WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/246
20 March 2008

(08-1248)

Dispute Settlement Body
8 February 2008

MINUTES OF MEETING

Held in the Centre William Rappard
on 8 February 2008

Chairman: Mr. Bruce Gosper (Australia)

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1. European Communities – Measures affecting the approval and marketing of biotech products

(a) Recourse to Article 22.2 of the DSU by the United States (WT/DS291/39)

1. The Chairman drew attention to the communication from the United States contained in document WT/DS291/39, and invited the representative of the United States to speak.

2. The representative of the United States said that, as his country had noted at the January DSB meeting, the reasonable period of time for the EC's compliance in this dispute had expired on 11 January 2008. Even though more than four and a half years had elapsed since the United States had filed its consultation request in May 2003, the issues covered in the dispute remained unresolved. On 14 January, the United States and the EC had agreed to certain procedures under Articles 21 and 22 of the DSU for the purposes of this dispute. Those agreed procedures had been notified to the DSB in document WT/DS291/38 on 17 January 2008. The United States and the EC had entered into these agreed procedures with the intent of allowing continued discussions aimed at the goal of resolving this dispute and related issues. On 17 January 2008, the United States had requested authorization under Article 22.2 of the DSU to suspend concessions and other obligations with respect to the EC under the covered agreements. The requested level of suspension was the annual level equivalent to the annual level of nullification or impairment of benefits accruing to the United States resulting from the EC's failure to bring measures of the EC and its member States, concerning the approval and marketing of biotech products, into compliance with the DSB's recommendations and rulings.

3. Pursuant to the agreed procedures between the United States and the EC, on 6 February 2008, the EC had objected to the level of suspension proposed by the United States, and had claimed that the US request had not followed the principles or procedures set forth in Article 22.3 of the DSU. The EC's objection served to refer this matter to arbitration, pursuant to Article 22.6 of the DSU, and no further action was required of the DSB. Indeed, Article 22.6 of the DSU did not refer to any decision by the DSB. Nevertheless, the United States had no objection if the DSB wished to take note of that fact and confirm that it may not consider the US request for authorization, which was the item on the agenda of the present meeting, since the matter was being referred to arbitration.

4. The United States wished to note, however, that it was unfortunate that the time of the DSB had to be wasted to consider this matter at the present meeting. The United States would have much preferred to have withdrawn its request under Article 22.2 from the agenda of the present meeting, as Japan had done with respect to its own Article 22.2 request at the previous DSB meeting. Unfortunately, the United States had been told by the EC that unless it had committed to leave its request on the agenda of the meeting, the EC would nonetheless require the DSB to meet by itself putting the US request on the agenda. In light of this, and in order to spare the DSB, the Chairman and the Secretariat needless procedural complications, the United States had chosen not to withdraw its request.

5. Pursuant to the agreed procedures between the United States and the EC, the United States and the EC would request the Arbitrator to suspend its proceedings. If, and when, the DSB were to find that a measure taken to comply with the recommendations and rulings of the DSB in this dispute did not exist, or was inconsistent with a covered agreement, the arbitration would resume at the request of the United States. His country continued to hope that the EC would take the steps necessary to resolve this dispute so that there would be no need for the United States to resort to the withdrawal of concessions or other obligations.

6. The representative of the European Communities said that, by letter of 6 February 2008, the EC had objected to the US retaliation request. As indicated in that letter, the level of suspension proposed by the United States was not equivalent to the level of nullification or impairment within the meaning of Article 22.7 of the DSU. The request did not follow either the principles or procedures set forth in Article 22.3 of the DSU. Accordingly, as required by Article 22.6 of the DSU, the matter shall be referred to arbitration. The EC referred to the sequencing agreement concluded with the United States and transmitted on 14 January 2008. Pursuant to that agreement, the United States and the EC would request the Article 22.6 Arbitrator to suspend its work. This would allow the EC and the US to continue the constructive dialogue which had started in 2007.

7. The EC also wished to react to the US's position that the present meeting was a waste of time of the DSB. The EC considered that referral to Article 22.6 arbitration was an important procedural step that should be subject to the DSB's action. Such action was automatic. The DSB's action would serve as a basis for subsequent DSB's action under Article 22.7 DSU; i.e. the authorization of suspension of concessions at the level determined by the Article 22.6 Arbitrator.

8. The representative of the United States said that, to be clear, under the terms of the DSU, the filing of the EC's objection had automatically resulted in the matter being referred to arbitration. Thus, there was no need at the present meeting for the EC to request that this matter be referred again to arbitration. As the United States had noted, Article 22.6 of the DSU did not refer to any decision by the DSB in this regard.

9. The DSB took note of the statements, and it was agreed that the matter raised by the European Communities in document WT/DS291/40 is referred to arbitration, as required by Article 22.6 of the DSU.

2. European Communities – Anti-dumping measure on farmed salmon from Norway

(a) Implementation of the recommendations of the DSB

10. 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 its meeting on 15 January 2008, the DSB had adopted the Panel Report in the dispute: "European Communities – Anti-Dumping Measure on Farmed Salmon from Norway". He invited the representative of the EC to inform the DSB of its intentions in respect of implementation of the recommendations.

11. The representative of the European Communities said that, following the adoption of the Panel Report in this dispute by the DSB at its meeting on 15 January 2008, the EC would now proceed to implement the recommendation. In doing so, the EC intended to ensure full implementation of the recommendation in a manner consistent with the EC's WTO obligations. The EC had already begun taking the necessary steps in preparation of full implementation. Given the complexity and highly fact-intensive nature of the dispute and the recommendation of the Panel, the EC would need a reasonable period of time to ensure full implementation. The EC stood ready to discuss the reasonable period of time for implementation with Norway, in accordance with Article 21.3(b) of the DSU.

12. The representative of Norway said that his country took note, with satisfaction, of the EC's statement that the EC intended to comply with the DSB's recommendation and ruling on its anti-dumping measure against Norwegian farmed salmon; a measure that had been found incompatible with WTO rules. Norway stood ready to discuss with the EC the question of the reasonable period of time for implementation, namely, the shortest possible time-period for achieving compliance. Norway noted that the EC's implementation could be completed very quickly in line with the EC's specific Regulation No. 1515/2001 allowing it to "fast-track" implementation after having been found by the DSB to violate its WTO obligations. With regard to the EC's intended steps for implementation, Norway reiterated that it expected the EC to repeal the anti-dumping measure on Norwegian farmed salmon. The overall scope, the significance, and the number of infringements of WTO rules was such that Norway believed the EC had no choice but to remove the anti-dumping measure in its entirety. Re-calculations could not remove all the violations. As stated in Article 21.1 of the DSU, "prompt compliance ... is essential in order to ensure effective resolution of disputes to the benefit of all Members". He added that a swift return to normal trading conditions for salmon would be beneficial, not just to Norwegian salmon growers, but also to producers and consumers in the EC.

13. The representative of the European Communities said that her delegation wished to react to the point made by Norway that the measure should be repealed and that this was the only option for the EC to implement in this dispute. It should be noted that despite repeated Norwegian requests for the repeal of the challenged EC's measure, the Panel had explicitly refused to recommend that. This clearly reflected the fact that the Panel had mainly faulted the EC on the facts, not on the law. The EC would be implementing on the basis of the Panel's and the DSB's recommendation.

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