WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/264
27 March 2009

(09-1513)

Dispute Settlement Body
11 February 2009

MINUTES OF MEETING

Held in the Centre William Rappard
on 11 February 2009

Chairman: Mr. Mario Matus (Chile)

1. China – Measures affecting imports of automobile parts

(a) Implementation of the recommendations of the DSB

1. 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 the 12 January 2009 DSB meeting, in relation to the disputes on: "China – Measures Affecting Imports of Automobile Parts", the DSB had adopted the Appellate Body Report and the Panel Report, as upheld by the Appellate Body Report, pertaining to the complaint by the European Communities. The DSB had also adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, pertaining to the complaint by the United States, as well as the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, pertaining to the complaint by Canada. He then invited the representative of China to inform the DSB of its intentions in respect of implementation of the recommendations.

2. The representative of China recalled that, on 12 January 2009, the DSB had adopted the Appellate Body Reports and the Panel Reports as upheld and modified by the Appellate Body Reports pertaining to the disputes on "China – Measures Affecting Imports of Automobile Parts" (DS339; DS340; DS342). According to Article 21.3 of the DSU, China was now informing the DSB that it intended to implement the DSB's recommendations and rulings in a manner that respected China's WTO obligations, and had begun to evaluate options for doing so. Since it was impracticable to immediately comply with the DSB's recommendations, China would need a reasonable period of time in which to implement. China stood ready to consult with the EC, the United States and Canada regarding a reasonable period of time in accordance with Article 21.3(b) of the DSU.

3. The representative of Canada said that her country welcomed the statement made by China that China intended to comply with the DSB's recommendations and rulings. Canada was, however, concerned about China's statement made at the 12 January 2009 DSB meeting that China did not consider the Panel's alternative findings on Article II of the GATT 1994 to be part of the recommendations adopted by the DSB. The Panel had found that China's measures, even if they were applied and administered as ordinary customs duties, would be inconsistent with Article II of the GATT 1994. Yet China now asserted that those findings were not part of what the DSB had adopted

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on 12 January 2009. In attempting to explain its position at that meeting, China had stated, in essence, that because the adoption of a panel report under Article 16 of the DSU was contingent on a party's right to seek appellate review, the Panel's Article II findings could not be considered adopted because the Appellate Body had declined to examine them. China's position improperly conflated the right of a party to seek review of a panel's findings with the status of those findings when the DSB adopted the Appellate Body report. Notably, in this case, the Appellate Body had not modified the Panel's findings that China's measures would be inconsistent with Article II of the GATT 1994. On the contrary, the Appellate Body had explicitly rejected China's request to declare those findings "moot and of no legal effect". By asserting, unilaterally, that despite this rejection, it might disregard those findings, China seemed to be calling into question the good faith of the request it had made to the Appellate Body. In any event, in accordance with Article 19.1 of the DSU and paragraph 254 of the Appellate Body's Report, it was now China's obligation to bring its measures into conformity with the GATT 1994. Canada urged China to do so without delay, and was ready to discuss with China what would constitute a reasonable period of time for China to comply with its GATT obligations.

4. The representative of the United States said that his delegation wished to thank China for its statement made at the present meeting, indicating that it intended to implement the DSB's recommendations and rulings in this dispute. As noted at the 12 January 2009 DSB meeting, China's measures imposed a discriminatory tax and additional administrative burdens on the use of imported auto parts. Those were the sole functions of the measures. Thus, to eliminate the WTO-inconsistent discrimination, China may simply remove those measures. Accordingly, the United States expected the implementation process to be relatively straightforward. The United States stood ready to discuss with China a reasonable period of time for its implementation, under Article 21.3(b) of the DSU.

5. The representative of the European Communities said that the EC welcomed China's statement regarding its intentions to comply with the DSB's findings, and urged China to do so in the shortest possible period of time. The EC's car industry was already facing the challenges of global recession, and should not continue to be penalized by China's discriminatory measures. The EC wished to revert to a point made by China at the 12 January 2009 DSB meeting with regard to the Panel's alternative findings on Article II of the GATT 1994. While indeed the Appellate Body had not reviewed those findings, it had considered the proper interpretation of Article II of the GATT 1994 in the context of its findings on the threshold issue, and had addressed the issue of HS General Interpretative Rule 2(a), *inter alia*, in paragraphs 164 and 165 of its Report. The EC considered those Appellate Body's findings to be also relevant in guiding China's efforts towards effective implementation. The EC remained available to discuss with China the issue of the reasonable period of time.

6. The representative of Brazil said that his country had participated as a third party to this dispute. Brazil noted and appreciated China's statement that China intended to implement the DSB's recommendations and rulings. Brazil looked forward to seeing this dispute settled as soon as possible.

7. The representative of China said that his delegation wished to briefly respond to the statements made by Canada and the EC. China had no intention to reopen the debate on the issue of the scope of the DSB's recommendations. As China had stated at the 12 January 2009 DSB meeting, without an effective recommendation from the Appellate Body on the alternative findings of the Panel, China would have difficulty in understanding how the Panel's recommendation on the alternative findings issue could be part the DSB's recommendations. China took note of the statements made by Canada and the EC and reserved its right to make further responses in that regard.

8. The DSB took note of the statements, and of the information provided by China regarding its intentions in respect of implementation of the DSB's recommendations.