RESTRICTED

WT/DSB/M/21

5 August 1996

(96-3097)

WORLD TRADE ORGANIZATION

DISPUTE SETTLEMENT BODY
15 and 16 July 1996

MINUTES OF MEETING

Held in the Centre William Rappard
on 15 and 16 July 1996

Chairman: Mr. Celso Lafer (Brazil)

Subjects discussed: Page

1. United States - Tariff increases on products from the European Communities 1
- Request by the European Communities for the establishment of a panel 1

2. Pakistan - Patent Protection for Pharmaceutical and Agricultural Chemical Products 3
- Request by the United States for the establishment of a panel 3

3. Proposed nominations for the indicative list of governmental and non-governmental panelists 4

4. Poland - Import Régime for Automobiles 5
- Mutually agreed solution 5

5. Report on progress of preparatory work for the Singapore Ministerial Conference 5
- Announcement by the Chairman 5

1. United States - Tariff increases on products from the European Communities
- Request by the European Communities for the establishment of a panel (WT/DS39/2)

The Chairman recalled that the DSB had considered this matter at its meeting on 5 July and had agreed to revert to it at the present meeting. He drew attention to the communication from the European Communities contained in WT/DS39/2.

The representative of the European Communities recalled the origin of the request for the establishment of a panel i.e., prohibitive tariffs applied unilaterally by the United States for the past nine years to a range of export products from the Communities valued at more than US$ 90 million. He said that a new development which might affect the Communities' position with regard to the establishment of the panel had taken place that morning. According to the information provided by the United States, it appeared that the application of the above-mentioned measures had been terminated

on 15 July 1996. The Communities were currently seeking confirmation of this welcome news and therefore requested that the DSB suspend the consideration of this Agenda item for the next twenty-four hours.

Following a procedural discussion on this request, the DSB suspended the consideration of this item and agreed to resume its consideration on 16 July.

Upon resuming the meeting on 16 July, the representative of the European Communities requested the United States to confirm and explain the legal situation, and if possible, to provide some indications of the practical implications with respect to the imposition of duties on exports from the Communities.

The representative of the United States assured the Communities, and other Members, that the information alluded to by the Communities on 15 July was accurate i.e., effective 12.01 a.m., 15 July 1996 (6.01 a.m. Geneva time) the US Government had terminated the application of the increased duties on certain products from the Communities under the Presidential Proclamation No. 5759 of 24 December 1987, and presently applied the m.f.n. rates on those products.

The determination to terminate the application of these increased duties was taken by the United States Trade Representative and had been sent to the US official journal, the Federal Register, which would publish it in due course. Publication of the determination was not a precondition to its effectiveness. As stated in the determination, the increased tariffs had been terminated. A copy of the determination had been provided to the Communities on 15 July 1996. Copies would also be made available to interested delegations. In accordance with the determination, "the termination of increased duties is effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 12.01 a.m. 15 July 1996". He added that Italian exporters currently in the process of exporting canned tomatoes confirmed that their exports would enter the United States at the m.f.n rate of duty.

The United States, a major proponent in the Uruguay Round for improved rules and procedures for the settlement of disputes, had shown, through its actions, the confidence in the multilateral dispute settlement system embodied in the DSU. At present, with a system in which a Member could not deny others effective legal recourse, the United States had been using that system and was accepting its results. It had chosen to file a complaint against the Communities' hormone directive requesting the establishment of a panel. In terminating the measures that the Communities' actions had provoked, his authorities had placed their confidence and trust in the WTO dispute settlement system. He believed that it was neither necessary nor appropriate for the Communities to maintain their request for the establishment of a panel since the measure under consideration had been terminated. The United States urged the Communities to reconsider the need for another meeting of the DSB.

The representative of the European Communities said that his delegation was grateful for the clear confirmation on the termination of these measures and looked forward to an early publication in the Federal Register. In the light of the statement and the confirmation given, his delegation wished to reserve its rights to reconvene, if necessary, a further meeting of the DSB at an early date.

The DSB took note of the statements.

2. Pakistan - Patent Protection for Pharmaceutical and Agricultural Chemical Products - Request by the United States for the establishment of a panel (WT/DS36/3)

The Chairman drew attention to the communication from the United States contained in document WT/DS36/3.

The representative of the United States said that on 30 April 1996, his country had requested Pakistan to hold consultations with regard to the failure of Pakistan either to provide patent protection for pharmaceutical and agricultural products or to comply with the obligations under Articles 70.8 and 70.9 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). As a developing country, Pakistan was entitled under the transitional provisions contained in Article 65 of the TRIPS Agreement to delay modifying its patent system to make product patent protection consistent with Article 27 of the TRIPS Agreement. However, since Pakistan did not provide patent protection for pharmaceutical and agricultural chemical products on 1 January 1995, it was obliged to comply with Articles 70.8 and 70.9 of the TRIPS Agreement as of that date.

Article 70.8 of the TRIPS Agreement required Pakistan to establish procedures to permit entities to file product patent applications, referred to as "mailbox" applications, drawn to pharmaceutical and agricultural chemical inventions. It also required Pakistan to ensure that when it provided patent protection for pharmaceutical and agricultural chemical products, all "mailbox" applications would be promptly examined based on their priority date, and patents would be granted based on the standards established in the TRIPS Agreement. Article 70.9 of the TRIPS Agreement required Pakistan to establish a system to provide exclusive marketing rights in products that were the subject of a "mailbox" application, where the product had been patented and granted marketing approval in another Member and had been granted marketing approval in Pakistan. Although more than nineteen months had elapsed since January 1995, Pakistan had not made the necessary changes to its laws to meet its obligations. The consultations requested by the United States with Pakistan to resolve this matter had not produced a mutually acceptable solution. Accordingly, the United States requested the establishment of a panel to examine this matter.

