

Dispute Settlement Body
17 April 2002

MINUTES OF MEETING

Held in the Centre William Rappard
on 17 April 2002

Chairman: Mr. Carlos Pérez del Castillo (Uruguay)

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Prior to the adoption of the agenda, India recalled that on 4 April 2002 it had requested that the item concerning the establishment of a panel pursuant to Article 21.5 of the DSU in the case on "European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India" be included on the DSB agenda. Subsequently, there had been an exchange of communications between the EC and India on this matter. In light of this, pursuant to Rule 6 of the Rules of Procedure for meetings of the General Council and the DSB, India wished to amend the proposed agenda contained in WT/DSB/W/190 and requested that the item pertaining to the above-mentioned case be removed from the proposed agenda.

The DSB so agreed.

1. Surveillance of implementation of recommendations adopted by the DSB

- (a) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/18/Add.3)
- (b) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.3 - WT/DS162/17/Add.3)

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 two sub-items to which he had just referred be considered separately.

- (a) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/18/Add.3)

2. The Chairman drew attention to document WT/DS160/18/Add.3 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

3. The representative of the United States said that on 4 April 2002, his country had provided an additional status report on the dispute under consideration, in accordance with Article 21.6 of the DSU. As noted in that report, the United States had been engaged in discussions with the EC in an effort to find a positive and mutually acceptable resolution to this dispute. In light of those discussions, the arbitration proceedings in this case had been suspended at the joint request of the parties in order to facilitate efforts to reach a positive resolution.

4. The representative of the European Communities said that the EC and its member States had read with interest the US status report in an effort to understand the status of implementation of the DSB recommendations and rulings in this dispute, and found that the status report contained nothing more than a reference to the productive discussions which had been held between the United States and the EC. Since those discussions did not relate to the issue of compliance, one could only conclude that the United States had not made any progress towards compliance with its obligations under the TRIPS Agreement. The EC hoped that at the next meeting the United States would be more cooperative and would provide more information in its status report.

5. The representative of Australia said that at previous meetings, his country had registered concerns about continued delay in the US implementation in this case, as well as with regard to the discriminatory nature of the proposed compensation arrangements that Australia understood had been reached between the United States and the EC. At the present meeting, he wished to take this opportunity to register these concerns once again and to reiterate Australia's expectation that any compensation arrangements reached between the parties would be applied on a non-discriminatory basis.

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

- (b) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.3 - WT/DS162/17/Add.3)

7. The Chairman drew attention to document WT/DS136/14/Add.3 – WT/DS162/17/Add.3 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.

8. The representative of the United States said that on 4 April 2002 his country had provided an additional status report on this dispute, in accordance with Article 21.6 of the DSU. As noted in that report, on 20 December 2001, the proposed legislation H.R. 3557 had been introduced in the US Congress. That legislation would repeal the 1916 Act and would provide that no judgments pursuant to actions under such Act shall be entered on or after 26 September 2000 that were inconsistent with the legislation. The United States continued to work with Japan and the EC in order to reach a mutually satisfactory resolution to this dispute.

9. The representative of the European Communities said that the EC had agreed to request the Arbitrators to suspend their work in order to give the US Congress the necessary time to adopt the proposal of Chairman Thomas to repeal the 1916 Act and to terminate pending cases. However, the EC noted that the US Congress had still not made progress towards the enactment of that proposal. The EC was concerned by this continued lack of compliance. It expected that the proposal to repeal the 1916 Act and to terminate pending cases would be enacted before the date agreed on by the parties to the dispute with regard to the reactivation of the arbitration proceeding, and that the new judge in charge of the Iowa case, which involved two European companies, would not decide to resume his proceedings.

10. The representative of Japan said that his delegation had noted the status report provided by the United States. As stated at the past DSB meetings, Japan's ultimate goal was to secure prompt compliance by the United States. In light of the fact that the United States had shown a willingness to implement the DSB's recommendations and rulings as soon as possible, Japan had requested the Arbitrator to suspend the proceedings in the case under consideration. The communication from the Arbitrator suspending the proceedings had been circulated as document WT/DS162/21. However, the arbitration proceedings could be reactivated at the request of either party after 30 June 2002, if no substantial progress had been made in repealing the 1916 Act thereby resolving this dispute. Bearing that in mind, Japan again urged the United States to comply with the DSB's recommendations and rulings as promptly as possible.

11. The representative of Mexico said that his country had participated as a third party in this case and hoped that a solution could be reached.

