned, but not surprised by the decision of the EC to request the establishment of a panel. Australia was concerned because of the potential harm which the challenge posed for the carefully negotiated balance reflected in the SPS Agreement and the ability of many Members, not just Australia, to maintain quarantine systems which addressed their particular circumstances while meeting their international obligations. The reason Australia was not surprised by the actions of the EC related to the possible motivations for the challenge. First, he said that he wished to be clear what the challenge was not about. To a very large extent, it was not about commercial considerations and securing greater market access for products from member States of the EC. For a number of products referred to in the request, Australia had no record of member States of the EC having previously expressed any interest in exporting to Australia. From Australia's perspective, the most likely reason there had been no previous expression of interest was because no significant commercial interest existed in relation to those products. Australia would be concerned if the challenge formed part of a strategy to alter the central principles of the SPS Agreement or which would threaten to undermine the ability of all Members to design an appropriate quarantine system to protect animal or plant life, or health.

38. The EC appeared to be challenging Australia's "positive list" approach to quarantine. As in other areas, the EC seemed to consider that the approach which it had taken quarantine was the only permitted model for a quarantine system. This ignored the fact that the EC had a vastly different trading history and pest status to many countries, including Australia. It also ignored the fact that the SPS Agreement was intended to establish a framework within which Members could design a quarantine system to meet their particular circumstances. Many Members maintained systems which were similar to that of Australia and which might be affected by this dispute. Australia did maintain a conservative approach to quarantine matters, but it was one which was entirely WTO-consistent and reflected its rights and obligations under the SPS Agreement.

39. The EC appeared to consider that the SPS Agreement required all WTO Members to carry out risk assessments for all possible traded plant and animal products from all possible sources, regardless of the existence or expression of any commercial interest. This was an onerous requirement for any government and one that Australia did not believe was contained in the SPS Agreement. Many Members, both developed and developing, would find it extremely difficult to apply the SPS Agreement in this way. Due to the very broad, unspecific and open-ended nature of the challenge, Australia considered the request contained in document WT/DS287/7 to be insufficient to satisfy Article 6.2 of the DSU. Australia understood that it was for a Panel to rule on this issue, but wished to signal its concerns at this early stage. He noted that Australia had expressed similar concerns about the EC's request for consultations in this matter during the discussions in May 2003. Australia's quarantine system was entirely WTO-consistent, and believed that this would ultimately be supported by a panel's findings, should a panel be established. Australia could not agree to the establishment of a panel at the present meeting.

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

5. European Communities – Customs classification of frozen boneless chicken cuts

(a) Request for the establishment of a panel by Brazil (WT/DS269/3)

41. The Chairman drew attention to the communication from Brazil contained in document WT/DS269/3.

42. The representative of Brazil said that on 11 October 2002, Brazil had requested consultations with the EC concerning the reclassification by the EC of the product frozen boneless chicken cuts, which had resulted in the application of tariffs on imports of salted chicken meat in excess of the tariff treatment provided for that product under the EC Schedule of Concession under the GATT 1994 ("Schedule LXXX"). Consultations under Article 4 of the DSU and Article XXII of the GATT 1994 had been held in Geneva on 5 December 2002 and on 19 March 2003. Even though these consultations had allowed a better understanding of the issue, they had unfortunately not led to a mutually agreed solution. The measures at issue in this case were the following: Commission Regulation (EC) No. 1223/2002 and EC Commission Decision, of 31 January 2003, regarding the definition and classification of frozen boneless chicken cuts under the Combined Nomenclature sub-heading 0207.14.10 and the validity of binding tariff information. By virtue of Regulation No. 1223/2002 and the EC Commission Decision, of 31 January 2003, chicken meat, frozen and impregnated with over 1.2 per cent of salt, falling under heading 0210, was now defined and classified under heading 0207, for frozen chicken. In Schedule LXXX, salted meat of sub-heading 0210.90.20 was subject to a bound duty rate of 15.4 percent and frozen boneless chicken cuts of subheading 0207.41.10 was subject to a bound duty rate of 102.4 €/100kg/net. Brazil considered that these measures were inconsistent with Articles II:1(a) and II:1(b) of the GATT 1994 and, as a result, nullified and impaired the benefits accruing to Brazil under that Agreement. More specifically, Brazil claimed that these measures provided treatment less favourable on imports of salted chicken meat than the treatment provided for the product in Schedule LXXX. The application of these measures

