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WT/DSB/M/363

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Dispute Settlement Body
17 June 2015

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 17 JUNE 2015

Chairman: Mr. Harald Neple (Norway)

Prior to the adoption of the Agenda, the representative of Mexico said that his country wished to withdraw item 1B (recourse to Article 22.2 of the DSU by Mexico in the COOL dispute) from the proposed Agenda item 1 of the present meeting. In the interest of transparency and to the benefit of all Members, Mexico wished to explain the reasons for its withdrawal. He said that on 4 June 2015, Mexico had filed its request for suspension of concessions or other obligations. Subsequently, Mexico became aware that due to a typographical error, there was a mathematical error in the calculation of the final amount. In order to rectify this, Mexico had requested a corrigendum, which was circulated on 12 June 2015. Mexico consulted with the United States in order to enable the DSB to consider the original document and the corrigendum at the present meeting. Mexico believed that this corrigendum did not affect the substance of the matter to be discussed in the arbitration proceedings. However, in the US view, there was a need to ensure that the 10-day advance notice for circulation of documents be preserved. Following Mexico's consultation with the United States, the parties had agreed that, at the present meeting, Mexico would withdraw item 1B from the proposed Agenda. Mexico would then file another request for suspension of concessions or other obligations and would request that a special DSB meeting be convened on 29 June 2015 for this purpose. Subsequently, on 22 June 2015, the United States would file its request for arbitration.

The representative of the United States said that his country was pleased to have cooperated with Mexico to find a way forward. Mexico's withdrawal of the original request was appropriate given Mexico's desire to revise that request. Following the circulation of a revised request, the United States would object to that request. This sequence of steps would ensure that there was no confusion about what request had been presented to the DSB for action, would ensure compliance with the 10-day advance notice rule, and would clarify which request was subject to the objection and referral by the responding party.

The Chairman said that item 1B was removed from the proposed Agenda, as requested by Mexico.

The DSB took note of the statements and the Agenda was adopted as amended.

1 UNITED STATES – CERTAIN COUNTRY OF ORIGIN LABELLING (COOL) REQUIREMENTS

A. Recourse to Article 22.2 of the DSU by Canada (WT/DS384/35)

1.1. The Chairman drew attention to the communication from Canada contained in document WT/DS384/35, and invited the representative of Canada to speak.

1.2. The representative of Canada said that his country was, at the present meeting, requesting authorization from the DSB to suspend concessions to the United States, as was its right under Article 22 of the DSU, in response to the US continued non-compliance with its WTO obligations, despite more than five years of proceedings in the "US-COOL" dispute. The timelines in this dispute were well-known, and were also identified in the documentation submitted by Canada in support of this request. In that regard, Canada would not repeat them again at the present

meeting. What was important for the purposes of the present meeting was that the DSB had, at its 29 May 2015 meeting, adopted the Appellate Body and Panel Reports in the compliance phase of this dispute. Those Reports had concluded that the amended COOL measure continued to be inconsistent with the WTO obligations of the United States under both the TBT Agreement and the GATT 1994. At the 29 May 2015 DSB meeting, Canada had called on the United States to repeal the amended COOL measure, to rectify its WTO violations, and to remove this unnecessary barrier to trade. Despite some efforts in the US House of Representatives, Canada was deeply disappointed that the United States continued to maintain a measure that was inconsistent with its WTO obligations. As a direct result of this non-compliance, Canadian stakeholders continued, on a daily basis, to be adversely affected by this US measure which had nullified or impaired benefits that would have otherwise accrued to Canada through the supply of Canadian livestock to the US market. Canada's request to the DSB for authorization to suspend concessions to the United States should not be a surprise. Over the past two years of this dispute, Canada had repeatedly warned that, should the United States fail to bring itself into compliance, Canada would seek authorization to retaliate. At the present meeting, Canada was requesting that the DSB authorize Canada to suspend concessions in the amount of CDN$3.068 billion per year, which was the equivalent of the level of nullification and impairment of benefits suffered by Canada, on an annual basis, as a result of the amended COOL measure. Following the principle in Article 22.3(a) of the DSU, this request concerned the suspension of certain tariff and related obligations to the United States under the GATT 1994. Canada would, in due course, provide the DSB with a list of the US goods that would be affected by its suspension of concessions and the level of tariffs to be applied to those goods. Although the decision to make this request for retaliation was not one that Canada had taken lightly, the adverse effects of the WTO-inconsistent measure maintained by the United States left Canada with no choice but to seek to preserve Canada's rights under the WTO Agreement. Canada believed deeply in the role of the dispute settlement system in providing security and predictability for all participants in the multilateral trading system. The failure of the United States to comply with the DSB's recommendations and rulings in this dispute negatively affected not only Canadian interests, but the credibility of the trading system as a whole. Canada, once again, strongly urged the United States to comply with its WTO obligations by immediately repealing the amended COOL measure as it applied to muscle cuts of beef and pork. Canada noted the communication filed by the United States on 16 June 2015, in which the United States informed of its objection to the amount requested by Canada. Canada also understood that as a result of that objection, this matter was now referred to arbitration. Canada stood ready to explain and defend, in the course of arbitration proceedings under Article 22.6 of the DSU, the calculation of the retaliation amount requested at the present meeting.

1.3. The representative of the United States said that, on 16 June 2015, the United States had submitted an objection to Canada's request for authorization to suspend the application to the United States of concessions or other obligations. The United States noted that, pursuant to the US objection on 16 June 2015 to Canada's request, this matter had thereby been referred to arbitration pursuant to Article 22.6 of the DSU. In this circumstance, there was no need for the present meeting as there was no action the DSB may take with respect to Canada's request. Nevertheless, while not an efficient use of the resources of the WTO and of Members, the United States had no objection if the DSB wished to take note of that fact and confirm that it may not consider Canada's request for authorization, which was the item on the Agenda of the present meeting, since the matter had been referred to arbitration. Turning briefly to the US objection, the United States strongly disagreed with Canada's specific proposal for the suspension of concessions. Although these matters would be considered in detail during the arbitration, the United States would emphasize that the level of Canada's request was quite excessive.

1.4. The representative of the European Union said that the EU noted that there was some controversy as to whether or not the present DSB meeting was necessary for the purpose of referring the matter to arbitration. The EU welcomed the present meeting and referred to the views expressed by the EU on this matter at previous DSB meetings.

1.5. The DSB took note of the statements and that the matter raised by the United States in document WT/DS384/36 has been referred to arbitration, as required by Article 22.6 of the DSU.

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