RESTRICTED

WORLD TRADE ORGANIZATION

WT/DSB/M/12
21 March 1996

(96-1035)

DISPUTE SETTLEMENT BODY
5 March 1996

MINUTES OF MEETING

Held in the Centre William Rappard
on 5 March 1996

Chairman: Mr. Celso Lafer (Brazil)

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1. Brazil - Measures affecting desiccated coconut
- Request for establishment of a panel (WT/DS22/5)

The representative of the Philippines said that her country wished to request the DSB to establish, at the present meeting, a panel with standard terms of reference in accordance with Article 7.1 of the DSU. The Philippines requested that the panel consider and find that: (i) the countervailing duties imposed by Brazil on desiccated coconut were inconsistent with paragraphs 3 and 6(a) of Article VI of GATT 1994; and (ii) Brazil should desist from further imposing the countervailing duty on the Philippines' exports of desiccated coconut, and reimburse whatever duties were collected.

The representative of Brazil said that his country noted the request for a panel made by the Philippines and agreed that the panel be established to examine the countervailing measures imposed on imports of desiccated coconut from the Philippines. He said that Brazil would request the panel to give a preliminary ruling on the issue of applicable law as stated in SCM/193 which had been circulated as an annex to WT/DS22/3. Brazil therefore requested the Philippines to hold consultations on the terms of reference of the panel in accordance with Article 7.3 of the DSU.

The DSB took note of the statements, agreed to establish a panel and authorized the Chairman of the DSB to draw up the terms of reference of the panel in consultation with the parties to the dispute in accordance with of Article 7.3 of the DSU. The Chairman said that he would request the Secretariat to carry out the consultations provided for in Article 7.3 of the DSU on his behalf.

The representatives of the United States, the European Communities, Canada, Indonesia, and Malaysia reserved their rights to participate in the Panel's proceedings as third parties.

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The DSB took note of this information.

2. United States - Restrictions on imports of cotton and man-made fibre underwear
- Request by Costa Rica for the establishment of a panel (WT/DS24/2)

The Chairman drew attention to the communication from Costa Rica contained in WT/DS24/2.

The representative of Costa Rica recalled that on 27 March 1995 the United States had requested consultations with Costa Rica on the above-mentioned textiles category under Article 6 of the Agreement on Textiles and Clothing (ATC). After the bilateral consultations had failed and the quantitative restrictions had been imposed on Costa Rican exports, the Textiles Monitoring Body (TMB) had reviewed the matter on 21 July . The TMB had found that serious damage, as envisaged in paragraphs 2 and 3 of Article 6 of the ATC, had not been demonstrated. It could not reach a consensus on the existence of actual threat of serious damage. It had recommended that "further consultations be held between the United States and the parties concerned, with a view to arriving at a mutual understanding, bearing in mind the above, and with due consideration to the particular features of this case, as well as equity considerations."[1] The parties held further bilateral consultations in August 1995 but these did not lead to a mutually satisfactory understanding. Discussions in the TMB during its subsequent review on 19 October had confirmed its previous conclusions. On that occasion, the TMB had considered its review of the matter completed. Subsequently, Costa Rica had requested consultations with the United States under Article 4 and other relevant provisions of the DSU, Article XXIII of the GATT 1994 and the corresponding provisions of the ATC. These consultations did not produce a solution to the dispute. Therefore, Costa Rica requested the DSB to establish a panel with standard terms of reference in accordance with Article 7.1 of the DSU. It also requested that the panel review and find that: (i) the quantitative restrictions introduced by the United States were inconsistent with Articles 2, 6, and 8 of the ATC; (ii) the measure in question nullified or impaired the benefits accruing to Costa Rica from the WTO and under the ATC in particular; and (iii) the United States should withdraw the measure.

The representative of the United States recalled that, as Members were aware, the transitional safeguard was permitted under the ATC if the proper conditions were met. The United States had met all these conditions and believed that it had acted fully within its rights under the ATC. The US imports from Costa Rica of the product in dispute -- category 352/652 -- had risen sharply and had displaced the US domestic production. In 1995, Costa Rican imports had equalled almost 10 per cent of the US domestic production of this product. Cotton and man-made fibre underwear from Costa Rica were the lowest priced goods entering into the US market. Their prices were well below the US producers' average prices of the same product. The United States believed that it was justified in finding serious damage or actual threat thereof, as referred to in Article 6 of the ATC. It had complied with all procedural requirements: it had gone through the TMB process twice, and had consulted with Costa Rica six times in search of a solution. Despite Costa Rica's views, expressed in consultations and in its statement made at the present meeting, the United States was convinced that its safeguard measure was necessary and fully consistent with its obligations under the ATC. The United States would not stand in the way of a consensus on the establishment of a panel at the present meeting. It looked forward to resolving this dispute through the dispute settlement process.

The DSB took note of the statements and agreed to establish a panel with standard terms of reference in accordance with Article 6 of the DSU.

[1] G/TMB/R/2