had resulted in the imposition of ordinary customs duties of 102.4 €/100kg/net on imports of salted chicken meat in excess of the *ad valorem* duty of 15.4 per cent for that product set forth and provided in Schedule LXXX. Regulation No. 1223/2002 and EC Commission Decision, of 31 January 2003, had now been in force for a considerable period of time and were significantly impacting upon Brazil's exports of salted chicken meat to the European Communities. Therefore, pursuant to Article XXIII of the GATT 1994 and Article 6 of the DSU, Brazil requested that a panel be established at the meeting to examine this matter, with standard terms of reference as set out in Article 7 of the DSU.

43. The representative of the European Communities said that Brazil's decision to request the establishment of a panel could not but cause great disappointment to the EC. The EC regretted the fact that Brazil had chosen this course of action. This was even more so as the EC had gone at great length to explain to Brazil, during two rounds of consultation, the EC legislation and practice in this respect. It was obvious that Brazil had misunderstood or had misinterpreted the EC legislation which it now attacked in the WTO. The EC legislation in question had simply ensured a uniform interpretation of the relevant CN codes throughout the EC and thus a uniform classification of the specific products imported under the EC Common Customs Tariffs. Nothing else and nothing more. The EC was convinced that it had acted consistently with its Schedule of commitments as read in the light of the Harmonized System of product classification. The EC had thus ensured that it had granted to Brazil and to other WTO Members the concessions which it had undertaken as part of the Uruguay Round negotiations. The EC wished to urge Brazil to reconsider its position. It could be unfortunate to proceed along this path for a matter that was clearly a result of a misunderstanding. To this effect, the EC stood ready to offer additional clarifications and explanations, if Brazil thought it was necessary. For all the reasons mentioned above, the EC had no option, but to express its disagreement with the establishment of a panel.

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

6. Mexico – Definitive anti-dumping measures on beef and rice

(a) Request for the establishment of a panel by the United States (WT/DS295/2)

45. The Chairman drew attention to the communication from the United States contained in document WT/DS295/2.

46. The representative of the United States said that, as described in its panel request of 19 September 2003, the United States was concerned that Mexico's definitive anti-dumping measure on long-grain white rice from the United States, published in the Diario Oficial on 5 June 2002, was inconsistent with Mexico's obligations under the GATT 1994 and the Anti-Dumping Agreement. As described in its panel request, US concerns about that measure were several. They included, for example, the manner in which Mexico had conducted its dumping and injury analyses; the data it had relied on in making its determinations; the manner in which Mexico applied the "facts available" to investigated exporters and to exporters that were not individually investigated; and Mexico's decision not to exclude from the measure those exporters that Mexico had found were not dumping. The United States was also concerned that certain provisions of Mexico's Foreign Trade Act, and its Federal Code of Civil Procedure, were inconsistent with the Anti-Dumping Agreement and the SCM Agreement. These were outlined in more detail in its panel request. On 31 July and 1 August 2003, the United States and Mexico had held consultations and had discussed these matters. The consultations had provided helpful clarifications, but had failed to resolve many of the US concerns. Accordingly, the United States was requesting that the DSB establish a panel to examine these matters, pursuant to Article 6 of the DSU, Article 17.4 of the Anti-Dumping Agreement, and Article 30 of the SCM Agreement, with standard terms of reference.

