WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/88
29 September 2000

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Dispute Settlement Body
11 September 2000

MINUTES OF MEETING

Held in the Centre William Rappard
on 11 September 2000

Chairman: Mr. S. Harbinson (Hong Kong, China)

Prior to the adoption of the agenda, the item concerning "Korea – Measures Affecting Import of Fresh, Chilled and Frozen Beef – Report of the Panel" had been removed from the proposed agenda as a result of Korea's decision to appeal the Report.

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1. United States - Section 110(5) of the US Copyright Act

(a) Implementation of the recommendations of the DSB

1. The Chairman recalled that in accordance with DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He also recalled that at its meeting on 27 July 2000, the DSB had adopted the Panel Report on "United States – Section 110(5) of the US Copyright Act". He noted that the 30-day period in this case had expired on 26 August 2000. In a communication dated 24 August 2000 (WT/DS160/9), the United States had informed the DSB in writing of its intentions with respect to implementation of the DSB's recommendations.

2. The representative of the United States said that the letter which had been sent to the Chairman and which had been circulated to Members in document WT/DS160/9 was self-explanatory. The United States intended to implement the recommendations and rulings of the DSB in a manner which respected its WTO obligations, and had begun to evaluate options for doing so. As noted in the document to which she had just referred, the United States needed a reasonable period of time in which to implement the DSB's recommendations and rulings. Accordingly, her country proposed that such a reasonable period of time be 15 months. The United States hoped that the DSB could reach a consensus, at the present meeting, to accept the proposal in accordance with Article 21.3(a) of the DSU. However, if that was not possible, her country was ready to consult with

the EC regarding a reasonable period of time. Her delegation was not in a position to state what form implementation would take. She reiterated that the United States was reviewing its options and intended to implement in a manner which respected its WTO obligations.

3. The representative of the European Communities said that the EC welcomed the US intention to fully comply with its WTO obligations. However, it could not accept the period of 15 months proposed by the United States. The EC believed that such a time-period was not reasonable and was rather excessive. The legislative change required was a simple one and could be completed in a shorter period of time. While the EC could not accept the period of 15 months, it was ready to consult with the United States on this matter.

4. The representative of Australia said that while his country recognized that the negotiation of a reasonable period of time was a matter for the EC and the US, or for determination by an arbitrator, Australia had a strong interest in implementation in this case, given that Australian artists had been, and continued to be, deprived of their right to equitable remuneration for the commercial use of their works in direct contravention of US obligations under the TRIPS Agreement. Further, although Australia recognized the right of the United States to determine how it would implement the recommendation, implementation in this case should not be a complex matter requiring detailed legislative or regulatory amendments.

5. The DSB took note of the statements and of the information provided by the United States regarding its intention to implement the DSB's recommendations. The DSB also noted that the question of a reasonable period of time would be a matter for further consideration by the parties under Article 21.3(b) of the DSU.

2. United States – Measures treating export restraints as subsidies

(a) Request for the establishment of a panel by Canada (WT/DS194/2)

6. The Chairman recalled that the DSB had considered this matter at its meeting on 4 August 2000 and had agreed to revert to it. He drew attention to the communication from Canada contained in document WT/DS194/2.

7. The representative of Canada pointed out that his country's request for the establishment of a panel was before the DSB for the second time. The first request had been made at the DSB meeting on 4 August 2000. He regretted that at that meeting the United States had not allowed the panel to be established. Canada's claims concerning the treatment of export restraints set out in its panel request, had been circulated to Members in document WT/DS194/2. As stated previously, Canada viewed the US measures as unjustified and inconsistent with the US obligations.

8. Consequently, in accordance with the relevant provisions of the DSU, the GATT 1994 and the SCM Agreement, Canada affirmed its request for the establishment of a panel. He recalled that at the 4 August DSB meeting, the United States had expressed a number of concerns with Canada's panel request. At the present meeting, he did not wish to engage in a detailed rebuttal of all points made by the United States, and would make only brief comments on the US statement.

9. Canada disagreed with the United States about its concerns with regard to the reference to "US practice" in the identification of the "measures" at issue in the panel request and, specifically, the US allegation that "practice" was not sufficiently identified, and that it had not been the subject of consultations. He refered to a letter that Canada had sent to the United States prior to the consultations. In that letter, dated 13 June 2000, Canada had given the United States express notice that at the consultations, it wished to enquire as to sources of "US law and practice" that in addition to the other identified measures, were relevant to US treatment of export restraints. Moreover, the

US Statement of Administrative Action (SAA) and the Preamble - two of the measures identified in Canada's request for consultations - both contained clear references to US practice. Canada was concerned that this US practice was to apply the legal interpretation set out in the SAA and Preamble, thus contravening the US WTO obligations.

10. He further stated that "practice" under the identified measures was very much a part of the consultations, and the reference to "practice" in Canada's panel request could not in any way prejudice the ability of the United States to defend itself. Canada had clearly stated its claims and the legal basis for those claims. He reiterated Canada's request that a panel be established to examine this matter.

11. The representative of the United States said that, for the reasons previously stated at the 4 August DSB meeting, her country wished to oppose the establishment of a panel on this matter. However, the United States recognized that, in accordance with the DSU provisions, unless Canada objected, a panel would automatically be established. She did not wish to repeat the US comments made at the previous meeting, which remained valid. She only wished to reiterate that Canada's panel request failed to conform to the requirements of the DSU to the extent that it included a measure – an unidentified "US practice" - that was neither included in Canada's consultation request nor discussed at the consultations. The United States reserved its rights with respect to Canada's failure to follow the DSU rules. In addition, the use of the word "include" in its panel request suggested that Canada might attempt to raise before a panel "measures" other than those identified in its panel request. As previously stated, under established WTO law, such an attempt would be impermissible, and therefore the United States also reserved its rights with respect to this aspect of Canada's panel request.

12. 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.

13. Australia, European Communities and India reserved their third-party rights to participate in the Panel's proceedings.