The representative of Pakistan said that his country respected the right of a Member to request the establishment of a panel after the consultations had failed to settle a dispute. His country was however disappointed with the United States' decision to proceed to the panel stage though Pakistan, still engaged in the process of consultations, had assured the United States of its sincere efforts to fulfil its obligations under the TRIPS Agreement. He confirmed that, as stated in WT/DS36/3, the United States had requested Pakistan to hold consultations pursuant to Article XXII of GATT 1994 and Article 4 of the DSU. His country had responded positively and had invited the United States to hold the consultations in Islamabad in the third week of June. It had proposed these arrangements due to financial difficulties to bring representatives to Geneva, and also due to their involvement in the preparation of the annual budget and in trade policy matters.

His delegation regretted that the United States had not accepted Pakistan's genuine request and had insisted to enter into consultations in Geneva within 30 days of the request although Article 4.3 of the DSU stipulated a possibility to enter into consultations within another mutually agreed period. As a result, his delegation had held a round of consultations in Geneva on 30 May 1996, within the 30-day period. During these consultations, Pakistan had assured the United States, and the European Communities which had joined the consultations, that it was committed to fulfilling its obligations under the TRIPS Agreement, and that the bill to amend its Patents and Designs Act to provide for the so-called "mailbox system" had been before the Parliament and was expected to be shortly enacted into law. Furthermore, his country had formally confirmed this position to the General Council and the Council for TRIPS.

During the consultations, the United States had provided a series of written questions which included questions not directly relevant to the issue of "mailbox system". For example, one question was "when did Pakistan expect to provide patent protection for pharmaceutical and agricultural chemical products?" He recalled that the TRIPS Agreement provided for a transitional period of ten years for developing countries like Pakistan to extend patent protection to such products. Other questions related to provisions of the TRIPS Agreement for which Pakistan had another three years to implement. Pakistan had nevertheless responded to the United States' concerns positively and in good faith, and had informed the United States in writing that the bill to amend its Patents and Designs Act was already before the Parliament and was expected to be enacted into law following the completion of the parliamentary process. Three days after these assurances, the United States had proceeded with its request for the establishment of a panel.

Article 3.7 of the DSU contained important principles with regard to the general provisions for settlement of disputes. It stipulated that before bringing a case, a Member shall exercise its judgement as to whether action under the DSU procedures would be fruitful, and that the aim of the dispute settlement mechanism is to secure a positive solution to a dispute. Pakistan which had entered into consultations with the United States in a positive spirit had assured the United States of its resolve to fulfil its commitments including that with respect to the "mailbox system" under the TRIPS Agreement, and had confirmed the introduction of an amendment bill to that effect in the Parliament. He therefore expressed disappointment that the United States had decided to request the establishment of a panel and questioned whether this was the most fruitful recourse to the DSU procedures.

This experience raised important questions in relation to the DSU such as: (i) the real difficulties faced by developing countries on the insistence by a developed country that consultations be held only in Geneva; (ii) the meaning and significance of the consultations stage; (iii) whether a Member could decide unilaterally that consultations had been concluded in particular since Article 12.10 of the DSU provided that "in the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the period established in paragraphs 7 and 8 of Article 4. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultations with the parties, whether to extend the relevant period, and if so, for how long." For all these reasons, Pakistan could not agree to the establishment of a panel requested by the United States. His delegation hoped that the United States would reconsider and explore the consultations further.

The representative of the United States regretted Pakistan's decision to delay the establishment of a panel. In pursuance of Article 6 of the DSU, his delegation noted the fact that the panel to examine this matter would be established when the request would reappear on the agenda of the next DSB meeting.

The DSB took note of the statements and agreed to revert to this matter at a future meeting.

3. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/33)

The Chairman drew attention to document WT/DSB/W/33 containing additional names proposed by Members for inclusion on the indicative list of governmental and non-governmental panelists in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in WT/DSB/W/33.

The DSB so agreed.

4. Poland - Import Régime for Automobiles
- Mutually agreed solution

The representative of India, speaking under "Other Business", said that in pursuance of the request by India to hold consultations with Poland under Article 4 of the DSU and Article XXIII:1 of GATT 1994 contained in WT/DS19/1 and dated 18 October 1995, India and Poland had held several rounds of consultations on matters related to Poland's import régime on passenger cars. As a result of these consultations, India and Poland had arrived at a mutually agreed solution. By this agreement, the authorities of India and Poland wished to inform the DSB that they had effectively and finally terminated the dispute settlement proceedings resulting from the complaint made by India against Poland contained in WT/DS19/1. The DSB would be notified of the details of the agreement in the very near future.

The representative of Poland said that his authorities confirmed the statement made by India.

The DSB took note of the information.

5. Report on progress of preparatory work for the Singapore Ministerial Conference
- Announcement by the Chairman

The Chairman, speaking under "Other Business", announced that at the meeting of the General Council scheduled for 18 July 1996, the Chairman intended to invite Chairpersons to present an oral report on the progress of preparatory work for the Ministerial Conference in Singapore in their respective bodies. These reports would be presented under the responsibility of each Chairperson. He therefore proposed to present a short, factual oral report under its own responsibility on the activities of the DSB thus far this year, in implementing the provisions of the DSU.

The DSB took note of this information.