47. The representative of Mexico said that his country objected to the establishment of a panel. However, this should come as no surprise because, among other things, this reflected the incentive scheme of the dispute settlement mechanism. He said that the consultations had demonstrated overall that both Mexico's anti-dumping measures and its legislation were lawful. Mexico was taken aback that the United States should take such a course. Nor should it come as a surprise that Mexico had joined the growing trend among Members to identify flaws in the request for a panel, because in this case the request submitted by the United States had showed substantial shortcomings and was so vague and ambiguous as to be inconsistent with Article 6.2 of the DSU. There were other debatable aspects to the request, including measures or claims outside the purview of the consultations. He then referred to some examples in this regard. The United States had cited breaches of Article 4 of the Anti-Dumping Agreement, a provision not addressed in the consultations between the two countries. It further mentioned that Mexico had failed to properly evaluate the relevant economic factors, another matter outside the purview of the consultations concerning the measure imposed on rice. Furthermore, the US request contained assertions pertaining to Article 1 of the Anti-Dumping Agreement and Article VI of GATT 1994, again provisions not addressed by the consultations. The US claims concerning modifications to Mexico's Foreign Trade Act were likewise absurd. Despite extensive formal and informal consultations, in which the Foreign Trade Act's compatibility with and relation to its international commitments had been clearly explained, the United States "appeared" not to have understood. As Members might observe, most of the objections to Mexico's Foreign Trade Act were that its provisions "appeared to require" or "appeared to provide". It accordingly "appeared" to Mexico that the United States would do well to submit a new request explaining its assertions clearly. Moreover, in its request the United States had referred repeatedly to provisions of the Anti-Dumping Agreement and the SCM Agreement with regard to which consultations had never been held and in a number of cases, presented provisions quite differently from the way they had been cited in the course of the consultations. Mexico further noted that the United States now included Article 97 of the Foreign Trade Act, another provision not addressed in the consultations. Finally, Mexico would note that the United States had dropped its objection to Article 366 of the Federal Code of Civil Procedure, but was now contesting what "Mexican officials have asserted" as a measure. The United States had thus added a new dimension to WTO law by creating a whole new category of "measures" which might be challenged. The United States would do well to withdraw this request and, should it still see fit, submit one which would meet the formal requirements of Article 6.2, withdrawing all the elements not addressed by the consultations. If, on the other hand, the United States did wish to challenge all those new aspects, it should submit a new request for consultations.

48. The representative of the United States said that his country disagreed with the suggestion by Mexico that the US panel request had failed to meet the requirements of the DSU. The detailed multi-page US request was more than sufficient to present the problem clearly and it had met all the requirements of Article 6.2 and all the other relevant Articles of the DSU.

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

7. Selection process for appointment of a new Appellate Body member

(a) Statement by the Chairman

50. The Chairman, speaking under "Other Business", said that as he had announced at the beginning of the meeting, he wished to make a statement concerning the selection process for appointment of a new Appellate Body member. As Members were aware, two candidates had been nominated for this position by the United States. A paper containing the curricula vitae of these candidates had been circulated as Job No. 6859 on 9 September. He recalled that the Selection Committee, which had been established by the DSB at its meeting on 21 and 23 July 2003 had been requested to make a recommendation to the DSB on the appointment by no later than 24 October so that the DSB could take a decision on the appointment at its meeting on 7 November. He also wished

to recall that, as agreed by the DSB at its meeting on 18 August, the DSB would also take a decision on the reappointment of Messrs. Abi-Saab, Ganesan, and Taniguchi at the same 7 November meeting.

51. At the present meeting, he wished to inform delegations that he, as Chairman of the Selection Committee, intended to convene the Selection Committee to interview the two candidates sometime during the weeks of 6 and 13 October 2003. The candidates would also be available for meetings with individual delegations during these weeks upon request. Individual delegations wishing to meet with the candidates would be asked to contact the US Mission to make the necessary arrangements. Consistent with previous practice, the Selection Committee would also be available to meet, upon request, with any interested delegations who would wish to express their views on the candidates directly in person to the Selection Committee in the week of 13 October 2003. Delegations wishing to do so were invited to contact the Secretariat (Council and TNC Division).

52. The representative of the United States said that his country wished to thank the Chairman for the information provided on the selection process. The Unites States also wished to confirm that the US Mission would be pleased to make arrangements for delegations that would wish to meet Prof. Janow and Mr. Lighthizer, individually, while they were in Geneva for meetings with the Selection Committee.

53. The DSB took note of the statements.

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