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

2. Mexico – Measures affecting telecommunications services

(a) Request for the establishment of a panel by the United States (WT/DS204/3)

13. The Chairman recalled that the DSB had considered this matter at its meeting on 8 March 2002 and had agreed to revert to it. He drew attention to the communication from the United States contained in document WT/DS204/3.

14. The representative of the United States said that his country was again requesting the establishment of a panel to examine the measures taken by Mexico affecting basic telecommunications services. This request addressed Mexico's failure to implement its GATS commitments for cross-border telecommunications services. In particular, as the United States discussed in greater detail at the 8 March DSB meeting, the US panel request focused on several measures, including: (i) a non-cost-oriented 13.5 per cent cross-border interconnection rate; (ii) an anti-competitive exclusive mandate to Mexico's dominant phone company to negotiate this rate; and (iii) a discriminatory lack of access for foreign suppliers to leased lines. These measures, which were largely embodied in Mexico's anti-competitive International Long Distance Rules, appeared to breach Articles 1 and 2 of the Reference Paper, Article 5 of the GATS Telecom Annex, and Article XVII of the GATS. These anti-competitive rules provided Mexico's dominant phone company a government

mandate to set high wholesale prices for telephone calls to Mexico. These rules had resulted in steep telephone charges that penalized American and Mexican families who sought to maintain cross-border ties, raised the price of doing business across the border, and burdened US and Mexican companies with unnecessary costs. The United States was disappointed that Mexico continued to maintain these anti-competitive rules, which were out of step with the positive strides Mexico had made in opening its domestic telecommunications market. Mexico's current stance was also at odds with the consensus to repeal these rules which unites the principal Mexican and US telecom providers, including Mexico's dominant phone company. The United States regretted that Mexico had not yet addressed these issues, and that it was, therefore, necessary to move forward with the panel process. Nevertheless, as stated previously, the United States remained open to further discussions with Mexico in an effort to resolve this matter on a mutually agreeable basis.

15. The representative of Mexico said that as his delegation had indicated at the 8 March DSB meeting, Mexico believed that the panel request of the United States was unclear in many respects and that it contained several procedural and substantive violations. He reiterated his country's view that the United States was trying to invent violations of commitments that had never been undertaken by Mexico. He said that these objections would be raised before the Panel. He noted that since the first request for consultations by the United States, Mexico had done its best in an effort to meet the US concerns, going beyond its WTO obligations. It was Mexico's understanding that the main telephone companies involved in this dispute had reached a satisfactory agreement. For these reasons, Mexico was surprised that the United States continued to pursue its panel request. In Mexico's view, this was a simple negotiating manoeuvre rather than a legitimate dispute. Therefore, the United States was in violation of Article 3.2 of the DSU which provided that the dispute settlement system "...is a central element in providing security and predictability to the multilateral trading system". This system should not be an instrument by which Members might help their companies to negotiate better terms for a particular trade transaction by obliging other Members to adopt measures that were not covered under their commitments.

16. The representative of Australia said that his country considered that the issues raised in the dispute under consideration would be of fundamental importance both in the context of the GATS and in relation to the telecommunication sector. Australia was currently considering whether or not it should participate as a third party in this case.

17. 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.

18. The representatives of the European Communities, Canada, Cuba, Guatemala, Japan and Nicaragua reserved their third-party rights to participate in the Panel's proceedings.

3. Argentina – Definitive anti-dumping duties on poultry from Brazil

(a) Request for the Establishment of a panel by Brazil (WT/DS241/3)

19. The Chairman recalled that the DSB had considered this matter at its meeting on 8 March 2002 and had agreed to revert to it. He drew attention to the communication from Brazil contained in document WT/DS241/3.

20. The representative of Brazil said that this was the second time his country was requesting the establishment of a panel to examine definitive anti-dumping measures on imports of poultry from Brazil imposed by Argentina through Resolution No. 574 of 21 July 2000. As the situation had not evolved since the 8 March DSB meeting when the panel request was on the agenda for the first time, Brazil wished to reiterate its request for the establishment of a panel. Brazil considered that the anti-dumping measures in question were inconsistent with several provisions of the Anti-Dumping Agreement and, as a result, had nullified and impaired the benefits accruing to Brazil under that

Agreement. Brazil claimed that the Argentinean authorities had violated, at least, Articles 1, 2, 3, 4, 5, 6, 9 and 12 of the Anti-Dumping Agreement, Annex 11 of the same Agreement and Article VI of the GATT 1994. These inconsistencies were related to: (i) the application presented by the domestic industry to initiate an investigation; (ii) the initiation of the investigation; (iii) the investigation itself; (iv) the final affirmative determination of dumping, injury and causal relationship; (v) and the imposition and collection of anti-dumping duties. These measures, which had been in force for almost two years, had significantly impacted upon Brazil's exports of poultry to Argentina and continued to do so. Therefore, pursuant to Article XXII of the GATT 1994, Article 6 of the DSU and Article 17 of the Anti-Dumping Agreement, Brazil was requesting that a panel be established at the present meeting to examine this matter, with standard terms of reference as set out in Article 7 of the DSU.

21. The representative of Argentina said that as had been indicated at the 8 March DSB meeting his country continued to believe that the measure concerned was consistent with WTO rules. However, Argentina was fully aware that since Brazil's request was on the agenda for the second time, a panel would have to be established at the present meeting. Argentina still hoped that it would be possible to find a mutually acceptable solution to this dispute.

22. 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.

23. The representatives of the European Communities, Guatemala, Paraguay and the United States reserved their third-party rights to participate in the Panel's proceedings.

4. United States – Sunset review of anti-dumping duties on corrosion-resistant carbon steel flat products from Japan

(a) Request for the establishment of a panel by Japan (WT/DS244/4)

24. The Chairman drew attention to the communication from Japan contained in document WT/DS244/4.

25. The representative of Japan said that his country had requested the establishment of a panel to examine the US sunset review of anti-dumping duties on corrosion-resistant carbon steel flat products from Japan. As Japan's claims were contained in its panel request, he did not wish to reiterate them at the present meeting. He noted that these claims included, among other things, the WTO inconsistency of the US laws, regulations, administrative procedures, including the US Department of Commerce Policy Bulletin and practices, as well as their applications to the imports from Japan. The United States had initiated the so-called sunset review automatically without sufficient evidence, had set unjustifiably high standards for the withdrawal of the anti-dumping measure, and had opted for an inappropriate method of calculation of the dumping margins. All of these US actions had resulted in the continuation of the measure in question. In its injury analysis, the United States had undertaken cumulative assessment without examining the existence of required conditions. The consultation, which had been requested by Japan in January 2002, had been held on 14 March 2002. However, no mutually satisfactory solution had been reached. Consequently, Japan was requesting that a panel be established at the present meeting.

26. The representative of the United States said that his country was disappointed that the consultations with Japan had not resulted in the resolution of this dispute. The United States could not agree to the establishment of a panel at the present meeting as it disagreed with Japan's allegations concerning the US measure. In particular, Japan was alleging breaches of obligations that did not exist. For example, Japan suggested that Article 11.3 included requirements for self-initiation that were simply not there. Similarly, Japan argued for a non-existent de minimis standard in sunset reviews, and argued incorrectly that the concept of negligibility applied in sunset reviews. Japan was

also incorrect in contending that a cumulative assessment could not be made in sunset reviews. Japan's other allegations concerning the Anti-Dumping Agreement and US law equally lacked merit. The United States believed that in general, and as applied to the anti-dumping duty order in question on Japanese steel, its sunset review regime fully complied with the US obligations under the Anti-Dumping Agreement and the other WTO Agreements. The United States was confident that should a panel be established, it would so agree. It urged Japan to reconsider its approach to this matter.

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

5. United States – Definitive safeguard measures on imports of circular welded carbon quality line pipe from Korea

(a) Statement by Korea concerning a reasonable period of time for implementation of the DSB's recommendations and rulings

28. The representative of Korea, speaking under "Other Business", recalled that the Appellate Body and the Panel Reports in the case under consideration had been adopted at the 8 March DSB meeting. However, the United States had still not provided information on a reasonable period of time for implementation of the DSB's recommendations and rulings in this regard. He noted that in accordance with Article 21.3 (b) of the DSU, only three days remained before the expiry of the 45-day period within which the parties should reach agreement on a mutually acceptable reasonable period of time. He recalled that at the 5 April meeting, the United States had informed the DSB of its intentions to implement the DSB's recommendations and rulings in this case. He noted that implementation in this case would not require any legislative changes and could be accomplished through administrative means. Therefore, the reasonable period of time should be as short as possible. Korea hoped that the parties would be able to agree on a reasonable period of time by Monday, 22 April 2002, the date of expiry of the 45-day period from the date of the adoption of the Panel and the Appellate Body Reports.

29. The representative of the United States said that his delegation was surprised that Korea had raised this issue at the present meeting. He further stated that Korea was aware that the United States had been in contact with Korea on this matter and would provide further responses within the next few days.

30. The DSB took note of the statements.
